



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 108<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 150

WASHINGTON, FRIDAY, APRIL 2, 2004

No. 45

## Senate

The Senate met at 9 a.m. and was called to order by the Honorable JOHN WARNER, a Senator from the State of Virginia.

### PRAYER

The visiting chaplain, Rev. Bill Jeschke, The Kings Chapel, Vienna, VA, offered the following prayer:

Let us pray.

O God, our strength and our redeemer, please give these, Your servants, the wisdom to know right and the grace to do it. Apart from You, we can do nothing; but by Your empowerment, we can do all things.

Give them strength for this great adventure, the sober service of directing this Senate into Your paths and ways. Help them to be fountains of blessing to our dear people and Your beloved world.

We pray that they will be committed to their sacred duty, and trust that through them You will accomplish Your wise purposes for our country.

We pray this in Your wonderful Name.

Amen.

### PLEDGE OF ALLEGIANCE

The Honorable JOHN WARNER 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 assistant journal clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, April 2, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable JOHN WARNER, a Senator from the State of Virginia, to perform the duties of the Chair.

TED STEVENS,  
President pro tempore.

Mr. WARNER thereupon assumed the Chair as Acting President pro tempore.

### RESERVATION OF LEADER TIME

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

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

### RECOGNITION OF THE MAJORITY LEADER

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

### SCHEDULE

Mr. FRIST. Mr. President, today the Senate will be in for a period, briefly, for morning business. As I stated last night in closing, there will be no roll-call votes during today's session.

I also mentioned in closing last night some of the important issues that need to be addressed that will be considered next week. One of those bills is the Pregnancy and Trauma Care Access Protection Act of 2004. I have repeatedly stated my concern about the current liability system and the fact that physicians are having to leave regions and States and even leave the practice of medicine altogether. That has a direct impact on care for women who are about to deliver children, as well as trauma services and specialty physicians.

We absolutely must find a way to achieve appropriate tort reform and bring common sense back into our court system. Having said that, I hope the Senate can begin the debate on this issue.

### PREGNANCY AND TRAINING CARE ACCESS PROTECTION ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to the consideration of Calendar No. 462, S. 2207, the Pregnancy and Trauma Care Access Protection Act of 2004.

Mr. REID. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

### CLOTURE MOTION

Mr. FRIST. Mr. President, with that objection, I now move to proceed to the consideration of S. 2207, and I will send a cloture motion to the desk.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant journal clerk read as follows:

### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 462, S. 2207, a bill to improve women's access to health care services, and the access of all individuals to emergency and trauma care services, by reducing the excessive burden the liability system places on the delivery of such service.

Bill Frist, Orrin Hatch, Judd Gregg, John Ensign, Lamar Alexander, Peter Fitzgerald, Larry Craig, John Cornyn, Robert Bennett, Mike Enzi, Mitch McConnell, Ted Stevens, Norm Coleman, James Inhofe, Kay Bailey Hutchison, George Voinovich, Charles Grassley.

Mr. FRIST. Mr. President I now ask unanimous consent that the live quorum under rule XXII be waived, and

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



Printed on recycled paper.

S3599

further that notwithstanding rule XXII the vote on the motion to invoke cloture occur at 2:15 on Wednesday, April 7.

Mr. REID. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. FRIST. Mr. President, I now withdraw my motion.

The ACTING PRESIDENT pro tempore. The motion is withdrawn.

Mr. FRIST. Mr. President, over the course of the morning, we will be continuing our discussions on how best to proceed with the JOBS bill, the manufacturing tax bill on which we spent part of last week and this week. Those discussions will continue, and we will be addressing that issue, I hope, in the next week. Medical liability we will be addressing next week.

Discussions continue to go on with regard to the budget, which is in conference. Those conferees were mentioned on the floor of the Senate. We passed the budget under Senator NICKLES' leadership. It was the earliest budget ever passed in this particular body. It is now in conference. I look forward to the product of those conferees at some appropriate time.

As my colleagues know, we have, under the regular order, 10 hours of debate on that before we will be voting on the budget itself.

Next week, we will be voting—and I will talk about this later—on Wednesday and Thursday. This will allow appropriate observance for Passover in preparation for the recess, which will be the following week.

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

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

The assistant journal clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The distinguished Senator from Michigan.

Mr. LEVIN. I thank the Chair.

#### STRATEGIC PETROLEUM RESERVE

Mr. LEVIN. Mr. President, earlier this week the OPEC cartel announced it would reduce oil production by 1 million barrels of oil per day starting April 1. This move is designed solely for one purpose: to keep pushing up oil prices in the United States and other oil-consuming countries.

Most energy experts say that given current inventory levels in the United States and elsewhere and current consumption rates, OPEC's cuts mean that gasoline prices will likely stay high, hurting American families; jet fuel prices will stay high, hurting our airlines; and diesel fuel prices will stay high, hurting our truckers, manufacturers, and farmers.

As OPEC was planning this price hike, what was the response of the ad-

ministration? Just a few days before, the Secretary of Energy stated he was not about to go begging for oil.

One step we should take immediately to counteract high prices and OPEC's action is to stop filling our Strategic Petroleum Reserve. This month, the administration is going to put about 200,000 barrels per day of oil into the Strategic Petroleum Reserve. If OPEC's cuts are distributed equally among its customers, this is about how much the OPEC cut will reduce U.S. supplies. Since the U.S. imports about 20 percent of OPEC's output and OPEC plans to cut production by about 1 million barrels per day, about 200,000 barrels per day will be the reduction in the supply to the United States.

Holding off additional deposits into the Strategic Petroleum Reserve would keep about as much oil on the U.S. oil market as OPEC is taking off our market. One way to fight back is to cancel these additional deposits which will otherwise go into the Strategic Petroleum Reserve, which is already 93-percent filled.

Mr. President, 200,000 barrels per day is a lot of oil. It is as much oil as is produced in several of our major oil-producing States. For instance, Oklahoma produces about 180,000 barrels a day. It is about as much as we import from Kuwait. Last year we imported about 205,000 barrels per day from Kuwait.

Over time, 100,000 to 200,000 barrels per day adds up to a significant amount of oil. Over the course of the next year or so, these daily fills will add up to about 50 million barrels of oil. In other words, over the next year or so, the Department of Energy, if it sticks to its plan to continue to fill the Strategic Petroleum Reserve to 100 percent, the DOE will take about 50 million barrels of oil off the market and put them into the Strategic Petroleum Reserve.

If we keep that oil in the market, in the private sector, we would get both short-term and long-term benefits. The day after the Senate passed the amendment which I offered with Senator COLLINS to cancel the planned delivery of 50 million barrels of oil into the Strategic Petroleum Reserve, prices on the New York and London crude oil exchanges fell by more than \$1, just on the news that the Senate had acted, even before anyone knew whether the House would follow suit. Prices rose back to their previous levels when the Department of Energy and some key Members of Congress said that the DOE should keep putting that oil into the Strategic Petroleum Reserve.

The market's reaction to the news that the Strategic Petroleum Reserve deliveries might be canceled is good evidence of how the market will react to the cancellation of those deliveries. We should listen to what the market is telling us. Keeping 50 million barrels of oil on the market rather than putting them into the reserve will enable our private sector inventories to build back

to normal levels. They have not been at normal levels for some time now. They have been well-below normal and recently fell to historic lows.

If we restore those private sector inventories, this will reduce prices substantially, and most experts agree that absent some type of additional supplies in the market, oil and gas prices are going to stay very high.

I want to make it clear that we are not proposing removing oil from the Strategic Petroleum Reserve at this time. What we are talking about is simply to stop putting even more oil into the reserve which is already 93 percent of capacity.

The administration says the daily addition is too small to make a difference in the price of oil. This is wrong for two reasons.

First, the amount the DOE is putting into the reserve each day is a lot of oil. Second, the administration's position ignores the long-term effect of putting these barrels of oil into the Strategic Petroleum Reserve—and this is the DOE's own staff I am going to quote. This is what DOE's own staff said:

Essentially, if the reserve inventory grows, and OPEC does not accommodate that growth by exporting more oil, the increase comes at the expense of commercial inventories. Most analysts agree that oil prices are directly correlated with inventories, and a drop of 20 million barrels over a 6-month period can substantially increase prices.

In fact, commercial inventories did fall on average by 20 million barrels in each of the three successive 6-month periods following the DOE staff's warning.

The Department of Energy's own staff who operates the Strategic Petroleum Reserve recommended against buying more oil for the Strategic Petroleum Reserve in tight markets.

In the spring of 2002, as prices were rising and inventories in the private sector were falling, this is what the Department of Energy staff warned:

Commercial petroleum inventories are low, retail product prices are high and economic growth is slow.

This is DOE staff's bottom line:

The Government should avoid acquiring oil for the Reserve under these circumstances.

Commercial petroleum inventories are low,—

They are still at an all-time low.

retail product prices are high—

They are at an all-time high now.

and economic growth is slow.

And it does continue to be sluggish. This is what their bottom line is:

The Government should avoid acquiring oil for the Reserve under these circumstances.

The administration chose to ignore those warnings. The reserve deliveries proceeded, and just as the DOE staff predicted, supplies tightened and prices climbed.

The administration continues to ignore the advice of these experts at the reserve, and American consumers are paying the price.

A wide variety of experts outside the Department of Energy has stated that

filling the reserve during tight oil markets increases oil prices. This January, Goldman Sachs, which is the largest crude oil trader in the world, said the following:

Government storage builds will provide persistent support to the markets—meaning filling the reserve pushes prices up, and

Government increases in storage lowered commercially available petroleum supplies.

Bill Greehey, who is the chief executive of Valero Energy, the largest independent refiner in the United States, has criticized the administration for filling the reserve when commercial inventories were low, thereby preventing increases in the commercial inventories.

Last September, when oil prices were at \$29 a barrel, Greehey complained the reserve program was diverting oil from the marketplace. Here is what he said:

If that was going into inventory, instead of the reserve, you would not be having \$29 oil, you'd be having \$25 oil. So, I think they've completely mismanaged the strategic reserve.

Now that is the chief executive of the largest independent refiner in the United States.

One of the top energy economists in the country, Phil Verleger, estimates the reserve program has added \$8 to \$10 to the price of a barrel of oil.

Economist Larry Kudlow said:

Normally, in Wall Street parlance, you're supposed to buy low and sell high, but in Strategic Petroleum Reserve actions, we're buying higher and higher and that has really helped keep oil prices high.

Now that is from a conservative economist.

In an article explaining why oil prices are so high, a recent issue of the Economist reported the following:

Another factor . . . propping up oil prices may be what [a] trader calls "supply disruption risk."

Here is what the Economist went on to say:

These worries have, in part, been fueled by a most unexpected source, the American government. Despite the high prices, American officials continue to buy oil on the open market to fill their country's strategic petroleum reserves. Why buy, you might ask, when prices are high, and thereby keep them up? The Senate has asked that question as well. It passed a nonbinding resolution this month calling on the Bush administration to stop SPR purchases, but Spencer Abraham, the Energy Secretary, has refused.

In January, the Petroleum Argus, an energy industry newsletter, stated the following:

The act of building up strategic stocks diverts crude supplies that would otherwise have entered the open market. The natural time to do this is when supplies are ample, commercial stocks are adequate and prices low. Yet the Bush administration, contrary to this logic, is forging ahead with plans to add [more oil] to the stockpile.

After the Senate passed our amendment that said we should hold off further purchases, Todd Hultman, who is president of Dailyfutures.com, a commodity research provider, was quoted as saying the amendment:

. . . makes good sense and is designed to make more crude oil available at a time when unleaded gasoline prices have been making new record highs.

Last summer, Dr. Leo Drollas, chief economist at the Centre for Global Energy Studies, criticized the Strategic Petroleum Reserve program:

They've continued filling the reserve, which is crazy, putting the oil under the ground when it is needed in refineries.

Now that is why the Senate, with support from both Republicans and Democrats, recently approved an amendment, which I offered with Senator COLLINS, to stop Strategic Petroleum Reserve shipments, sell the oil that would have been placed in the reserve and use the money from those sales for important homeland security programs.

Fifty-three House Members, 39 Republicans and 14 Democrats, recently wrote the President requesting a suspension of SPR petroleum reserve shipments. The House letter states the following:

Filling the SPR, without regard to crude oil prices and the availability of supplies, drives oil prices higher and ultimately hurts consumers.

The administration still chooses to ignore common sense and it adds oil to the Strategic Petroleum Reserve, no matter how high the price or how tight the supply of oil.

Even though this discussion is about suspending additional deposits into the Strategic Petroleum Reserve when prices are high and private and commercial inventories are low, I would like to comment on a misimpression regarding what happened the last time the Strategic Petroleum Reserve was actually used to release oil. Again, we are now shifting the discussion from talking about not putting more oil to the reserve to what happened last time we took oil out of the reserve. This is what happened during the Clinton administration when 30 million barrels were taken from the reserve and put on the private market. This was in September of the year 2000. Here is what the Washington Post recently stated:

The last time an administration tapped the Strategic Petroleum Reserve, the impact on price was negligible. When President Bill Clinton ordered the sale of 30 million barrels of oil on September 22, 2000, the average price of regular gas had climbed to more than \$1.56. By October 24, when the oil began to hit the market, prices had slipped one penny, according to the Energy Department's Energy Information Administration.

Well, that statement is highly misleading because it omits critical information. Here is the full story: On September 22, 2000, with crude oil prices at \$37 a barrel, home heating oil stocks at historic lows and winter around the corner, President Clinton ordered the release of 30 million barrels from the Strategic Petroleum Reserve. Within a few days of the announcement of the release, crude oil prices had fallen by \$6 a barrel. Within a week, home heating oil prices fell by 10 cents per gallon. Within 2 weeks, wholesale gasoline prices had fallen by 14 cents per gallon.

So what the statement omitted is what happened to oil and gas prices immediately after the order for the release of that 30 million barrels from the Strategic Petroleum Reserve. There was an immediate impact downward on gasoline prices, wholesale prices for home heating oil, in the amounts of 10 cents a gallon for home heating oil and 14 cents a gallon for gasoline. So the statement that gasoline prices on October 24, a month later, were only a cent lower than on September 22 omits the critical information that oil and gasoline prices fell significantly immediately after the release but then rose later due to unrelated events in the Middle East.

Two weeks after the release, crude oil prices were still \$6 per barrel lower than the prerelease prices and wholesale gasoline prices were 14 cents per gallon lower. Only when a wave of violence hit the Middle East during the third week after the release did gasoline prices rise to their prerelease levels.

So the release of 30 million barrels of reserve oil during the Clinton administration did have a significant, immediate effect on oil and gas prices downward.

Just as taking oil out of the reserve can significantly affect prices, putting oil into the reserve can have a significant effect as well. That is what is going on now. The administration should listen to its energy experts and the economists and stop adding oil to the Strategic Petroleum Reserve which is already 93 percent full. The result will be lower oil and gasoline prices, a welcome relief to American consumers, manufacturers, and airlines.

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

The PRESIDING OFFICER (Mr. THOMAS). The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

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

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

#### REPORT ON JOBS

Mr. MCCONNELL. Mr. President, today is spin day in Washington. As the first Friday of the month, we just received a report on jobs this morning. The report shows the unemployment rate is little changed at 5.7 percent. But some 308,000 new jobs were added last month, the most in 4 years, and about 3 times more than Wall Street predicted.

Over the past year, we have added three-quarters of a million new jobs. But since this is an election year, we will hear some say this jobless rate today is a disaster. In fact, the number is irrelevant. Whatever number came out today, some are prepared to spin it as a disaster. Why? Well, I think we all know this is an election year, and one

party can't win the White House if the economy is doing well. Therefore, the "sky is falling" crowd has to spin the wheel of misfortune, telling us good news is in fact bad news. They are going to try to convince us good news is really bad news. It is a sort of newspeak approach. But it is not that easy.

This town is full of people very experienced when it comes to putting lipstick on a pig. But this is different. This is like scribbling a mustache on the Mona Lisa. It is not so easy, but it can be done. For example, you can do it if you first ignore all of the facts around you—just ignore them all. Next you have to ignore your own past claims that the same fact was a good fact. Lastly, you have to search very hard to find a dark lining in the silver clouds, take that one fact and wrap some blue-in-the-face hyperbole around it, and repeat it day after day after day until anyone hearing it turns blue, too.

The reason you can keep repeating that scratched, warped record is because it may be the only sad song you can play. The simple facts, the overwhelming weight of facts, are on the President's side.

First, the U.S. has had the strongest economic growth of any modern economy over the past 12 months. Let me repeat that. The United States—our country—has had the strongest economic growth of any modern economy over the past 12 months. Our 4.3-percent economic growth rate is the best economic performance in the world. But we are told this stunning success is bad, that somehow the best is the worst.

Absolutely wrong. The U.S. economy is the best. This chart illustrates the point. It compares the U.S. growth rate over the last 12 months—this line—with Australia, Japan, Britain, Spain, Sweden, Canada, Belgium, Austria, France, euro area, Denmark, Germany, Italy, Switzerland, and Netherlands. It compares to all of the industrialized world. We had dramatically better growth than any other country. The only one close to us is Australia.

Not only did we do well over the last 12 months, but what is projected? The U.S. is projected to have the strongest economic growth among developed countries in the next year.

So let's look ahead at the projections. The consensus of international economists, as reported in the Economist, indicates the U.S. will have 4.7 percent growth this year. While far and away the best projection for growth in the industrialized world, we are told that somehow here at home the worst is yet to come. Look at the projections.

Over the next year, we are projected to have the strongest GDP growth of any country in the industrialized world. But they will continue to try to convince us that the best is not here.

The U.S. jobs record compared to other modern economies is indeed reason for optimism, in fact even pride. Not only is there reason for optimism,

there is reason for pride. America has an unemployment rate almost one-third less than that of Europe's, with 5.7 percent here, 8.8 percent in Europe. We have an unemployment rate that is one-third less than Europe. Of all the European nations, only the three EU members have a local unemployment rate lower than the national unemployment rate in the U.S. So the U.S. jobs record is the best of Europe, Australia, and Canada. The U.S. jobs record is the best of any of these industrialized nations—any of them. Ours is better.

Next, let's compare America's job record today to that of our own past, because we have heard a lot of discussion about our economy today versus what it used to be like in the "good old days," as they say.

It is clear that America is on a course to have the best jobs decade in half a century, the decade we are currently in. Right now, America is poised to experience the best decade, in terms of the unemployment rate, in 50 years. The decade we are in now is likely to be the best, in terms of unemployment, in 50 years.

We are halfway to the best jobs decade in half a century. From 2000 to 2004, it was 5.2 percent. Looking at the same first 4 years in the previous decade, it was 6.6 percent. The first 4 years in the 1980s, it was 8.3 percent. Look at the first of the 4 years in the 1970s, when it was 5.4 percent. In the first 4 years in the 1960s, it was 5.7 percent. Back in 1950 to 1954, it was 4 percent.

So we are on the way to having the best jobs decade in the last 50 years. Again, some will try to convince the American people that things are not going well. If the unemployment rate for 2004 stays around 5.7 percent for the year—no improvement at all but no worsening—then the unemployment rate for the period of 2000 to 2004 will be 5.2 percent. How does that compare to the jobs performance in the first half of the previous decade? I just went over it. We are in the process of having the best first half of the decade in terms of jobs performance in the last 50 years.

But, again, we are told that somehow the best is the worst. The sky is falling crowd is wrong again. The best is still the best. It is funny how they thought the best was the best not long ago.

For example, in 1996, another election year, we had some around here who thought a 5.6-unemployment rate was something to crow about. They were happy about it. Back in 1996, when we had an incumbent President running in the other party and the unemployment rate was about what it is today, they were crowing about it.

When the unemployment rate was 5.6 percent under President Clinton in 1996, Senator KERRY said:

Unemployment is down. The economy is doing well.

He said that in 1996 when we had essentially the same unemployment rate we have today.

Also that year, Senator KERRY was bragging about the fact that "unem-

ployment is the lowest in the industrial world," when it was essentially what it is today. He was bragging about it then; this was terrific then but it is not so good today.

When the unemployment rate was at 5.6 percent under President Bush, Senator KERRY said:

The fact is that Americans are worse off.

He said:

The bottom line is, for America's workers, there is no "greater prosperity" under George Bush.

These comments were made when the unemployment rate was 5.6 percent, just recently. These other comments were made when the unemployment rate was 5.6 percent and President Clinton was running for reelection in 1996. The same individual, looking at the same unemployment figure, one time acted as if it is something to applaud, and next suggested the country is going to heck in a handbasket.

It is kind of funny how they thought the best was the best not so long ago. As I just said, in April of 1996, Senator KERRY said:

Unemployment is down. The economy is doing well.

He praised the economy, saying unemployment was the lowest in the industrialized world. That is what he said when unemployment was at 5.6 percent in April of 1996. But now, facing the same facts in the last week or two, it is somehow not good news.

So when unemployment is 5.6 percent under a Democratic President, Bill Clinton, it is the best of times; when it is 5.6 percent under President Bush, it is the worst of times.

That is just spin: 5.6 percent is the worst of times under George Bush; 5.6 percent is the best of times under Bill Clinton. It is just Washington spin.

Does anyone not have any memory around here? Today we will hear the same debate but with a different number. The unemployment rate edged up to 5.7 percent. We will hear that a 5.7 percent unemployment rate was good back then but bad now. So why is a 5.7 percent unemployment rate good then and bad now?

They claim millions of jobs have been lost since President Bush took office, creating, as you have heard them say, the worst performance since the Great Depression. Think of that. They believe today is like the Great Depression.

In 1937, Franklin Roosevelt stated:

I see one-third of our Nation ill housed, ill clad, and ill nourished.

Yet we are told that today, when home ownership is the highest ever recorded—home ownership is the highest ever recorded—when the poverty rate is the fourth lowest in a quarter century, and when we have the strongest economy in the developed world, we are practically in a Great Depression.

On what single fact do they hang this utterly absurd charge? Actually, they don't have a fact but, rather, they have a survey of business establishments.

That survey suggests that from March 2001 to February 2004, payroll jobs are down by 2.5 million.

Of course, another survey of jobs, the household survey, says that we have more jobs now than at any time in our history, 138 million jobs—138 million jobs—the most in our history under the household survey. We have not lost jobs by this measure; we have gained jobs, half a million jobs more than at any time in American history, leading to the question: Which survey is right?

Let's look at the statistical abstract for 2003. If you look at this abstract, which is the final word on facts and statistics in America, you will not see the measure showing job loss. Instead, the statistical abstract uses the job measure that says the U.S. today has the most jobs ever in our entire history.

This is the Economic Report of the President. Whether it is the report of a Democratic President or a Republican President, this report uses the job measure that says the U.S. today has the most jobs ever.

If you look at the unemployment rate announced today by the Labor Department, the unemployment rate calculation by that Department and repeated by every newspaper, TV, and radio, uses the job measure that says the U.S. has the most jobs ever—the most jobs ever—in our history.

If you ask the farmer, if you ask the self-employed worker, the private household worker, the domestic servant, or the family-run business, they are part of the job measure that says the U.S. has the most jobs ever—the most jobs ever.

These workers, roughly some 8 million and some of the hardest working in our country, the "sky is falling crowd" does not count these workers under the measure they use. We think they work for a living. My friends across the aisle apparently do not.

So, you can make this absurd charge about job losses if you ignore the statistical abstract, if you ignore the Presidential reports, if you ignore the Department of Labor's unemployment rate, and if you ignore 8 million workers, but after all is said and done, after we have all revved up the spin machine so that we are all dizzy, after all this is over, we are going to have an election. On that day, all the spinning will stop, and the American people will decide. They will decide if America is closer to the worst of times—the "sky is falling crowd" claim—or nearer to the best of times, as the facts suggest. I look forward to the day all the spin is set aside.

The unemployment rate today is a good number. We would like for it to get even better, but it is a good number. It is the same good number as in 1996 when President Clinton was bragging on it. It is the same good number as in 1996 when Senator KERRY was bragging on it. So I can say despite our challenges, despite 9/11 and recessions, stock crashes and corporate scandals,

our economy is strong, our security is rising.

Challenges remain, of course. We will not rest until everyone who wants a job can find a job. But for America, have no doubt about it, the best is yet to come. It is not behind us; it is ahead of us. I think the facts are compelling that the economy is good and getting better.

I yield the floor.  
The PRESIDING OFFICER. The minority whip.

#### JOBS

Mr. REID. Mr. President, for 38 months, the Bush administration has had job loss. We join in the celebration that we have had jobs created, and the President during the next 7 months until the election will have to create another 2.5 million jobs to not be known as the only President since Herbert Hoover who created no private sector jobs. So he has 2.5 million more jobs to go, and we hope that he beats Herbert Hoover's record.

Let me also say, the numbers that came out today indicate the unemployment rate went up this month. It was not stable. It went up. It went up from 5.6 percent to 5.7 percent. This number is not an irrelevant number.

I will also say that when Senator KERRY spoke, of course, he was dealing with what took place in the Clinton years. When President Clinton took office from President Bush 1, the unemployment rate was 7.4 percent. During President Clinton's administration, as a result of the very difficult deficit reduction vote that took place in 1993 where not a single Republican voted in the House or the Senate for the deficit reduction plan, the deficits disappeared and unemployment dropped downward significantly, from 7.4 percent to 4 percent. That is where we were when this man, the President of the United States George Bush, took office. Senator KERRY was talking about how good things were when it was 5.4 percent because it had dropped 2 percent from Bush 1 to Clinton 1.

The number of people unemployed in America today—5.7 percent—is not irrelevant. It is not irrelevant to the millions of Americans who are out of work. So many are out of work. The unemployment rolls are around 9 million or 10 million, but there are millions no longer listed on the unemployment rolls because they are taken off after they are unemployed for such a long period of time. The average time a person is unemployed in America today is almost 1 year. I do not think we should be doing high-fives out here.

I join with my friend, the senior Senator from Kentucky, in talking about it is good we have had for the first time in a long time a significant rise in the number of employed. But we have to go forward because during this President's term of office, we will have to gain about 2.5 million more jobs for him not to be considered a President in the same category as Herbert Hoover.

Speaking of ignoring past claims, the administration, as we know, claimed there would be millions of jobs created with these tax cuts, and we have lost jobs. Let me also say this: Of course, there are more jobs now than there were because we have millions more people in this country today. That is the reason.

As happy as we are with the creation of new jobs last month, let's understand we have a long way to go. We have gas prices that are high. Nevada has the second highest gas prices in America. We have to focus on the fact that we had nine Americans killed in Iraq yesterday. We have to focus on the fact that the number of dead in Iraq is now over 600. We have to focus on the fact now that casualties in Iraq are more than 3,500, with people missing arms, legs, and being paralyzed.

So we still have lots of problems. I have no doubt, and I join with my friend from Kentucky, about the greatness of America. We believe in the greatness of America, but as legislators we also believe we have an obligation to make our country even greater. That is why we think it is wrong that 8 million Americans are not going to be able to have overtime under the Bush rule that has been promulgated. We also think it is wrong that people who are on minimum wage are not going to get an increase as other people in America are getting. We think that is important. We also believe those people who are going off the unemployment rolls every week deserve extended unemployment benefits, as was done during the Reagan administration and during the first Bush administration.

So there is a lot of work we have to do. I hope next month we can again be talking about the increased jobs. Certainly it is something we should be happy about.

#### CBO REPORTS

Mr. DOMENICI. Mr. President, at the time Senate Report No. 108-236 Harpers Ferry National Historical Park Boundary Revision Act of 2003 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 CONGRESSIONAL RECORD for the Information of the Senate.

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, March 25, 2004.

Hon. PETE V. DOMENICI,  
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1576, the Harpers Ferry National Historical Park Boundary Revision Act of 2003.

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. 1576—Harpers Ferry National Historical Park Boundary Revision Act of 2003*

S. 1576 would expand the boundary of the Harpers Ferry National Historical Park in West Virginia by about 1,240 acres. The bill would authorize the National Park Service (NPS) to acquire the added acreage by purchase, donation, or exchange, except that lands that are already owned by the federal government would be acquired by transfer. Finally, the bill would authorize the appropriation of whatever amounts are necessary for these purposes.

Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 1576 would cost the federal government about \$5 million over the next year or two. Of this amount, we estimate that \$4 million would be used to purchase about 190 acres of private property, and \$1 million would be used to develop that land. The remaining acreage that would be added to the park is either already owned by the federal government or would be donated by the nonprofit Civil War Preservation Trust. CBO estimates that additional costs to operate and maintain those additional lands would be less than \$200,000 a year. This estimate is based on information provided by the NPS.

S. 1576 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis, who can be reached at 226-2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

Mr. DOMENICI. Mr. President, at the time Senate Report No. 108-230 Fort Donelson National Battlefield Expansion Act of 2004 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 CONGRESSIONAL RECORD for the information of the Senate.

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 26, 2004.*

Hon. PETE V. DOMENICI,  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 524, the Fort Donelson National Battlefield Expansion Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

*S. 524—Fort Donelson National Battlefield Expansion Act of 2004*

S. 524 would expand the boundary of the Fort Donelson National Battlefield, a historic Civil War site located in Calloway County, Kentucky. The bill would authorize the Secretary of the Interior to acquire lands to include in the battlefield by purchase, donation, or exchange. Finally, the bill would

direct the Secretary of the Interior and the Secretary of Agriculture to enter into a memorandum of understanding to protect and interpret Fort Henry, a nearby Civil War site administered by the Forest Service.

According to the National Park Service (NPS), most of the lands to be added to the battlefield would be donated by the state of Kentucky, Calloway County, and the West Kentucky Corporation. Assuming the availability of appropriated funds, we estimate that first-year costs to acquire additional lands, hire staff, and purchase equipment for the expanded battlefield would total about \$1.2 million. We also estimate that future operational costs would total \$1 million annually. Finally, we estimate that the NPS and the Forest Service would spend less than \$100,000 annually to enhance interpretation services at Fort Henry.

S. 254 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Any costs incurred by the state of Kentucky or local governments in that state to acquire land for the park would be voluntary.

The CBO staff contact for this estimate is Megan Carroll, who can be reached at 226-2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

**THE DANGERS OF FIFTY CALIBER SNIPER RIFLES**

Mr. LEVIN. Mr. President, two weeks ago, the Violence Policy Center released a report rebutting a number of assertions made by the Fifty Caliber Institute about the civilian sale of .50 caliber anti-armor sniper rifles.

The .50 caliber sniper rifle is among the most powerful weapons legally available. According to the Violence Policy Center's report, a .50 caliber sniper rifle is capable of accurately hitting a target over 1,500 yards away, and the ammunition available for the .50 caliber includes armor-piercing, incendiary, and explosive bullets. The report also cites the U.S. Army's manual on urban combat, which states that .50 caliber sniper rifles are designed to attack bulk fuel tanks and other high-value targets from a distance, using "their ability to break through all but the thickest shielding material."

One of the most disturbing parts of the report quotes a brochure from the leading manufacturer, Barrett Firearms, advertising the .50 caliber sniper rifle.

The Model 82A1 is designed to provide extreme accuracy at extended ranges with standard military ammunition. . . . The accuracy of the Model 82A1 makes possible the placement of the shot in the most vulnerable area of the target. The compressor sections of jet engines or the transmissions of helicopters are likely targets for the weapon, making it capable of destroying multi-million dollar aircraft with a single hit delivered to a vital area. The cost-effectiveness of the Model 82A1 cannot be overemphasized when a round of ammunition purchased for less than 10 USD [U.S. Dollars] can be used to destroy or disable a modern jet aircraft.

I believe that information detailing the potential destruction these weapons can cause should alert us to the dangers to airline safety, as well as

homeland security. That is why I co-sponsored Senator FEINSTEIN's Military Sniper Weapon Regulation Act, S. 429. This bill would change the way .50 caliber guns are regulated by placing them under the requirements of the National Firearms Act. This would subject these weapons to the same regimen of registration and background checks as those weapons regulated under the National Firearms Act. This is a necessary and commonsense step towards assuring the safety of all Americans.

The .50 caliber sniper rifle is among the most powerful firearms legally available. Senator FEINSTEIN's bill presents us with a simple solution to improving their regulation, and I urge my colleagues to support it.

**ADDITIONAL STATEMENTS**

**UNIVERSITY OF MICHIGAN WINS THE 2004 NATIONAL INVITATION TOURNAMENT**

● Mr. LEVIN. Mr. President, last night the University of Michigan Wolverines defeated the Rutgers University Scarlet Knights 62-55 in the final game of the 2004 Men's Basketball National Invitation Tournament to complete a 23-11 season.

The win was even sweeter for the Wolverines as they defeated Rutgers before a crowd of 16,064, largely cheering for the Scarlet Knights, at Madison Square Garden in New York City. Throughout the season and particularly during the NIT, a vocal home crowd at Crisler Arena cheered Michigan to victory. Cheering their team through the first three games of the tournament, Michigan's fans were truly the team's sixth man.

For the season, Michigan won 16 of their 19 home games. Prior to the NIT, they had only won five of their 13 road games. Winning two games in Madison Square Garden proved the mettle of this young team that has relied heavily upon its many sophomores and freshmen. I know I speak for all of Michigan in extending my heartiest congratulations to University of Michigan men's basketball team on their championship. This was a hard fought victory and one that I'm sure Wolverines fans enjoyed immensely.

Twenty years ago, Bill Frieder coached a young Wolverines team that won the NIT Championship. That team used their championship as a springboard to greater success: in each of the next two years they won the Big Ten Championship. I am sure that Michigan Coach Tommy Amaker and his players have similar hopes for a program that has not been to a postseason tournament since 2000. This banner will be raised in the rafters of Crisler Arena next to the 1989 NCAA championship and the 1984 NIT championship banners.

For 68 years, the National Invitation Tournament has showcased some of the

greatest talents in college basketball and this year was no exception. Last night, players from both teams displayed their excellent training and hard work. Michigan was led by tournament Most Valuable Player Daniel Horton, who led Michigan with 14 points and Dion Harris who had 13 points.

Michigan opened a lead of 41-29, but a 15-2 Rutgers' run quickly nudged the Scarlet Knights in front, albeit briefly. The old adage "the best offense is a good defense" came true as Michigan constructed its win around a defensive strategy where defensive specialist Bernard Robinson, a senior whose leadership helped guide this young team, limited Rutgers' hot-shooting freshman to just two points.

In his third year with the Wolverines, Coach Amaker not only assembled the winning game plan, but also brought together a team that will consistently compete with any team in the nation. Last night's victory is testament to a team that worked hard to salvage its season and reputation. While individual performances by Robinson, Daniel Horton and Dion Harris played a key role in this game, Michigan's championship was a team effort that has helped restore the pride in the Michigan basketball program. I congratulate Coach Amaker and his team for their selfless efforts in putting University of Michigan basketball back on the national map.

I know my colleagues will join me in congratulating the University of Michigan men's basketball team on their victory, and I know we all look forward to next year when this team really comes of age.

Mr. President, I ask that the players and coaches names be printed in the RECORD.

The list follows:

Players: Lester Abram; John Andrews; Amadou Ba; Ashtyn Bell; Graham Brown; Colin Dill; Sherrod Harrell; Dion Harris; Daniel Horton; Chris Hunter; J.C. Mathis; Brent Petway; Bernard Robinson Jr.; Courtney Sims; Dani Wohl.

Coaches: Head Coach Tommy Amaker; Assistant Coach Charles E. Ramsey; Assistant Coach Chuck Swenson; Assistant Coach Andrew Moore.●

**SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS**

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DODD):

S. Res. 329. A resolution authorizing the Sergeant at Arms and Doorkeeper of the Senate to ascertain and settle claims arising out of the discovery of lethal ricin powder in the Senate Complex; considered and agreed to.

By Mr. WYDEN:

S. Res. 330. A resolution expressing the sense of the Senate that the President should communicate to the members of the Organization of Petroleum Exporting Countries ("OPEC") cartel and non-OPEC countries that participate in the cartel of crude

oil producing countries the position of the United States in favor of increasing world crude oil supplies so as to achieve stable crude oil prices; to the Committee on Foreign Relations.

**ADDITIONAL COSPONSORS**

S. 1730

At the request of Ms. SNOWE, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1730, a bill to require the health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

S. 1804

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 1804, a bill to reauthorize programs relating to sport fishing and recreational boating safety, and for other purposes.

S. 2179

At the request of Mr. BROWNBACk, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2179, a bill to posthumously award a Congressional Gold Medal to the Reverend Oliver L. Brown.

S. 2250

At the request of Mr. SARBANES, his name was added as a cosponsor of S. 2250, a bill to extend the Temporary Extended Unemployment Compensation Act of 2002, and for other purposes.

S. 2267

At the request of Mr. KERRY, his name was added as a cosponsor of S. 2267, a bill to amend section 29(k) of the Small Business Act to establish funding priorities for women's business centers.

S. RES. 317

At the request of Mr. HAGEL, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. Res. 317, a resolution recognizing the importance of increasing awareness of autism spectrum disorders, supporting programs for increased research and improved treatment of autism, and improving training and support for individuals with autism and those who care for individuals with autism.

**SUBMITTED RESOLUTIONS**

SENATE RESOLUTION 329—AUTHORIZING THE SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE TO ASCERTAIN AND SETTLE CLAIMS ARISING OUT OF THE DISCOVERY OF LETHAL RICIN POWDER IN THE SENATE COMPLEX

Mr. LOTT (for himself and Mr. DODD) submitted the following resolution; which was considered and agreed to:

S. RES. 329

*Resolved, Section 1. Payment of claims arising from the Ricin discovery.*

(a) SETTLEMENT AND PAYMENT.—The Sergeant at Arms and Doorkeeper of the Senate—

(1) in accordance with such regulations as the Committee on Rules and Administration may prescribe, consider, and ascertain any claim incident to service by a Member, officer, or employee of the Senate for any damage to, or loss of, personal property, for which the Member, officer, or employee has not been reimbursed, resulting from the discovery of lethal ricin powder in the Senate Complex on February 2, 2004, or the related remediation efforts undertaken as a result of that discovery; and

(2) may, with the approval of the Committee on Rules and Administration and in accordance with the provisions of section 3721 of title 31, United States Code, determine, compromise, adjust, and settle such claim in an amount not exceeding \$4,000 per claimant.

(b) FILING OF CLAIMS.—Claimants shall file claims pursuant to this resolution with the Sergeant at Arms not later than July 31, 2004.

(c) USE OF CONTINGENT FUND.—Any compromise, adjustment, or settlement of any such claim pursuant to this resolution shall be paid from the contingent fund of the Senate on a voucher approved by the chairman of the Committee on Rules and Administration.

SENATE RESOLUTION 330—EXPRESSING THE SENSE OF THE SENATE THAT THE PRESIDENT SHOULD COMMUNICATE TO THE MEMBERS OF THE ORGANIZATION OF PETROLEUM EXPORTING COUNTRIES ("OPEC") CARTEL AND NON-OPEC COUNTRIES THAT PARTICIPATE IN THE CARTEL OF CRUDE OIL PRODUCING COUNTRIES THE POSITION OF THE UNITED STATES IN FAVOR OF INCREASING WORLD CRUDE OIL SUPPLIES SO AS TO ACHIEVE STABLE CRUDE OIL PRICES

Mr. WYDEN submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 330

Whereas the United States currently imports the majority of its crude oil;

Whereas ensuring access to and stable prices for imported crude oil for the United States and major allies and trading partners of the United States is a continuing critical objective of United States foreign and economic policy for the foreseeable future;

Whereas the 11 countries that make up the Organization of Petroleum Exporting Countries ("OPEC") produce 40 percent of the world's crude oil and control three-quarters of proven reserves, including much of the spare production capacity;

Whereas beginning in February 2004, OPEC instituted production cuts, which reduced production by 2,000,000 barrels per day and have resulted in dramatic increases in crude oil prices;

Whereas in February 2004, crude oil prices were around \$28 per barrel and have steadily risen since then, exceeding \$38 per barrel in March 2004, the highest prices in 13 years;

Whereas the increase in crude oil prices has translated into higher prices for gasoline and other refined petroleum products; in the case of gasoline, the increases in crude oil prices have resulted in a pass-through of cost increases at the pump to an average national price of \$1.75 per gallon;

Whereas increases in the price of crude oil result in increases in prices paid by United States consumers for refined petroleum

products, including home heating oil, gasoline, and diesel fuel; and

Whereas increases in the costs of refined petroleum products have a negative effect on many Americans, including the elderly and individuals of low income (whose home heating oil costs have doubled in the last year), families who must pay higher prices at the gas station, farmers (already hurt by low commodity prices, trying to factor increased costs into their budgets in preparation for the growing season), truckers (who face an almost 13-year high in diesel fuel prices), and manufacturers and retailers (who must factor in increased production and transportation costs into the final price of their goods): Now, therefore, be it

*Resolved*, That it is the sense of the Senate that—

(1) the President and Congress should take both a short-term and a long-term approach to reducing and stabilizing crude oil prices as well as reducing dependence on foreign sources of energy;

(2) to address the problem in the short-term, the President should communicate to the members of the Organization of Petroleum Exporting Countries "OPEC" cartel and non-OPEC countries that participate in the cartel of crude oil producing countries that—

(A) the United States seeks to maintain strong relations with crude oil producers around the world while promoting international efforts to remove barriers to energy trade and investment and increased access for United States energy firms around the world;

(B) the United States believes that restricting supply in a market that is in demand of additional crude oil does serious damage to the efforts that OPEC members have made to demonstrate that they represent a reliable source of crude oil supply;

(C) the United States believes that stable crude oil prices and supplies are essential for strong economic growth throughout the world; and

(D) the United States seeks an immediate increase in the OPEC crude oil production quotas;

(3) the President should be commended for sending Secretary of State Powell to personally communicate with leaders of several members of the Organization of Petroleum Exporting Countries on the need to increase the supply of crude oil;

(4) to ameliorate the long-term problem of the United States dependence on foreign oil sources, the President should—

(A) review all administrative policies, programs, and regulations that put an undue burden on domestic energy producers; and

(B) consider lifting unnecessary regulations that interfere with the ability the United States' domestic oil, gas, coal, hydroelectric, biomass, and other alternative energy industries to supply a greater percentage of the energy needs of the United States; and

(5) to ameliorate the long-term problem of United States dependence on foreign oil sources, the Senate should appropriate sufficient funds for the development of domestic energy sources, including measures to increase the use of biofuels and other renewable resources.

Mr. WYDEN. Mr. President, the Reuters news service is reporting that Saudi Arabia, and their Foreign Minister specifically, have said in the last day or so they have not been contacted by the Bush administration over OPEC's decision to cut oil production once again. As a result, today I am introducing a resolution urging the

President communicate to OPEC that oil production be increased, and I intend next week to ask for its immediate consideration.

I am very troubled by the comments of the Foreign Minister of Saudi Arabia. In fact, what Reuters has reported is the Saudi Foreign Minister was asked whether the United States had expressed its disappointment over OPEC's cut in production and the Saudi Foreign Minister said at the time:

I didn't hear from this Bush administration. I'm hearing it from you that they are disappointed.

This is very troubling. Up and down the west coast of the United States our constituents are getting mugged by high oil prices. We have to have an administration that is willing to put some heat on OPEC to step up oil production at a critical time, particularly as we move in this country to the high driving season. These high gasoline prices are devastating to consumers. They are going to be very harmful to our economy overall, particularly job production. It is consumer spending that is driving the Oregon economy, and if we continue to see our consumers shellacked with these high gasoline prices, it is going to be harder and harder for us to create family wage jobs and generate business growth.

I am hopeful my colleagues will support this resolution I am introducing today and which I am going to ask for immediate consideration of next week. The reason I am hopeful for such bipartisan support is this resolution, in terms of its substance, is identical to one introduced on February 28 of 2000, with our current Secretary of Energy, our friend Spencer Abraham, as one of the principal sponsors. Back then it was clear our colleagues thought it was important, particularly with influential Senators on the other side. Then the Senator from Michigan, Senator Abraham, also the chairman of the Finance Committee, Senator GRASSLEY, Senator SANTORUM, and a number of our distinguished colleagues were co-sponsors of that legislation. The feeling was then it was important to put some heat on OPEC. It was important to make it clear it was the position of the Senate that OPEC boost production.

Of course, that is what then-candidate George W. Bush said, that it was important to boost oil production. Yet with the comments of the Saudi Foreign Minister in the last day or so, I think it is very clear at best it is not a case of getting a full court press, in terms of this administration, on Saudi Arabia and on OPEC.

I will tell you, if ever there was an administration that had some bargaining chips to play with Saudi Arabia in terms of boosting oil production, it is certainly this administration. If you look at what happened after 9/11, in terms of people being helped out of the country, various issues with respect to declassifying Government doc-

uments, it is very clear Saudi Arabia has been treated pretty darned well by this administration. If ever there was an administration that had some bargaining chips to play in terms of trying to get OPEC to increase oil production, it is certainly this administration. Yet the Saudi Foreign Minister has said, just in the last day, he wasn't even contacted by the Bush administration with respect to oil production.

Let me also say there are some other troubling signs, and why I feel so strongly about the Senate next week passing the resolution I am introducing. When Secretary Powell was in Saudi Arabia about 2 weeks ago, he also had a chance to talk about the oil crunch and how it is so harmful to American consumers. The press release that came from the U.S. Information Agency—this is again another document coming from our Government—indicated the Secretary and the Crown Prince and Foreign Minister talked about a variety of subjects, terrorism and governmental reforms, but nothing was said about oil prices. What we have, and I have said this before, is OPEC is going to stick up for OPEC. OPEC is not going to stick up for the American consumer. If you think OPEC is going to stick up for the American consumer, then you think Colonel Sanders is going to stick up for the chickens. It is not going to happen. It is the job of our administration to stick up for the consumer, and when the Saudi Foreign Minister says he hasn't even been contacted, that he heard from reporters the administration was disappointed, that is not good enough. It is not good enough for my constituents where consistently we are paying some of the highest prices for gasoline in our country, where we faced anticompetitive practices like redlining and zone pricing for years. It is not good enough where you have a situation such as we have in Bakersfield, CA, where a very large refinery has been closed. They didn't even look for a buyer. There is a lot of oil in the area.

The American people are entitled to some answers. They are certainly entitled to an administration that does what then-Governor George W. Bush said was important, and that was to fight for the consumer, to push OPEC to increase production. Instead, what we learned from the Saudi Foreign Minister is the administration has essentially just sat on its hands.

I was following the remarks of the Senator from Kentucky a bit ago. He makes the point, and it is certainly one that makes sense to me, that what is good for then-President Clinton should be good for President Bush. What I say to my friend is the same principle ought to be applied when it comes to a Senate resolution on OPEC and high oil and gasoline prices.

I hope we will have a good debate in the Senate in the days ahead with respect to our policy as it relates to OPEC and oil production. A number of

our distinguished colleagues were there when this resolution was considered earlier: Senator GRASSLEY, Senator SANTORUM, our current Secretary of Energy, a good friend of mine, Senator Abraham. I also note the distinguished Presiding Officer of the Senate, Senator CHAFEE, was also a cosponsor of that resolution.

I am hopeful we will be able to do as the Senator from Kentucky said and that is apply the same principle to this administration as was applied to the Clinton administration. Every administration ought to be pushing OPEC to increase oil production. We certainly ought to take action when the Saudi oil minister was saying he wasn't even contacted.

I ask unanimous consent to have printed in the RECORD the article from the Reuters news service. The title of this article is "Saudi Says Not Heard From Bush Over OPEC Oil Cut."

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

[From Reuters News Service, Apr. 1, 2004]  
SAUDI SAYS NOT HEARD FROM BUSH OVER OPEC OIL CUT

VIENNA, April 1.—Saudi Arabia's foreign minister said on Thursday he had not been contacted by the Bush administration over OPEC's decision on Wednesday to cut crude output by one million barrels per day.

U.S. Energy Secretary Spencer Abraham told a House of Representatives committee on Thursday President George W. Bush had spoken to most of the leaders of OPEC nations about global crude oil supplies and rising prices.

But Abraham declined to respond to a lawmaker's question about whether the president had specifically spoken to Saudi Arabia, the cartel's largest member which led a push this week to cut OPEC production by one million barrels per day in April.

Asked if the United States had expressed its disappointment to him over the cut, Saudi Foreign Minister Prince Saud al-Faisal told reporters:

"I didn't hear this from the Bush administration. I'm hearing it from you that they're disappointed."

The Bush administration faces growing pressure from Democrats to take action amid record-high U.S. retail gasoline prices.

In the run-up to Wednesday's OPEC meeting, the administration abandoned its so-called "quiet diplomacy" and instead said publicly that it was pressuring OPEC to delay a production cut.

Its request was supported by OPEC members Kuwait and the United Arab Emirates, but opposed by Saudi Arabia, a longtime U.S. ally.

Abraham said Bush administration officials may have spoken to Saudi officials in recent weeks.

"We are very disappointed with the decision (OPEC) made yesterday and obviously are evaluating what we might" do, Abraham added.

U.S. crude fell 50 cents to \$35.26 on Thursday after losing 1.4 percent on Wednesday on news of a huge build in U.S. crude inventories and the Saudi foreign minister said earlier the fall justified the cartel's decision.

"As you have seen, since we reduced production in OPEC the price went down. This reflects the veracity of the position that Saudi Arabia has taken that there is an excess capacity on the market rather than shortages," he said.

Mr. WYDEN. Mr. President, I will be back on the floor in the days ahead to talk about this critical question. It seems to me what is coming in this country on this oil issue is a perfect storm. The combination of the fact this administration is unwilling to push OPEC over its production cuts, the fact the Federal Trade Commission is unwilling to do anything about these anticompetitive practices or even investigate this refinery closure in Bakersfield, which has great implications for the west coast, all of these factors are coming together to create what I believe is a perfect storm for the gasoline consumer in this country. Given that consumer spending is what is driving our economy right now, we cannot afford to have these high gasoline prices continue or, as I fear, escalate to \$3 a gallon.

We will continue to focus on the question of the Strategic Petroleum Reserve, swiping oil out of the private sector and squirreling it away into the Strategic Petroleum Reserve at a time when it already has a very high level and national security questions are being addressed. But that is not the focus of my comments today. The focus of my comments today is every Member of the Congress ought to be very troubled when the Saudi Foreign Minister says he wasn't contacted by the administration over these production cuts.

We ought to do as was done in 2000 when the Senate, led by a number of our distinguished colleagues on the other side of the aisle who moved ahead on a resolution to boost oil production by OPEC. We ought to do the same now and stand up for the American consumer.

I yield the floor.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3010. Mr. MCCONNELL (for Mr. HATCH (for himself, Mr. LEAHY, Mr. DEWINE, and Mr. KOHL)) proposed an amendment to the bill H.R. 1086, to encourage the development and promulgation of voluntary consensus standards by providing relief under the anti-trust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, and for other purposes.

TEXT OF AMENDMENTS

SA 3010. Mr. MCCONNELL (for Mr. HATCH (for himself, Mr. LEAHY, Mr. DEWINE, and Mr. KOHL)) proposed an amendment to the bill H.R. 1086, to encourage the development and promulgation of voluntary consensus standards by providing relief under the anti-trust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, and for other purposes; as follows:

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

TITLE I—STANDARDS DEVELOPMENT ORGANIZATION ADVANCEMENT ACT OF 2003

SEC. 101. SHORT TITLE.

This title may be cited as the "Standards Development Organization Advancement Act of 2003".

SEC. 102. FINDINGS.

The Congress finds the following:

(1) In 1993, the Congress amended and renamed the National Cooperative Research Act of 1984 (now known as the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301 et seq.)) by enacting the National Cooperative Production Amendments of 1993 (Public Law 103-42) to encourage the use of collaborative, procompetitive activity in the form of research and production joint ventures that provide adequate disclosure to the antitrust enforcement agencies about the nature and scope of the activity involved.

(2) Subsequently, in 1995, the Congress in enacting the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) recognized the importance of technical standards developed by voluntary consensus standards bodies to our national economy by requiring the use of such standards to the extent practicable by Federal agencies and by encouraging Federal agency representatives to participate in ongoing standards development activities. The Office of Management and Budget on February 18, 1998, revised Circular A-119 to reflect these changes made in law.

(3) Following enactment of the National Technology Transfer and Advancement Act of 1995, technical standards developed or adopted by voluntary consensus standards bodies have replaced thousands of unique Government standards and specifications allowing the national economy to operate in a more unified fashion.

(4) Having the same technical standards used by Federal agencies and by the private sector permits the Government to avoid the cost of developing duplicative Government standards and to more readily use products and components designed for the commercial marketplace, thereby enhancing quality and safety and reducing costs.

(5) Technical standards are written by hundreds of nonprofit voluntary consensus standards bodies in a nonexclusionary fashion, using thousands of volunteers from the private and public sectors, and are developed under the standards development principles set out in Circular Number A-119, as revised February 18, 1998, of the Office of Management and Budget, including principles that require openness, balance, transparency, consensus, and due process. Such principles provide for—

(A) notice to all parties known to be affected by the particular standards development activity,

(B) the opportunity to participate in standards development or modification,

(C) balancing interests so that standards development activities are not dominated by any single group of interested persons,

(D) readily available access to essential information regarding proposed and final standards,

(E) the requirement that substantial agreement be reached on all material points after the consideration of all views and objections, and

(F) the right to express a position, to have it considered, and to appeal an adverse decision.

(6) There are tens of thousands of voluntary consensus standards available for government use. Most of these standards are kept current through interim amendments and interpretations, issuance of addenda, and

periodic reaffirmation, revision, or reissuance every 3 to 5 years.

(7) Standards developed by government entities generally are not subject to challenge under the antitrust laws.

(8) Private developers of the technical standards that are used as Government standards are often not similarly protected, leaving such developers vulnerable to being named as codefendants in lawsuits even though the likelihood of their being held liable is remote in most cases, and they generally have limited resources to defend themselves in such lawsuits.

(9) Standards development organizations do not stand to benefit from any antitrust violations that might occur in the voluntary consensus standards development process.

(10) As was the case with respect to research and production joint ventures before the passage of the National Cooperative Research and Production Act of 1993, if relief from the threat of liability under the antitrust laws is not granted to voluntary consensus standards bodies, both regarding the development of new standards and efforts to keep existing standards current, such bodies could be forced to cut back on standards development activities at great financial cost both to the Government and to the national economy.

#### SEC. 103. DEFINITIONS.

Section 2 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301) is amended—

(1) in subsection (a) by adding at the end the following:

“(7) The term ‘standards development activity’ means any action taken by a standards development organization for the purpose of developing, promulgating, revising, amending, reissuing, interpreting, or otherwise maintaining a voluntary consensus standard, or using such standard in conformity assessment activities, including actions relating to the intellectual property policies of the standards development organization.

“(8) The term ‘standards development organization’ means a domestic or international organization that plans, develops, establishes, or coordinates voluntary consensus standards using procedures that incorporate the attributes of openness, balance of interests, due process, an appeals process, and consensus in a manner consistent with the Office of Management and Budget Circular Number A-119, as revised February 10, 1998. The term ‘standards development organization’ shall not, for purposes of this Act, include the parties participating in the standards development organization.

“(9) The term ‘technical standard’ has the meaning given such term in section 12(d)(4) of the National Technology Transfer and Advancement Act of 1995.

“(10) The term ‘voluntary consensus standard’ has the meaning given such term in Office of Management and Budget Circular Number A-119, as revised February 10, 1998.”; and

(2) by adding at the end the following:

“(c) The term ‘standards development activity’ excludes the following activities:

“(1) Exchanging information among competitors relating to cost, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required for the purpose of developing or promulgating a voluntary consensus standard, or using such standard in conformity assessment activities.

“(2) Entering into any agreement or engaging in any other conduct that would allocate a market with a competitor.

“(3) Entering into any agreement or conspiracy that would set or restrain prices of any good or service.”.

#### SEC. 104. RULE OF REASON STANDARD.

Section 3 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4302) is amended by striking “of any person in making or performing a contract to carry out a joint venture shall” and inserting the following: “of—

“(1) any person in making or performing a contract to carry out a joint venture, or

“(2) a standards development organization while engaged in a standards development activity,

#### SEC. 105. LIMITATION ON RECOVERY.

Section 4 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4303) is amended—

(1) in subsections (a)(1), (b)(1), and (c)(1) by inserting “, or for a standards development activity engaged in by a standards development organization against which such claim is made” after “joint venture”,

(2) in subsection (e)—

(A) by inserting “, or of a standards development activity engaged in by a standards development organization” before the period at the end, and

(B) by redesignating such subsection as subsection (f), and

(3) by inserting after subsection (d) the following:

“(e) Subsections (a), (b), and (c) shall not be construed to modify the liability under the antitrust laws of any person (other than a standards development organization) who—

“(1) directly (or through an employee or agent) participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

“(2) is not a fulltime employee of the standards development organization that engaged in such activity, and

“(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.”.

#### SEC. 106. ATTORNEY FEES.

Section 5 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4304) is amended—

(1) in subsection (a) by inserting “, or of a standards development activity engaged in by a standards development organization” after “joint venture”, and

(2) by adding at the end the following:

“(c) Subsections (a) and (b) shall not apply with respect to any person who—

“(1) directly participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

“(2) is not a fulltime employee of a standards development organization that engaged in such activity, and

“(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.”.

#### SEC. 107. DISCLOSURE OF STANDARDS DEVELOPMENT ACTIVITY.

Section 6 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4305) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively,

(B) by inserting “(1)” after “(a)”, and

(C) by adding at the end the following:

“(2) A standards development organization may, not later than 90 days after commencing a standards development activity engaged in for the purpose of developing or

promulgating a voluntary consensus standards or not later than 90 days after the date of the enactment of the Standards Development Organization Advancement Act of 2003, whichever is later, file simultaneously with the Attorney General and the Commission, a written notification disclosing—

“(A) the name and principal place of business of the standards development organization, and

“(B) documents showing the nature and scope of such activity.

Any standards development organization may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4 to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.”;

(2) in subsection (b)—

(A) in the 1st sentence by inserting “, or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms” before the period at the end, and

(B) in the last sentence by inserting “or available to such organization, as the case may be” before the period.

(3) in subsection (d)(2) by inserting “, or the standards development activity,” after “venture”;

(4) in subsection (e)—

(A) by striking “person who” and inserting “person or standards development organization that”, and

(B) by inserting “or any standards development organization” after “person” the last place it appears, and

(5) in subsection (g)(1) by inserting “or standards development organization” after “person”.

#### SEC. 108. RULE OF CONSTRUCTION.

Nothing in this title shall be construed to alter or modify the antitrust treatment under existing law of—

(1) parties participating in standards development activity of standards development organizations within the scope of this title, including the existing standard under which the conduct of the parties is reviewed, regardless of the standard under which the conduct of the standards development organizations in which they participate are reviewed, or

(2) other organizations and parties engaged in standard-setting processes not within the scope of this amendment to the title.

#### TITLE II—ANTITRUST CRIMINAL PENALTY ENHANCEMENT AND REFORM ACT OF 2003

##### SEC. 201. SHORT TITLE.

This title may be cited as the “Antitrust Criminal Penalty Enhancement and Reform Act of 2003”.

##### Subtitle A—Antitrust Enforcement Enhancements and Cooperation Incentives

##### SEC. 211. SUNSET.

(a) IN GENERAL.—Except as provided in subsection (b), the provisions of sections 211 through 214 shall cease to have effect 5 years after the date of enactment of this Act.

(b) EXCEPTION.—With respect to an applicant who has entered into an antitrust leniency agreement on or before the date on which the provisions of sections 211 through 214 of this subtitle shall cease to have effect, the provisions of sections 211 through 214 of this subtitle shall continue in effect.

##### SEC. 212. DEFINITIONS.

In this subtitle:

(1) ANTITRUST DIVISION.—The term “Antitrust Division” means the United States Department of Justice Antitrust Division.

(2) ANTITRUST LENIENCY AGREEMENT.—The term “antitrust leniency agreement,” or

"agreement," means a leniency letter agreement, whether conditional or final, between a person and the Antitrust Division pursuant to the Corporate Leniency Policy of the Antitrust Division in effect on the date of execution of the agreement.

(3) ANTITRUST LENIENCY APPLICANT.—The term "antitrust leniency applicant," or "applicant," means, with respect to an antitrust leniency agreement, the person that has entered into the agreement.

(4) CLAIMANT.—The term "claimant" means a person or class, that has brought, or on whose behalf has been brought, a civil action alleging a violation of section 1 or 3 of the Sherman Act or any similar State law, except that the term does not include a State or a subdivision of a State with respect to a civil action brought to recover damages sustained by the State or subdivision.

(5) COOPERATING INDIVIDUAL.—The term "cooperating individual" means, with respect to an antitrust leniency agreement, a current or former director, officer, or employee of the antitrust leniency applicant who is covered by the agreement.

(6) PERSON.—The term "person" has the meaning given it in subsection (a) of the first section of the Clayton Act.

**SEC. 213. LIMITATION ON RECOVERY.**

(a) IN GENERAL.—Subject to subsection (d), in any civil action alleging a violation of section 1 or 3 of the Sherman Act, or alleging a violation of any similar State law, based on conduct covered by a currently effective antitrust leniency agreement, the amount of damages recovered by or on behalf of a claimant from an antitrust leniency applicant who satisfies the requirements of subsection (b), together with the amounts so recovered from cooperating individuals who satisfy such requirements, shall not exceed that portion of the actual damages sustained by such claimant which is attributable to the commerce done by the applicant in the goods or services affected by the violation.

(b) REQUIREMENTS.—Subject to subsection (c), an antitrust leniency applicant or cooperating individual satisfies the requirements of this subsection with respect to a civil action described in subsection (a) if the court in which the civil action is brought determines, after considering any appropriate pleadings from the claimant, that the applicant or cooperating individual, as the case may be, has provided satisfactory cooperation to the claimant with respect to the civil action, which cooperation shall include—

(1) providing a full account to the claimant of all facts known to the applicant or cooperating individual, as the case may be, that are potentially relevant to the civil action;

(2) furnishing all documents or other items potentially relevant to the civil action that are in the possession, custody, or control of the applicant or cooperating individual, as the case may be, wherever they are located; and

(3)(A) in the case of a cooperating individual—

(i) making himself or herself available for such interviews, depositions, or testimony in connection with the civil action as the claimant may reasonably require; and

(ii) responding completely and truthfully, without making any attempt either falsely to protect or falsely to implicate any person or entity, and without intentionally withholding any potentially relevant information, to all questions asked by the claimant in interviews, depositions, trials, or any other court proceedings in connection with the civil action; or

(B) in the case of an antitrust leniency applicant, using its best efforts to secure and facilitate from cooperating individuals covered by the agreement the cooperation de-

scribed in clauses (i) and (ii) and subparagraph (A).

(c) TIMELINESS.—If the initial contact by the antitrust leniency applicant with the Antitrust Division regarding conduct covered by the antitrust leniency agreement occurs after a State, or subdivision of a State, has issued compulsory process in connection with an investigation of allegations of a violation of section 1 or 3 of the Sherman Act or any similar State law based on conduct covered by the antitrust leniency agreement or after a civil action described in subsection (a) has been filed, then the court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant's initial cooperation with the claimant.

(d) CONTINUATION.—Nothing in this section shall be construed to modify, impair, or supersede the provisions of sections 4, 4A, and 4C of the Clayton Act relating to the recovery of costs of suit, including a reasonable attorney's fee, and interest on damages, to the extent that such recovery is authorized by such sections.

**SEC. 214. RIGHTS, AUTHORITIES, AND LIABILITIES NOT AFFECTED.**

Nothing in this subtitle shall be construed to—

(1) affect the rights of the Antitrust Division to seek a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement to prevent the cooperation described in section 213(b) from impairing or impeding the investigation or prosecution by the Antitrust Division of conduct covered by the agreement;

(2) create any right to challenge any decision by the Antitrust Division with respect to an antitrust leniency agreement; or

(3) affect, in any way, the joint and several liability of any party to a civil action described in section 213(a), other than that of the antitrust leniency applicant and cooperating individuals as provided in section 213(a) of this title.

**SEC. 215. INCREASED PENALTIES FOR ANTI-TRUST VIOLATIONS.**

(a) RESTRAINT OF TRADE AMONG THE STATES.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended by—

(1) striking "\$10,000,000" and inserting "\$100,000,000";

(2) striking "\$350,000" and inserting "\$1,000,000"; and

(3) striking "three" and inserting "10".

(b) MONOPOLIZING TRADE.—Section 2 of the Sherman Act (15 U.S.C. 2) is amended by—

(1) striking "\$10,000,000" and inserting "\$100,000,000";

(2) striking "\$350,000" and inserting "\$1,000,000"; and

(3) striking "three" and inserting "10".

(c) OTHER RESTRAINTS OF TRADE.—Section 3 of the Sherman Act (15 U.S.C. 3) is amended by—

(1) striking "\$10,000,000" and inserting "\$100,000,000";

(2) striking "\$350,000" and inserting "\$1,000,000"; and

(3) striking "three" and inserting "10".

**Subtitle B—Tunney Act Reform**

**SEC. 221. PUBLIC INTEREST DETERMINATION.**

(a) CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.—

(1) FINDINGS.—Congress finds that—

(A) the purpose of the Tunney Act was to ensure that the entry of antitrust consent judgments is in the public interest; and

(B) it would misconstrue the meaning and Congressional intent in enacting the Tunney Act to limit the discretion of district courts to review antitrust consent judgments solely to determining whether entry of those consent judgments would make a "mockery of the judicial function".

(2) PURPOSES.—The purpose of this section is to effectuate the original Congressional intent in enacting the Tunney Act and to ensure that United States settlements of civil antitrust suits are in the public interest.

(b) PUBLIC INTEREST DETERMINATION.—Section 5 of the Clayton Act (15 U.S.C. 16) is amended—

(1) in subsection (d), by inserting at the end the following: "Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments.";

(2) in subsection (e)—

(A) in the matter before paragraph (1), by—

(i) striking "court may" and inserting "court shall"; and

(ii) inserting "(1)" before "Before"; and

(B) striking paragraphs (1) and (2) and inserting the following:

"(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

"(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

"(2) Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.";

(3) in subsection (g), by inserting "by any officer, director, employee, or agent of such defendant" before ", or other person".

**AUTHORITY FOR COMMITTEES TO MEET**

**SUBCOMMITTEE ON EMERGING THREATS AND CAPABILITIES**

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Subcommittee on Emerging Threats and Capabilities of the Committee on Armed Services be authorized to meet during the session of the Senate on April 2, 2004, at 9:30 a.m., in open and closed session to receive testimony on the Department of Defense Counter Narcotics Program in review of the Defense authorization request for fiscal year 2005.

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

**ORDER OF PROCEDURE—S. 2207**

The PRESIDING OFFICER. The majority whip.

Mr. MCCONNELL. Mr. President, with respect to the previously filed cloture motion, I ask unanimous consent that the live quorum under rule XXII be waived, and further that notwithstanding rule XXII the vote on the motion to invoke cloture occur at 2:15 on Wednesday, April 7.

Mr. REID. No objection.

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

**AUTHORIZATION TO SETTLE CLAIMS ARISING OUT OF DISCOVERY OF LETHAL RICIN POWDER IN SENATE COMPLEX**

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 329, which was introduced by Senators LOTT and DODD earlier today.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 329) authorizing the Sergeant at Arms and Doorkeeper of the Senate to ascertain and settle claims arising out of the discovery of lethal ricin powder in the Senate Complex.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 329) was agreed to, as follows:

S. RES. 329

*Resolved,*

**SECTION 1. PAYMENT OF CLAIMS ARISING FROM THE RICIN DISCOVERY.**

(a) SETTLEMENT AND PAYMENT.—The Sergeant at Arms and Doorkeeper of the Senate—

(1) in accordance with such regulations as the Committee on Rules and Administration may prescribe, consider, and ascertain any claim incident to service by a Member, officer, or employee of the Senate for any damage to, or loss of, personal property, for which the Member, officer, or employee has not been reimbursed, resulting from the discovery of lethal ricin powder in the Senate Complex on February 2, 2004, or the related remediation efforts undertaken as a result of that discovery; and

(2) may, with the approval of the Committee on Rules and Administration and in accordance with the provisions of section 3721 of title 31, United States Code, determine, compromise, adjust, and settle such claim in an amount not exceeding \$4,000 per claimant.

(b) FILING OF CLAIMS.—Claimants shall file claims pursuant to this resolution with the Sergeant at Arms not later than July 31, 2004.

(c) USE OF CONTINGENT FUND.—Any compromise, adjustment, or settlement of any such claim pursuant to this resolution shall be paid from the contingent fund of the Senate on a voucher approved by the chairman of the Committee on Rules and Administration.

**STANDARDS DEVELOPMENT ORGANIZATION ADVANCEMENT ACT OF 2003**

Mr. MCCONNELL. I ask unanimous consent that the Senate now proceed to

the immediate consideration of Cal-endar No. 376, H.R. 1086.

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

The assistant legislative clerk read as follows:

A bill (H.R. 1086) to encourage the development and promulgation of volunteer consensus standards by providing relief under the antitrust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

H.R. 1086

*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 “Standards Development Organization Advancement Act of 2003”.]

**SEC. 2. FINDINGS.**

[The Congress finds the following:

[(1) In 1993, the Congress amended and renamed the National Cooperative Research Act of 1984 (now known as the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301 et seq.)) by enacting the National Cooperative Production Amendments of 1993 (Public Law 103-42) to encourage the use of collaborative, procompetitive activity in the form of research and production joint ventures that provide adequate disclosure to the antitrust enforcement agencies about the nature and scope of the activity involved.

[(2) Subsequently, in 1995, the Congress in enacting the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) recognized the importance of technical standards developed by voluntary consensus standards bodies to our national economy by requiring the use of such standards to the extent practicable by Federal agencies and by encouraging Federal agency representatives to participate in ongoing standards development activities. The Office of Management and Budget on February 18, 1998, revised Circular A-119 to reflect these changes made in law.

[(3) Following enactment of the National Technology Transfer and Advancement Act of 1995, technical standards developed or adopted by voluntary consensus standards bodies have replaced thousands of unique Government standards and specifications allowing the national economy to operate in a more unified fashion.

[(4) Having the same technical standards used by Federal agencies and by the private sector permits the Government to avoid the cost of developing duplicative Government standards and to more readily use products and components designed for the commercial marketplace, thereby enhancing quality and safety and reducing costs.

[(5) Technical standards are written by hundreds of nonprofit voluntary consensus standards bodies in a nonexclusionary fashion, using thousands of volunteers from the private and public sectors, and are developed under the standards development principles set out in Circular Number A-119, as revised February 18, 1998, of the Office of Manage-

ment and Budget, including principles that require openness, balance, transparency, consensus, and due process. Such principles provide for—

[(A) notice to all parties known to be affected by the particular standards development activity,

[(B) the opportunity to participate in standards development or modification,

[(C) balancing interests so that standards development activities are not dominated by any single group of interested persons,

[(D) readily available access to essential information regarding proposed and final standards,

[(E) the requirement that substantial agreement be reached on all material points after the consideration of all views and objections, and

[(F) the right to express a position, to have it considered, and to appeal an adverse decision.

[(6) There are tens of thousands of voluntary consensus standards available for government use. Most of these standards are kept current through interim amendments and interpretations, issuance of addenda, and periodic reaffirmation, revision, or reissuance every 3 to 5 years.

[(7) Standards developed by government entities generally are not subject to challenge under the antitrust laws.

[(8) Private developers of the technical standards that are used as Government standards are often not similarly protected, leaving such developers vulnerable to being named as codefendants in lawsuits even though the likelihood of their being held liable is remote in most cases, and they generally have limited resources to defend themselves in such lawsuits.

[(9) Standards development organizations do not stand to benefit from any antitrust violations that might occur in the voluntary consensus standards development process.

[(10) As was the case with respect to research and production joint ventures before the passage of the National Cooperative Research and Production Act of 1993, if relief from the threat of liability under the antitrust laws is not granted to voluntary consensus standards bodies, both regarding the development of new standards and efforts to keep existing standards current, such bodies could be forced to cut back on standards development activities at great financial cost both to the Government and to the national economy.

**SEC. 3. DEFINITIONS.**

[Section 2 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301) is amended—

[(1) in subsection (a) by adding at the end the following:

[(7) The term ‘standards development activity’ means any action taken by a standards development organization for the purpose of developing, promulgating, revising, amending, reissuing, interpreting, or otherwise maintaining a voluntary consensus standard, or using such standard in conformity assessment activities, including actions relating to the intellectual property policies of the standards development organization.

[(8) The term ‘standards development organization’ means a domestic or international organization that plans, develops, establishes, or coordinates voluntary consensus standards using procedures that incorporate the attributes of openness, balance of interests, due process, an appeals process, and consensus in a manner consistent with the Office of Management and Budget Circular Number A-119, as revised February 10, 1998.

[(9) The term ‘technical standard’ has the meaning given such term in section 12(d)(4)

of the National Technology Transfer and Advancement Act of 1995.

“(10) The term ‘voluntary consensus standard’ has the meaning given such term in Office of Management and Budget Circular Number A-119, as revised February 10, 1998.”; and

(2) by adding at the end the following:

“(c) The term ‘standards development activity’ excludes the following activities:

“(1) Exchanging information among competitors relating to cost, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required for the purpose of developing or promulgating a voluntary consensus standard, or using such standard in conformity assessment activities.

“(2) Entering into any agreement or engaging in any other conduct that would allocate a market with a competitor.

“(3) Entering into any agreement or conspiracy that would set or restrain prices of any good or service.”.

**SEC. 4. RULE OF REASON STANDARD.**

Section 3 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4302) is amended by striking “of any person in making or performing a contract to carry out a joint venture shall” and inserting the following: “of—

“(1) any person in making or performing a contract to carry out a joint venture, or

“(2) a standards development organization while engaged in a standards development activity,

shall”.

**SEC. 5. LIMITATION ON RECOVERY.**

Section 4 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4303) is amended—

(1) in subsections (a)(1), (b)(1), and (c)(1) by inserting “, or for a standards development activity engaged in by a standards development organization against which such claim is made” after “joint venture”, and

(2) in subsection (e)—

(A) by inserting “, or of a standards development activity engaged in by a standards development organization” before the period at the end, and

(B) by redesignating such subsection as subsection (f), and

(3) by inserting after subsection (d) the following:

“(e) Subsections (a), (b), and (c) shall not be construed to modify the liability under the antitrust laws of any person (other than a standards development organization) who—

“(1) directly (or through an employee or agent) participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

“(2) is not a fulltime employee of the standards development organization that engaged in such activity, and

“(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.”.

**SEC. 6. ATTORNEY FEES.**

Section 5 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4304) is amended—

(1) in subsection (a) by inserting “, or of a standards development activity engaged in by a standards development organization” after “joint venture”, and

(2) by adding at the end the following:

“(c) Subsections (a) and (b) shall not apply with respect to any person who—

“(1) directly participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

“(2) is not a fulltime employee of a standards development organization that engaged in such activity, and

“(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.”.

**SEC. 7. DISCLOSURE OF STANDARDS DEVELOPMENT ACTIVITY.**

Section 6 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4305) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively,

(B) by inserting “(1)” after “(a)”, and

(C) by adding at the end the following:

“(2) A standards development organization may, not later than 90 days after commencing a standards development activity engaged in for the purpose of developing or promulgating a voluntary consensus standards or not later than 90 days after the date of the enactment of the Standards Development Organization Advancement Act of 2003, whichever is later, file simultaneously with the Attorney General and the Commission, a written notification disclosing—

“(A) the name and principal place of business of the standards development organization, and

“(B) documents showing the nature and scope of such activity.

Any standards development organization may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4 to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.”.

(2) in subsection (b)—

(A) in the 1st sentence by inserting “, or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms” before the period at the end, and

(B) in the last sentence by inserting “or available to such organization, as the case may be” before the period.

(3) in subsection (d)(2) by inserting “, or the standards development activity,” after “venture”.

(4) in subsection (e)—

(A) by striking “person who” and inserting “person or standards development organization that”, and

(B) by inserting “or any standards development organization” after “person” the last place it appears, and

(5) in subsection (g)(1) by inserting “or standards development organization” after “person”.

**SEC. 8. RULE OF CONSTRUCTION.**

Nothing in this Act shall be construed to alter or modify the antitrust treatment under existing law of—

(1) parties participating in standards development activity of standards development organizations within the scope of this Act, or

(2) other organizations and parties engaged in standard-setting processes not within the scope of this amendment to the Act.]

**TITLE I—STANDARDS DEVELOPMENT ORGANIZATION ADVANCEMENT ACT OF 2003**

**SEC. 101. SHORT TITLE.**

This title may be cited as the “Standards Development Organization Advancement Act of 2003”.

**SEC. 102. FINDINGS.**

The Congress finds the following:

(1) In 1993, the Congress amended and renamed the National Cooperative Research Act of 1984 (now known as the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301 et seq.)) by enacting the National Cooperative Production Amendments of 1993 (Public Law 103-42) to encourage the use of collaborative, procompetitive activity in the form of research and production joint ventures that provide adequate disclosure to the antitrust enforcement agencies about the nature and scope of the activity involved.

(2) Subsequently, in 1995, the Congress in enacting the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) recognized the importance of technical standards developed by voluntary consensus standards bodies to our national economy by requiring the use of such standards to the extent practicable by Federal agencies and by encouraging Federal agency representatives to participate in ongoing standards development activities. The Office of Management and Budget on February 18, 1998, revised Circular A-119 to reflect these changes made in law.

(3) Following enactment of the National Technology Transfer and Advancement Act of 1995, technical standards developed or adopted by voluntary consensus standards bodies have replaced thousands of unique Government standards and specifications allowing the national economy to operate in a more unified fashion.

(4) Having the same technical standards used by Federal agencies and by the private sector permits the Government to avoid the cost of developing duplicative Government standards and to more readily use products and components designed for the commercial marketplace, thereby enhancing quality and safety and reducing costs.

(5) Technical standards are written by hundreds of nonprofit voluntary consensus standards bodies in a nonexclusionary fashion, using thousands of volunteers from the private and public sectors, and are developed under the standards development principles set out in Circular Number A-119, as revised February 18, 1998, of the Office of Management and Budget, including principles that require openness, balance, transparency, consensus, and due process. Such principles provide for—

(A) notice to all parties known to be affected by the particular standards development activity,

(B) the opportunity to participate in standards development or modification,

(C) balancing interests so that standards development activities are not dominated by any single group of interested persons,

(D) readily available access to essential information regarding proposed and final standards,

(E) the requirement that substantial agreement be reached on all material points after the consideration of all views and objections, and

(F) the right to express a position, to have it considered, and to appeal an adverse decision.

(6) There are tens of thousands of voluntary consensus standards available for government use. Most of these standards are kept current through interim amendments and interpretations, issuance of addenda, and periodic reaffirmation, revision, or reissuance every 3 to 5 years.

(7) Standards developed by government entities generally are not subject to challenge under the antitrust laws.

(8) Private developers of the technical standards that are used as Government standards are often not similarly protected, leaving such developers vulnerable to being named as codefendants in lawsuits even though the likelihood of their being held liable is remote in most cases, and they generally have limited resources to defend themselves in such lawsuits.

(9) Standards development organizations do not stand to benefit from any antitrust violations that might occur in the voluntary consensus standards development process.

(10) As was the case with respect to research and production joint ventures before the passage of the National Cooperative Research and Production Act of 1993, if relief from the threat of liability under the antitrust laws is not granted to voluntary consensus standards bodies, both regarding the development of new standards and efforts to keep existing standards current, such bodies could be forced to cut back on standards development activities at great financial cost both to the Government and to the national economy.

#### SEC. 103. DEFINITIONS.

Section 2 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301) is amended—

(1) in subsection (a) by adding at the end the following:

“(7) The term ‘standards development activity’ means any action taken by a standards development organization for the purpose of developing, promulgating, revising, amending, reissuing, interpreting, or otherwise maintaining a voluntary consensus standard, or using such standard in conformity assessment activities, including actions relating to the intellectual property policies of the standards development organization.

“(8) The term ‘standards development organization’ means a domestic or international organization that plans, develops, establishes, or coordinates voluntary consensus standards using procedures that incorporate the attributes of openness, balance of interests, due process, an appeals process, and consensus in a manner consistent with the Office of Management and Budget Circular Number A-119, as revised February 10, 1998.

“(9) The term ‘technical standard’ has the meaning given such term in section 12(d)(4) of the National Technology Transfer and Advancement Act of 1995.

“(10) The term ‘voluntary consensus standard’ has the meaning given such term in Office of Management and Budget Circular Number A-119, as revised February 10, 1998.”; and

(2) by adding at the end the following:

“(c) The term ‘standards development activity’ excludes the following activities:

“(1) Exchanging information among competitors relating to cost, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required for the purpose of developing or promulgating a voluntary consensus standard, or using such standard in conformity assessment activities.

“(2) Entering into any agreement or engaging in any other conduct that would allocate a market with a competitor.

“(3) Entering into any agreement or conspiracy that would set or restrain prices of any good or service.”.

#### SEC. 104. RULE OF REASON STANDARD.

Section 3 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4302) is amended by striking “of any person in making or performing a contract to carry out a joint venture shall” and inserting the following: “of—

“(1) any person in making or performing a contract to carry out a joint venture, or

“(2) a standards development organization while engaged in a standards development activity, shall”.

#### SEC. 105. LIMITATION ON RECOVERY.

Section 4 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4303) is amended—

(1) in subsections (a)(1), (b)(1), and (c)(1) by inserting “, or for a standards development activity engaged in by a standards development organization against which such claim is made” after “joint venture”, and

(2) in subsection (e)—

(A) by inserting “, or of a standards development activity engaged in by a standards devel-

opment organization” before the period at the end, and

(B) by redesignating such subsection as subsection (f), and

(3) by inserting after subsection (d) the following:

“(e) Subsections (a), (b), and (c) shall not be construed to modify the liability under the antitrust laws of any person (other than a standards development organization) who—

“(1) directly (or through an employee or agent) participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

“(2) is not a fulltime employee of the standards development organization that engaged in such activity, and

“(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.”.

#### SEC. 106. ATTORNEY FEES.

Section 5 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4304) is amended—

(1) in subsection (a) by inserting “, or of a standards development activity engaged in by a standards development organization” after “joint venture”, and

(2) by adding at the end the following:

“(c) Subsections (a) and (b) shall not apply with respect to any person who—

“(1) directly participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

“(2) is not a fulltime employee of a standards development organization that engaged in such activity, and

“(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.”.

#### SEC. 107. DISCLOSURE OF STANDARDS DEVELOPMENT ACTIVITY.

Section 6 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4305) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively,

(B) by inserting “(1)” after “(a)”, and

(C) by adding at the end the following:

“(2) A standards development organization may, not later than 90 days after commencing a standards development activity engaged in for the purpose of developing or promulgating a voluntary consensus standards or not later than 90 days after the date of the enactment of the Standards Development Organization Advancement Act of 2003, whichever is later, file simultaneously with the Attorney General and the Commission, a written notification disclosing—

“(A) the name and principal place of business of the standards development organization, and

“(B) documents showing the nature and scope of such activity.

Any standards development organization may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4 to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.”.

(2) in subsection (b)—

(A) in the 1st sentence by inserting “, or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms” before the period at the end, and

(B) in the last sentence by inserting “or available to such organization, as the case may be” before the period,

(3) in subsection (d)(2) by inserting “, or the standards development activity,” after “venture”.

(4) in subsection (e)—

(A) by striking “person who” and inserting “person or standards development organization that”, and

(B) by inserting “or any standards development organization” after “person” the last place it appears, and

(5) in subsection (g)(1) by inserting “or standards development organization” after “person”.

#### SEC. 108. RULE OF CONSTRUCTION.

Nothing in this title shall be construed to alter or modify the antitrust treatment under existing law of—

(1) parties participating in standards development activity of standards development organizations within the scope of this title, or

(2) other organizations and parties engaged in standard-setting processes not within the scope of this amendment to the title.

#### TITLE II—ANTITRUST CRIMINAL PENALTY ENHANCEMENT AND REFORM ACT OF 2003

##### SEC. 201. SHORT TITLE.

This title may be cited as the “Antitrust Criminal Penalty Enhancement and Reform Act of 2003”.

##### Subtitle A—Antitrust Enforcement Enhancements and Cooperation Incentives

##### SEC. 211. SUNSET.

(a) IN GENERAL.—Except as provided in subsection (b), the provisions of sections 211 through 214 shall cease to have effect 5 years after the date of enactment of this Act.

(b) EXCEPTION.—With respect to an applicant who has entered into an antitrust leniency agreement on or before the date on which the provisions of sections 211 through 214 of this subtitle shall cease to have effect, the provisions of sections 211 through 214 of this subtitle shall continue in effect.

##### SEC. 212. DEFINITIONS.

In this subtitle:

(1) ANTITRUST DIVISION.—The term “Antitrust Division” means the United States Department of Justice Antitrust Division.

(2) ANTITRUST LENIENCY AGREEMENT.—The term “antitrust leniency agreement,” or “agreement,” means a leniency letter agreement, whether conditional or final, between a person and the Antitrust Division pursuant to the Corporate Leniency Policy of the Antitrust Division in effect on the date of execution of the agreement.

(3) ANTITRUST LENIENCY APPLICANT.—The term “antitrust leniency applicant,” or “applicant,” means, with respect to an antitrust leniency agreement, the person that has entered into the agreement.

(4) CLAIMANT.—The term “claimant” means a person or class, that has brought, or on whose behalf has been brought, a civil action alleging a violation of section 1 or 3 of the Sherman Act or any similar State law, except that the term does not include a State or a subdivision of a State with respect to a civil action brought to recover damages sustained by the State or subdivision.

(5) COOPERATING INDIVIDUAL.—The term “cooperating individual” means, with respect to an antitrust leniency agreement, a current or former director, officer, or employee of the antitrust leniency applicant who is covered by the agreement.

(6) PERSON.—The term “person” has the meaning given it in subsection (a) of the first section of the Clayton Act.

##### SEC. 213. LIMITATION ON RECOVERY.

(a) IN GENERAL.—Subject to subsection (d), in any civil action alleging a violation of section 1 or 3 of the Sherman Act, or alleging a violation of any similar State law, based on conduct covered by a currently effective antitrust leniency agreement, the amount of damages recovered by or on behalf of a claimant from an antitrust leniency applicant who satisfies the requirements of subsection (b), together with the amounts so recovered from cooperating individuals who satisfy such requirements, shall not exceed that

portion of the actual damages sustained by such claimant which is attributable to the commerce done by the applicant in the goods or services affected by the violation.

(b) REQUIREMENTS.—Subject to subsection (c), an antitrust leniency applicant or cooperating individual satisfies the requirements of this subsection with respect to a civil action described in subsection (a) if the court in which the civil action is brought determines, after considering any appropriate pleadings from the claimant, that the applicant or cooperating individual, as the case may be, has provided satisfactory cooperation to the claimant with respect to the civil action, which cooperation shall include—

(1) providing a full account to the claimant of all facts known to the applicant or cooperating individual, as the case may be, that are potentially relevant to the civil action;

(2) furnishing all documents or other items potentially relevant to the civil action that are in the possession, custody, or control of the applicant or cooperating individual, as the case may be, wherever they are located; and

(3)(A) in the case of a cooperating individual—

(i) making himself or herself available for such interviews, depositions, or testimony in connection with the civil action as the claimant may reasonably require; and

(ii) responding completely and truthfully, without making any attempt either falsely to protect or falsely to implicate any person or entity, and without intentionally withholding any potentially relevant information, to all questions asked by the claimant in interviews, depositions, trials, or any other court proceedings in connection with the civil action; or

(B) in the case of an antitrust leniency applicant, using its best efforts to secure and facilitate from cooperating individuals covered by the agreement the cooperation described in clauses (i) and (ii) and subparagraph (A).

(c) TIMELINES.—If the initial contact by the antitrust leniency applicant with the Antitrust Division regarding conduct covered by the antitrust leniency agreement occurs after a civil action described in subsection (a) has been filed, then the court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant's initial cooperation with the claimant.

(d) CONTINUATION.—Nothing in this section shall be construed to modify, impair, or supersede the provisions of sections 4, 4A, and 4C of the Clayton Act relating to the recovery of costs of suit, including a reasonable attorney's fee, and interest on damages, to the extent that such recovery is authorized by such sections.

**SEC. 214. RIGHTS AND AUTHORITY OF ANTITRUST DIVISION NOT AFFECTED.**

Nothing in this subtitle shall be construed to—

(1) affect the rights of the Antitrust Division to seek a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement to prevent the cooperation described in section 213(b) from impairing or impeding the investigation or prosecution by the Antitrust Division of conduct covered by the agreement; or

(2) create any right to challenge any decision by the Antitrust Division with respect to an antitrust leniency agreement.

**SEC. 215. INCREASED PENALTIES FOR ANTITRUST VIOLATIONS.**

(a) RESTRAINT OF TRADE AMONG THE STATES.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended by—

(1) striking “\$10,000,000” and inserting “\$100,000,000”;

(2) striking “\$350,000” and inserting “\$1,000,000”; and

(3) striking “three” and inserting “10”.

(b) MONOPOLIZING TRADE.—Section 2 of the Sherman Act (15 U.S.C. 2) is amended by—

(1) striking “\$10,000,000” and inserting “\$100,000,000”;

(2) striking “\$350,000” and inserting “\$1,000,000”; and

(3) striking “three” and inserting “10”.

(c) OTHER RESTRAINTS OF TRADE.—Section 3 of the Sherman Act (15 U.S.C. 3) is amended by—

(1) striking “\$10,000,000” and inserting “\$100,000,000”;

(2) striking “\$350,000” and inserting “\$1,000,000”; and

(3) striking “three” and inserting “10”.

**Subtitle B—Tunney Act Reform**

**SEC. 221. PUBLIC INTEREST DETERMINATION.**

Section 5 of the Clayton Act (15 U.S.C. 16) is amended—

(1) in subsection (d), by inserting at the end the following: “Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments.”; and

(2) in subsection (e)—

(A) in the matter before paragraph (1), by—

(i) inserting “independently” after “shall”;

(ii) striking “court may” and inserting “court shall”; and

(iii) inserting “(1)” before “Before”; and

(B) striking paragraphs (1) and (2) and inserting the following:

“(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous and any other competitive considerations bearing upon the adequacy of such judgment necessary to a determination of whether the consent judgment is in the public interest; and

“(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

“(2) The Court shall not enter any consent judgment proposed by the United States under this section unless it finds that there is reasonable belief, based on substantial evidence and reasoned analysis, to support the United States’ conclusion that the consent judgment is in the public interest. In making its determination as to whether entry of the consent judgment is in the public interest, the Court shall not be limited to examining only the factors set forth in this subsection, but may consider any other factor relevant to the competitive impact of the judgment.”.

Mr. HATCH. Mr. President, I rise today to support passage of H.R. 1086, the Standards Development Organization Advancement Act of 2003. This legislation, along with provisions added to it during the Judiciary Committee markup and by the substitute amendment that I have offered along with Senators LEAHY, DEWINE, and KOHL, provides several important and significant improvements to our antitrust laws.

This legislation incorporates the limited antitrust protection for Standards Development Organizations that Senator LEAHY and I introduced as S. 1799, and that Chairman SENSENBRENNER introduced in the House as H.R. 1086. Under this provision, the civil liability for Standards Development Organizations or “SDOs” will be limited to single, rather than treble, damages for

standards-setting activities about which they have informed the Department of Justice and Federal Trade Commission using a newly-created notification procedure.

The bill also increases the maximum criminal penalties for antitrust violations so that they are more in line with other comparable white collar crimes. I will note that this provision of the legislation is substantially the same as the one included in S. 1080, a Leahy-Hatch bill.

This legislation also provides increased incentives for participants in illegal cartels to blow the whistle on their co-conspirators and cooperate with the Justice Department's Antitrust Division in prosecuting the other members of these criminal antitrust conspiracies. This is accomplished by allowing the Justice Department, in appropriate circumstances, to limit a cooperating company's civil liability to actual, rather than treble, damages in return for the company's cooperation in both the resulting criminal case as well as any subsequent civil suit based on the same conduct.

Finally, this substitute would amend the Tunney Act to end the problem of courts simply “rubber-stamping” antitrust settlements reached with the Justice Department. In my view, this amendment essentially codifies existing case law, while reemphasizing the original congressional intent that lead to passage of the Tunney Act. When this provision was added to H.R. 1086 in the Senate Judiciary Committee, I noted that, although I supported it in principal, I thought that continued modifications of the actual language might be necessary to respond to concerns that had been raised. I am pleased to be able to state that, largely through the efforts of Senator KOHL and his staff, a compromise on this language was reached that is supported—or at least not strongly objected to—by the parties involved.

With that introduction, I will briefly discuss the four principal sections of the legislation.

The section Protection of Standards Development Organizations, which comes from S. 1799, a bill that Senator LEAHY and I introduced as a Senate companion to H.R. 1086, is designed to extend limited antitrust protection to Standards Development Organizations, or “SDOs”.

In the United States, most technical standards are developed and promulgated by private, not-for-profit organizations called SDOs. Numerous concerns have been raised that the threat of treble damages deters SDOs from their pro-competitive standard-setting activities. This legislation addresses those concerns by providing a notification process whereby SDOs may inform DOJ and the FTC regarding their intended standards-development activities. If the authorities do not object to the proposed activities but the SDO is subsequently sued by a private plaintiff, the SDO's civil liability is limited

to single rather than treble damages. Importantly, this legislation does not in any way immunize industry participants who cooperate in the development of standards from antitrust liability for using the standards-setting process for anti-competitive purposes.

I thank Senator LEAHY and Chairman SENSENBRENNER and their staffs for their vigilant efforts toward passage of the Standards Development Organization Advancement Act of 2003.

The legislation also amends the antitrust laws to provide corporations and their executives with increased incentives to come forward and cooperate with the Department of Justice in prosecuting criminal antitrust cartels. It does so by enhancing the effectiveness of the already-successful Corporate Leniency Policy issued by the Justice Department's Antitrust Division.

In general, the leniency policy provides that a corporation and its executives will not be criminally charged if the company is not the ringleader of the conspiracy and it is the first of the conspirators to approach the division and fully cooperate with the division's criminal investigation. The program serves to destabilize cartels, and it causes the members of the cartel to turn against one another in a race to the Government. Cooperation obtained through the leniency program has led to the detection and prosecution of massive international cartels that cost businesses and consumers billions of dollars and has led to the largest fines in the Antitrust Division's history.

Though this important program has been successful, a major disincentive to self reporting still exists, the threat of exposure to a possible treble damage lawsuit by the victims of the conspiracy. Under current law, the successful leniency applicant is not criminally charged, but it still faces treble damage actions with joint and several liability. In other words, before voluntarily disclosing its criminal conduct, a potential amnesty applicant must weigh the potential ruinous consequences of subjecting itself to liability for three times the damages that the entire conspiracy caused.

This provision addresses this disincentive to self-reporting. Specifically, it amends the antitrust laws to modify the damage recovery from a corporation and its executives to actual damages. In other words, the total liability of a successful leniency applicant would be limited to single damages without joint and several liability. Thus, the applicant would only be liable for the actual damages attributable to its own conduct, rather than being liable for three times the damages caused by the entire unlawful conspiracy.

Importantly, this limitation on damages is only available to corporations and their executives if they provide adequate and timely cooperation to both the Government investigators as well as any subsequent private plain-

tiffs bringing a civil suit based on the covered criminal conduct. I should also note that, because all other conspirator firms would remain jointly and severally liable for three times the total damages caused by the conspiracy, the victims' potential total recovery would not be reduced by the amendments Congress is considering. And again, the legislation requires the amnesty applicant to provide full cooperation to the victims as they prepare and pursue their civil lawsuit.

With this change, more companies will disclose antitrust crimes, which will have several benefits. First, I expect that the total compensation to victims of antitrust conspiracies will be increased because of the requirement that amnesty applicants cooperate. Second, the increased self-reporting incentive will serve to further destabilize and deter the formation of criminal antitrust conspiracies. In turn, these changes will lead to more open and competitive markets.

The enhanced criminal penalties provision, which was originally part of S. 1080, which I introduced with Senator LEAHY, improves current law by increasing the maximum prison sentences and fines for criminal violations of antitrust law. This change puts the maximum prison sentences for antitrust violations more in line with other white collar crimes. By increasing these criminal penalties, we are recognizing the profoundly harmful impact that antitrust violations have on consumers and the economy.

This legislation also amends the Tunney Act to end what some have seen as courts simply "rubber-stamping" antitrust settlements reached with the Justice Department without providing meaningful review. As I have stated, while I agree with the principle behind this proposal, I had significant concerns with the specific language that was reported out of the Judiciary Committee. After several months of discussions, I am happy to say that the current language appears to have answered most, if not all, of the principal concerns that were raised regarding the amendments to the Tunney Act.

In conclusion, I would like to thank Senators LEAHY, KOHL, and DEWINE and their staffs for their efforts on this bill. In particular, I would like to thank Susan Davies of Senator LEAHY's staff, Jeff Miller and Seth Bloom of Senator KOHL's staff, and Pete Levitas and Bill Jones of Senator DEWINE's staff. I also appreciate the expert and energetic efforts of my own antitrust counsel, Dave Jones. And finally, I thank Makan Delrahim, my former chief counsel, for all of his "technical assistance."

I urge my colleagues to support this bill.

Mr. LEAHY. Mr. President, I am delighted that Senator HATCH, Senator KOHL, Senator DEWINE, and I have been able to work together to develop a version of this bill that can pass today as the Standards Development Organi-

zation Advancement Act. Technical standards help to promote safety, increase efficiency, and allow for interoperability in a variety of products Americans use every day. Despite the fact that they go largely unnoticed, we would be markedly less safe without airbags that deploy properly in serious automobile collisions, more vulnerable were there not technical standards for fire retardant materials in homes. And consumers would be less likely to make the purchases that drive our economy without the technical standards that ensure a light bulb will fit in its socket or allow DVDs to function properly regardless of the manufacturer.

In the United States, most technical standards are developed by private, not-for-profit Standards Development Organizations, which often possess superior knowledge and adaptability in highly technical matters. Rather than Government overregulation of technical standards, SDOs promulgate guidelines that frequently are then adopted by State and Federal governments. Like many conveniences we take for granted, technical standards are so deeply infused in our lives that they may attract little or no individual attention.

While standards serve this vital societal role, there exists a natural tension between the antitrust laws that prohibit businesses from colluding and the development of technical standards, which require competitors to reach agreement on basic design elements. The Standards Development Organization Advancement Act reduces this tension, providing relief for SDOs under current law while preserving the trademark features of antitrust enforcement that benefit consumers.

Without creating an antitrust exemption, the Standards Development Organization Act allows SDOs to seek review of their standards by the Department of Justice or Federal Trade Commission prior to implementation. If these agencies do not object to the standard during this "screening" phase, but the organization is later sued by a private plaintiff, the SDO would be limited to single damages, rather than the treble damages levied under existing law.

Additionally, this bill amends the National Cooperative Research and Production Act of 1993, by directing courts to apply a "rule of reason" standard to SDOs and the guidelines they produce. Under existing law, standards may be deemed anticompetitive by a court even if they have the effect of better serving consumers. Courts should be able to balance the competing interests of safety and efficiency against any anticompetitive effect, making certain that the law is doing everything possible to meet the needs of the one constituent we all share—the American consumer. The Standards Development Organization Advancement Act gives our courts the authority to do so.

We may fail to notice the technical standards that provide dependability,

security, and convenience in our lives, but they serve an increasingly vital role in a country driven by technological change but devoted to safety and reliability.

Title II of the Standards Development Organization Advancement Act also addresses several areas of our antitrust laws that merit updating, as our experience with the actual practice in the world has shown. First, the act strives to eliminate the disparity between the treatment of criminal white collar offenses and antitrust criminal violations. Without this legislation, offenders who violated the criminal provisions of the antitrust laws would face much less significant penalties than would their wire fraud or mail fraud counterparts. The act increases the maximum penalty for a criminal antitrust violation from 3 years to 10 years and raises the maximum fines to corporations from \$10 million to \$100 million per violation. Senator HATCH and I had introduced this provision in S. 1080, the Antitrust Improvements Act of 2003, and I am pleased that this useful update to the penalties for criminal violations of the antitrust laws can be made as part of this bill.

Title II will also update the Justice Department's amnesty program in the criminal antitrust context. We have worked with the antitrust division of the Department of Justice and our States' attorneys general to give prosecutors the maximum leverage against participants in criminal antitrust activity. The Department has long had an "amnesty" or "leniency" policy that is generally available to the first conspirator involved in a criminal cartel that offers to cooperate with the authorities. But under the current policy, the Department may only agree to not bring criminal charges against a corporation, and its officers and directors, in exchange for cooperation in providing evidence and testimony against other members in the cartel. Under this bill, to qualify for amnesty, a party must provide substantial cooperation not only in any criminal case brought against the other cartel members, but also in any civil case brought by private parties that is based on the same unlawful conduct.

This bill would then give our prosecutors the authority to effectively limit a cooperating party's potential civil liability as well, and to limit that liability to single damages in any subsequent civil lawsuit brought by a private plaintiff. And while a party that receives leniency would only be liable for the portion of the damages actually caused by its own actions, the rest of its non-cooperating co-conspirators would remain jointly and severally liable for the entire amount of damages, which would then be trebled, to ensure that no injured party will fail to enjoy financial redress.

Finally, the Standards Development Organization Advancement Act makes some useful adjustments to the Tunney Act. That law provides that consent de-

crees in civil antitrust cases brought by the United States must be reviewed and approved by the District Court in which the case was brought. Under the Tunney Act, before entering a consent decree, the court must determine that "the entry of such judgment is in the public interest." In making this determination, the court may, but is not required to, consider a variety of enumerated factors. As currently drafted, the court has discretion in making this public interest determination, and some have expressed concerns that this lack of guidance results in courts that are overly deferential to prosecutors' judgments. Thus, this bill intends to explicitly restate the original and intended role of District courts in this process by mandating that the court make an independent judgment based on a series of enumerated factors. In addition, the legislation makes clear that this amendment to the Tunney Act will not change the law regarding whether a court may be required, in a particular instance, to permit intervention or to hold a hearing in a Tunney Act proceeding.

A final and important technical change would allow a judge to order publication of the comments received in a Tunney Act proceeding by electronic or other means. Currently, the Tunney Act requires the Antitrust Division to publish in the Federal Register the public comments received on its proposed consent judgments, along with the Division's response to those comments. This can be very expensive—it cost almost \$3 million in the Microsoft case—with little benefit, because those materials are, if anything, more accessible on the Web than in a library. Of course, interested people who lack Internet access will need to go to a library, but they would have had to do that for a paper copy as well.

This is an important bill that makes necessary, well-conceived, and bipartisan reforms.

Mr. KOHL. Mr. President, I rise today in strong support of the Antitrust Criminal Penalty Enhancement and Reform Act of 2003. It passed the Judiciary Committee unanimously in November 2003. Today, along with Senators HATCH, LEAHY, and DEWINE, we offer a substitute amendment to H.R. 1086. This legislation will enhance and improve the enforcement of our nation's antitrust laws in several important respects.

In light of the importance of this legislation to the administration of our antitrust laws, as well as the infrequency with which we amend major provisions of the antitrust laws, it is essential to describe in detail the reasons we are advancing this bill. Our proposal will accomplish four important goals. First, our legislation will restore the ability of Federal courts to review the Justice Department's civil antitrust settlements to be sure that these settlements are good for competition and consumers. We will amend the Tunney Act, the law passed in 1974

in response to concerns that some of these settlements were motivated by inappropriate political pressure and failed to restore competition or protect consumers. Congress concluded then, and it is still true now, that judicial review will ensure that cases are settled in the public interest. Unfortunately, in recent years, many courts seem to have ignored this statute and do little more than "rubber stamp" antitrust settlements. This practice is contrary to the intent of the Tunney Act and effectively strips the courts of the ability to engage in meaningful review of antitrust settlements. Our bill will overturn this precedent and make clear that the courts have the authority to do this vital job.

Second, our legislation enhances criminal penalties for those who violate our antitrust laws. It will increase the maximum corporate penalty from \$10 million to \$100 million; it will increase the maximum individual fine from \$350,000 to \$1 million; and it will increase the maximum jail term for individuals who are convicted of criminal antitrust violations from 3 to 10 years. These changes will send the proper message that criminal antitrust violations, crimes such as price fixing and bid rigging, committed by business executives in a boardroom are serious offenses that steal from American consumers just as surely as does a street criminal with a gun.

Our legislation will give the Justice Department significant new tools under its antitrust leniency program. The leniency program helps the Government break up criminal cartels by encouraging wrongdoers to cooperate with the authorities. Our bill will give the Justice Department the ability to offer those applying for leniency the additional reward of only facing actual damages in antitrust civil suits, rather than treble damage liability. This will result in more antitrust wrongdoers coming forward to reveal antitrust conspiracies, and thus the detection and ending of more illegal cartels.

Finally, our bill incorporates a provision in the original House passed version of H.R. 1086. This provision limits the liability that standards setting organizations face under the antitrust laws to single damages in most circumstances. It will protect these important organizations from the threat of liability. However, it will not in any way limit the damages available to any company that is a member of such an organization for antitrust violations, nor limit damages should a standard setting organization engage in conduct that is a per se violation of antitrust law.

It is important to explain clearly and specifically why it is necessary to amend the Tunney Act and what we intend to accomplish with these changes. In recent years, courts have been reluctant to give meaningful review to antitrust consent decrees, and have been only willing to take action with respect to most egregious decrees that

make a “mockery” of the judicial function. Our bill will effectuate the legislative intent of the Tunney Act and restore the ability of courts to give real scrutiny to antitrust consent decree.

The Tunney Act was enacted in 1974 and provides that consent decrees in civil antitrust cases brought by the United States must be reviewed and approved by the district court in which the case was brought to determine if they are in the public interest. However, the text of the statute contains no standards governing how a court is to conduct this review. While the legislative history of the law is clear that it was meant to prevent “judicial rubber stamping” of consent decrees, the leading precedent of the D.C. Circuit Court of Appeals currently interprets the law in a manner which makes meaningful review of these consent decrees virtually impossible. Leading cases stand for the proposition that only consent decrees that “make a mockery of the judicial function” can be rejected by the district court. The changes in the Tunney Act incorporated in this legislation, as well as the statement of Congressional findings, will make clear that such an interpretation misconstrues the legislative intent of the statute.

The amendments to the Tunney Act found in our bill will restore the original intent of the Tunney Act, and make clear that courts should carefully review antitrust consent decrees to ensure that they are in the public interest. It will accomplish this by, No. 1, a clear statement of congressional findings and purposes expressly overruling the improper judicial standard of recent D.C. Circuit decisions; No. 2, by requiring, rather than permitting, judicial review of a list of enumerated factors to determine whether a consent decree is in the public interest; and No. 3, by enhancing the list of factors which the court now must review.

The Tunney Act was enacted in 1974 to end the practice of courts “rubber stamping” antitrust consent decrees, and to remove political influence from the Justice Department’s decision as to whether to settle antitrust cases. There were several prominent decisions in the preceding years in which antitrust settlements by the Justice Department came under strong criticism as inadequate or motivated by illegitimate purposes, and which were not scrutinized by the courts. One of the leading early cases applying the Tunney Act noted that

the legislators found that consent decrees often failed to provide appropriate relief, either because of miscalculations by the Justice Department [citation omitted] or because of the “great influence and economic power” wielded by antitrust violators [citing S. Rep. No. 93-298, 93d Cong., 1st Sess. 5 (1973)]. The [legislative] history, indeed, contains references to a number of antitrust settlements deemed “blatantly inequitable and improper” on these bases [citing 119 Cong. Rec. 24598 (1973) (Remarks of Sen. Tunney)]. *U.S. v. American Telephone and Telegraph*, 552 F.Supp. 131, 148 (D.D.C. 1982),

aff’d sub nom., *Maryland v. U.S.*, 460 U.S. 1001 (1983).

While there were several notable cases which gave rise to the concern that the government was settling for inadequate remedies for antitrust violations, see *U.S. v. AT&T*, 552 F.Supp. at 148 n. 72; 119 Cong. Rec. 24598, Remarks of Sen. Tunney, the most prominent case was the Government’s settlement in 1971 of an antitrust suit brought against ITT. Critics alleged that the Nixon administration had been influenced by campaign contributions to the Nixon reelection effort in 1972. The reasons for the settlement were not publicly disclosed, and the settlement was strongly criticized by consumer advocates. The settlement’s critics attempted to have the settlement overturned by the district court, but the court rejected these efforts. “[T]here was no meaningful judicial scrutiny of the terms of the consent decree and no consideration of whether it was in the public interest.” *Anderson*, supra, 65 Antitrust Law Journal at 8.

The legislative history of the original Tunney Act is clear that the purpose of the statute was to give courts the opportunity to engage in meaningful scrutiny of antitrust settlements, so as to deter and prevent settlements motivated either by corruption, undue corporate influence, or which were plainly inadequate. In introducing the bill, Senator Tunney highlighted his concern that antitrust settlements could result from the economic power of the companies under scrutiny. He noted that “[i]ncreasing concentration of economic power, such as occurred in the flood of conglomerate mergers, carries with it a very tangible threat of concentration of political power. Put simply, the bigger the company, the greater the leverage it has in Washington.” 119 Cong. Rec. 3451, Feb. 6, 1973.

Senator Tunney also pointed with concern at the lack of scrutiny the courts were applying to antitrust settlements. He argued that “too often in the past district courts have viewed their rules [sic] as simply ministerial in nature—leaving to the Justice Department the role of determining the adequacy of the judgment from the public’s view.” *Id.* at 3542. Thus, his legislation was intended to substantially expand the role of the court in considering an antitrust consent decree. Senator Tunney described the criteria in the bill under which the courts to review the settlements, and stated that

The thrust of those criteria is to demand that the court consider both the narrow and the broad impacts of the decree. Thus, in addition to weighing the merits of the decree from the viewpoint of the relief obtained thereby and its adequacy, the court is directed to give consideration to the relative merits of other alternatives and specifically to the effect of the entry of the decree upon private parties aggrieved by the alleged violations and upon the enforcement of antitrust laws generally.

In a later floor debate on the legislation, Senator Tunney cited the testi-

mony of Judge J. Skelley Wright of the U.S. Court of Appeals for the D.C. Circuit, who had testified at an earlier hearing of the Senate Antitrust and Monopoly Subcommittee expressing concern as to whether antitrust settlements “might shortchange the public interest.” 119 Cong. Rec. 24597, July 18, 1973. Commenting on this testimony, Senator Tunney stated that “I think Judge Wright gets to the heart of the problem—it is the excessive secrecy with which many consent decrees have been fashioned, and *the almost mechanistic manner in which some courts have been, in effect, willing to rubber stamp consent judgments.*” *Id.* at 24598 (emphasis added). The bill passed the Senate that day on a 92 to 8 vote.

The later House debate in which the bill was passed echoed Senator Tunney’s concern. Congressman Seiberling of Ohio commented that, in considering antitrust consent decrees, “too often the courts have, in fact, simply rubber-stamped such agreements, and the public or competitors that might be affected have had an effective way to get their views before the court . . .” 120 Cong. Rec. 36341, Nov. 19, 1974. Similar sentiments were expressed by Congressman McClory, id., Congressman Jordan, id. at 36343, and Congressman Heinz, id. at 36341. Congressman Holtzman of New York commented that these procedures would “insure that our antitrust laws are not for sale.” *Id.* at 36342.

The House and Senate Committee Reports on the legislation also echo the floor debate. The Report of the House Judiciary Committee states that [o]ne of the abuses sought to be remedied by the bill has been called “judicial rubber stamping” by district courts of proposals submitted by the Justice Department. The bill resolves this area of dispute by requiring district court judges to determine that each proposed consent judgment is in the public interest.

House Rep. No. 93-1463, 93rd Cong., 1st Sess. (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 6535, 6538.

In one of the first cases to construe the statute, the Government’s case to break up the AT&T phone monopoly, Judge Greene of the U.S. District Court for the District of Columbia reviewed, and then summarized, the legislative history of the Tunney Act. He concluded that:

To remedy these problems [that led to the passage of the Tunney Act], Congress imposed two major changes in the consent decree process. First, it reduced secrecy by ordering disclosure by the Justice Department of the rationale and the terms of proposed consent decrees and by mandating an opportunity for public comment. Second, it sought to eliminate “‘judicial rubber stamping’ of proposals submitted to the courts by the Department,” by requiring an explicit judicial determination in every case that the proposed decree was in the public interest. *It is clear that Congress wanted the courts to act as an independent check upon the terms of decrees negotiated by the Department of Justice. . . . U.S. v. AT&T*, 552 F. Supp. at 148-149 (emphasis added) (citations omitted).

This conclusion is supported by a recent law journal article co-authored by

John J. Flynn, who was special counsel to the Senate Antitrust Subcommittee during the period when the Tunney Act was drafted and adopted. Professor Flynn writes that, in enacting the Tunney Act, Congress rejected the "notion that courts must give deference to the DOJ when determining if a consent decree is in the public interest. Instead, Congress wanted the courts to make an independent, objective, and active determination without deference to the DOJ." Flynn and Bush, *The Misuse and Abuse of the Tunney Act: The Adverse Consequences of the "Microsoft Fallacies"*, 34 Loyola U. Chicago L. J. 749, 758 (2003).

The early case law that followed the adoption of the Tunney Act in 1974 imposed fairly stringent requirements on courts reviewing antitrust settlements reached by the Justice Department.

The leading early case is the district court's review of the Government's proposed settlement with AT&T in the massive antitrust case that broke up the telephone monopoly, *U.S. v. AT&T*, supra (D.D.C. 1983). Judge Greene of the U.S. District Court for the District of Columbia rejected an argument for a highly deferential review of the proposed consent decree. The court stated that

It does not follow . . . that courts must unquestionably accept a proffered decree as long as it somehow, and however inadequately, deals with the antitrust and other public policy problems implicated in the lawsuit. To do so would be to revert to the "rubber stamp" role which was at the crux of the congressional concerns when the Tunney Act became law.

*U.S. v. AT&T*, 552 F. Supp. at 151.

Instead the standard the court applied to determine if the public interest was served by the consent decree was rather exacting. The court stated it would only enter the proposed consent decree "if the decree meets the requirements for an antitrust remedy that is, if it effectively opens the relevant markets to competition and prevents the recurrence of anticompetitive activity, all without imposing undue and unnecessary burdens upon other aspects of the public interest." *Id.* at 153.

The more recent precedent under the Tunney Act have sharply retreated from Judge Green's opinion in AT&T to a much more deferential standard of review. It is this misinterpretation of the Tunney Act that our bill corrects. In describing the recent Tunney Act precedent, one commentator has called it a "retreat toward rubber stamping." Anderson, supra, 65 Antitrust Law Journal at 19. We agree. It is this overly deferential standard review which makes reform of the Tunney Act necessary so that the legislative intent can be effectuated and courts can provide an independent safeguard to prevent against improper or inadequate settlements. The changes we make to the Tunney Act today address these problems and correct the mistaken precedents.

The precedent continues to recognize that the Tunney Act is intended "to

prevent "judicial rubber stamping" of the Justice Department's proposed consent decree," and for the court to "make an independent determination as to whether or not entry of a proposed consent decree [was] in the public interest." *U.S. v. Microsoft*, 56 F.3d 1448, 1458 (D.C. Cir. 1995), quoting S. Rep. No. 298 at 5. Further, in reviewing the proposed consent decree, the court should inquire into "the purpose, meaning, and efficacy of the decree." *Microsoft*, 56 F.3d at 1463.

However, these same decisions improperly and strictly circumscribe the role of the trial court and give it little leeway to fail to approve an antitrust consent decree. The D.C. Circuit has stated that:

[T]he district judge is not obligated to accept [an antitrust consent decree] that, on its face and even after government explanation, appears to make a mockery of judicial power. *Short of that eventuality*, the Tunney Act cannot be interpreted as an authorization for a district judge to assume the role of Attorney General.

*Id.*, 56 F.3d at 1462 (emphasis added). In other words, under this precedent, unless the proposed decree would "make a mockery of judicial power," the consent decree must be entered by the Court. In another portion of this opinion, in language much cited by lower courts, the D.C. Circuit held that the court should not insist that the consent decree is the one that will "best serve society," but only confirm that the resulting settlement is "within the reaches of the public interest." *Id.* at 1460, citations omitted; emphasis in original.

In a subsequent decision, the D.C. Circuit summarized a district court's review under the Tunney Act, as follows:

The district court must examine the decree in light of the violations charged in the complaint and should withhold approval *only* if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes "a mockery of judicial power."

*Massachusetts School of Law v. U.S.*, 118 F.3d 776, 783 (D.C. Cir. 1997) (emphasis added) (quoting *Microsoft*, 56 F.3d at 1462). This is plainly quite a limited standard of review, which contains no admonition to review the likely effects of the consent decree on competition, and makes it very unlikely that a court would fail to enter almost any consent decree.

In the opinion of a leading academic commentator on the Tunney Act, the court of appeals in *Microsoft* made a potentially serious mistake by formulating a rule that, so long as procedural niceties are followed, all antitrust consent decrees must be approved unless they are a "mockery." Once the real threat of meaningful scrutiny is eliminated, the benefits of deterrence and mediation would be destroyed and the Tunney Act would be nullified.

Anderson, supra, 65 Antitrust Law Journal at 38. Professor Flynn, who was involved in drafting the Tunney Act, agrees with this criticism of the

D.C. Circuit's approach. Professor Flynn states that "from the language of the Tunney Act and its legislative history, this is precisely the sort of deferential standard the drafters of the Tunney Act did not want. . . . [T]he D.C. Circuit chose to ignore the legislative intent and cast judicial review of consent decrees back to the days when rubber-stamping was prevalent." Flynn and Bush, supra, 34 Loyola U. Chi. L. J. at 780-781.

As originally written, the Tunney Act serves two goals deterrence and mediation. The prospect of judicial scrutiny deters the Justice Department from heeding political pressure to enter into a "sweetheart" settlement. And real Tunney Act review also provides an opportunity for a judge to act as a mediator, obtaining modifications to deficient settlements. As Professor Anderson points out, "[i]f the government and antitrust defendants come to perceive that meaningful [judicial] scrutiny is not a real threat, the door will be wide open for attempts to swing sweetheart deals and for the public to lose confidence in antitrust enforcement by the government." 65 Antitrust Law Journal at 38.

In sum, as the Tunney Act is currently interpreted, it is difficult if not impossible for courts to exercise meaningful scrutiny of antitrust consent decrees. The "mockery" standard is contrary to the intent of the Tunney Act as found in the legislative history. Our legislation will correct this misinterpretation of the statute. Our legislation will insure that the courts can undertake meaningful and measured scrutiny of antitrust settlements to insure that they are truly in the public interest, and to remind the courts of Congress' intention in passing the Tunney Act.

In an effort to explain how the revisions to the Tunney Act in H.R. 1086 correct the mistaken standard used by certain courts in applying the law, it is important to describe each of the specific provisions of section 221 of H.R. 1086. Today we have introduced, with Senators HATCH, LEAHY, and DEWINE, a Managers' Amendment to H.R. 1086. These comments address H.R. 1086 as amended.

First, section 221(a) of our bill contains Congressional Findings and Declarations of Purposes. These provisions clarify that we are determined to effectuate the original Congressional intent of the Tunney Act. In other words, after the enactment of this legislation, courts will once again independently review antitrust consent decrees to ensure that they are in the public interest. The Congressional Findings expressly state that for a court to limit its review of antitrust consent decrees to the lesser standard of determining whether entry of the consent judgments would make a "mockery of the judicial function" misconstrues the meaning and intent in enacting the Tunney Act. The language quoted paraphrases the D.C. Circuit decisions in

*Massachusetts School of Law v. U.S.*, 118 F.3d 776, 783 (D.C. Cir. 1997) and *U.S. v. Microsoft*, 56 F.3d 1448, 1462 (D.C. Cir. 1995). To the extent that these precedents are contrary to section 221(a) of our bill regarding the standard of review a court should apply in reviewing consent decrees under the Tunney Act, these decisions are overruled by this legislation. While this legislation is not intended to require a trial de novo of the advisability of antitrust consent decrees or a lengthy and protracted review procedure, it is intended to assure that courts undertake meaningful review of antitrust consent decrees to assure that they are in the public interest and analytically sound.

Section 221(b)(2)(A) of our bill amends the existing subsection of Section 5 of the Clayton Act (codified at 15 U.S.C. § 16(e)) containing the requirement that courts review antitrust consent decrees to determine that these consent decrees are in the public interest. Our bill modifies the law by stating that, in making this determination, the court "shall" look at a number of enumerated factors bearing on the competitive impact of the settlement. The current statute merely states that the court "may" review these factors in making its determination. Requiring, rather than permitting, the court to examine these factors will strengthen the review that courts must undertake of consent decrees and will ensure that the court examines each of the factors listed therein. Requiring an examination of these factors is intended to preclude a court from engaging in "rubber stamping" of antitrust consent decrees, but instead to seriously and deliberately consider these factors in the course of determining whether the proposed decree is in the public interest.

Our bill, in section 221(b)(2)(B), also revises and enhances the factors which the court is now required to review in making its public interest determination. In addition to the factors enumerated under current law, the court must examine whether the terms of the proposed decree are ambiguous. While complete precision when dealing with future conduct may be impossible to achieve, an overly ambiguous decree is incapable of being enforced and is therefore ineffective. A mandate to review the impact of entry of the consent judgment upon "competition in the relevant market or markets" is also added by our bill. This will ensure that the Tunney Act review is properly focused on the likely competitive impact of the judgment, rather than extraneous factors irrelevant to the purposes of antitrust enforcement. Finally, this list is not intended to be exclusive, as the court is directed to review any other competitive consideration "that the court deems necessary to a determination of whether the consent judgment is in the public interest."

Under the existing statute, the trial court is granted broad discretion as to

how to conduct Tunney Act proceedings. Our amendments make no changes to these procedures. In deciding whether to approve the consent decree, the court may, but is not required to, hold a hearing on the proposed decree. Id. § 16(f). In such a hearing, the court may take the testimony of Government officials or expert witnesses. The court may also take testimony from witnesses or other "interested persons or agencies" and examine documents relevant to the case. The court may also review the public comments filed during the sixty-day period pursuant to the Tunney Act. In addition, the court may appoint a special master or outside consultants as it deems appropriate. Finally, the court is granted the discretion to "take such other action in the public interest as the court may deem appropriate." Id. While the court may do any of the preceding, it is not required to follow any of these procedures.

Our amendments to section five of the Clayton Act add language stating that nothing in that section will be "construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." This language is not intended to make any changes to existing law, but merely to restate the current interpretation of the law. Under the statute, the court is not required to conduct an evidentiary hearing, but is permitted to do so or to take testimony if it wishes to do so. See 15 U.S.C. § 16(f). This will remain the procedure, a court will be permitted, but not required, to conduct evidentiary hearings in making its Tunney Act determination. Additionally, the statute currently permits in 15 U.S.C. § 16(f)(3) intervention by interested parties in the Tunney Act review proceeding. This will remain the procedure a court will be permitted, but not required, to allow parties to intervene.

Our amendments also make two other minor and technical changes to Tunney Act procedures. First, section 221(b)(1) of the bill permits the district court to authorize an alternative means of publication, rather than publication in the Federal Register, of the public comments received in response to the announcement of the proposed consent decree. A court may only authorize such alternative means of publication if it finds the expense of Federal Register publication exceeds the public interest benefits to be gained from such publication. This provision is intended to avoid unnecessary expense in publishing proposed consent decrees if alternate means are available, such as, for example, posting the proposed decrees electronically, which are sufficient to inform interested persons of the proposed consent decree.

The second technical amendment, found in section 221(b)(3) of our bill, amends the provision of the Tunney Act codified in 15 U.S.C. § 16(g) which requires that defendants notify the court of all communications with the

Government relevant to the consent decree, except for communications between the defendant's counsel of record and the Justice Department. Our bill adds language which clarifies the statute's language to make clear that only communications with the defendant, or any officer, director, employee, or agent of such defendant, or other person representing the defendant must be disclosed. The defendant is not required to disclose contacts with the Government concerning the settlement by persons not affiliated with, representing, or acting on behalf of the defendant, for example, competitors of the defendant. The defendant's obligation to disclose contacts by agents or persons representing the defendant, including outside lobbyists, is unaffected by this technical change.

In sum, our bill will mandate that courts engage in meaningful review of the Justice Department's antitrust consent decrees and not merely "rubber stamp" the decrees. It will make clear that it is a misinterpretation of the Tunney Act to limit a court's review to limit judicial review of these consent decrees to whether they make a mockery of judicial function, and therefore overrule recent D.C. Circuit decisions holding to the contrary. The bill is expressly intended to effectuate the legislative intent of the Tunney Act and ensure the ability of courts to effectively review consent decrees to ensure that they are in the public interest. It will require, rather than permit, a court to review a list of enumerated factors to determine whether a consent decree is in the public interest. By restoring a robust and meaningful standard of judicial review, our bill will ensure that the Justice Department's antitrust consent decrees are in the best interests of consumers and competition.

Mr. DEWINE. Mr. President, I rise today, along with Senator HATCH, Senator LEAHY and Senator KOHL, as a sponsor of H.R. 1086, the Standards Development Organization Advancement Act of 2003. H.R. 1086 was passed unanimously by the Judiciary Committee in November 2003, and I am proud to say that H.R. 1086 encompasses many of the provisions of S. 1797, the Antitrust Criminal Penalty Enhancement and Reform Act of 2003, which Senator KOHL and I introduced in October 2003. H.R. 1086 is a comprehensive bill that will enhance and improve the enforcement of U.S. antitrust law in four key areas.

First, and perhaps most important, this bill will raise the penalties for criminal violations of antitrust law and bring those penalties more into line with penalties for other, comparable white collar offenses. Antitrust crimes such as bid rigging or cartel activity cheat consumers and distort the free market just as surely as any other type of commercial fraud, and should be strongly punished. Under current antitrust laws, the maximum criminal penalties for individuals guilty of

price-fixing are three years incarceration and \$350,000 in fines. For corporations, the maximum fine is \$10 million. This bill will, No. 1, raise the maximum prison term to 10 years; No. 2, raise the maximum fine for individuals to \$1,000,000; and No. 3, raise the maximum corporate fine to \$100 million. By increasing the prison terms for individuals, this bill brings criminal antitrust penalties closer in line with the maximum penalties assessed for mail fraud and wire fraud, which are both 20 years. Executives and other antitrust offenders need to know that they face serious consequences when they collude with their competitors, and this bill will send that message to the marketplace.

Second, this bill improves on an investigative and prosecutorial tool already being employed effectively by the Justice Department. Since 1993 the Antitrust Division has successfully used a revised corporate amnesty program to help infiltrate and break-up criminal antitrust conspiracies. In short, if a corporate conspirator self-reports its illegal activity to the Antitrust Division and meets certain conditions—it must be the first conspirator to confess, it cannot be the ringleader of the conspiracy, and it must agree to cooperate fully with the investigation, among other things—it will receive a “free pass” from prosecution. This program has been extremely successful in cracking conspiracies, because it creates a strong uncertainty dynamic among co-conspirators; members of the cartel can never be sure that one of the other conspirators will not confess its illegal activity to the Antitrust Division in order to avoid criminal liability. This uncertainty decreases the likelihood of cartels forming to begin with, and makes cartels less stable when they do form.

H.R. 1086 helps to enhance the Division's corporate amnesty program by expanding its reach. The current amnesty program does not affect the civil liability of the conspirators; that is, a corporation cooperating with the Division through the amnesty program receives protection from government prosecution, but may still be sued in court by private parties for treble damages. This bill decreases that liability by limiting the damages a private plaintiff may recover from a corporation that has cooperated with the Antitrust Division. Specifically, the conspirator is not liable for the usual treble-damages; instead, it is only liable for actual damages. This modification recognizes that a corporation that has fully cooperated with the Antitrust Division is less culpable than other conspirators, and provides a far greater incentive for corporations to cooperate with the Antitrust Division.

Third, H.R. 1086 addresses a concern raised recently by a string of court opinions that appear to limit the depth of review required by the Tunney Act. In brief, the Tunney Act requires that prior to implementing an antitrust consent decree a court must review

that decree to assure that it is in the public interest; historically, that requirement has been understood to require that the courts engage in more than merely “rubber-stamping” those decrees. A number of recent opinions have led some to question the depth of review required by the Tunney Act. This bill makes clear that the Tunney Act requires what it has always required, and that mere rubber-stamping is not acceptable. In addition, H.R. 1086 makes a small number of minor modifications and revisions to ensure both that the Tunney Act accurately reflects its original intent and that it effectively functions in the modern legal and economic environment.

Finally, this bill will treat Standard Development Organizations (SDOs) more favorably under the antitrust laws. SDOs are private, voluntary non-profit organizations that set standards for industry products—e.g., one SDO sets the standard for the required depth of a swimming pool before a diving board may be installed. Under the bill, qualifying SDOs which pre-notify the Antitrust Division of their standard-setting activities will not be subject to treble damages in private suits brought against them. Moreover, SDO activities will be scrutinized for antitrust violations under the less strict “rule of reason” legal standard, and SDOs may be awarded certain costs and attorney fees if they substantially prevail in litigation which is later held to be frivolous.

In all of these ways, H.R. 1086 modernizes and enhances the enforcement of U.S. antitrust laws, and I am proud to sponsor it.

Mr. MCCONNELL. I ask unanimous consent that the Hatch-Leahy amendment at the desk be agreed to, the committee-reported substitute, as amended, be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table en bloc, and any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 3010) was agreed to.

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

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 1086), as amended, was read the third time and passed.

#### ORDERS FOR MONDAY, APRIL 5, 2004

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 1 p.m. on Monday, April 5. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate

then begin a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

#### AUTHORITY TO FILE

Mr. MCCONNELL. I ask unanimous consent that notwithstanding the Senate's adjournment, it be in order for the Commerce Committee to file legislative matters until 2 p.m. today.

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

#### PROGRAM

Mr. MCCONNELL. On Monday, the Senate will be in a period for the transaction of morning business throughout the day. There will be no rollcall votes on Monday, but Senators are encouraged to come to the floor to deliver morning business statements if they have any.

As a reminder, earlier today the majority leader propounded a unanimous consent request that would have allowed us to take up and begin debate on S. 2207, the Pregnancy and Trauma Care Access Protection Act of 2004. There was an objection to that request, and the majority leader was forced to file cloture on the motion to proceed.

The cloture vote on the motion to proceed to S. 2207 will occur on Wednesday of next week at 2:15, and that vote will be the next rollcall vote.

#### ORDER FOR ADJOURNMENT

Mr. MCCONNELL. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator WYDEN for up to 15 minutes and Senator SESSIONS for up to 15 minutes.

Mr. REID. Mr. President, I ask unanimous consent to add Senator CORZINE for 10 minutes following that.

Mr. MCCONNELL. Senator CORZINE for 10 minutes.

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

(The remarks of Mr. WYDEN pertaining to the submission of S. Res. 330 are printed in today's RECORD under “Submitted Resolutions.”)

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Alabama is recognized.

#### INCREASE IN EMPLOYMENT

Mr. SESSIONS. Madam President, I would like to celebrate the good employment news we received today.

I think it is important for us to at least take a few moments to celebrate what was revealed today in the March employment figures released by the Department of Labor statistics.

I just left a hearing of the Joint Economic Committee, of which I am a

member. It was held in the House this time. We had the Department of Labor statistician give those reports. They were good numbers indeed.

There were 308,000 new jobs added this month. Since last fall, we have added over 700,000 new jobs. These are not vague numbers. These new jobs are payroll jobs that are identified easily because these are payroll jobs where the employer is sending the money to the Federal Government for Social Security, Medicare, and income tax withholding. These are really hard numbers.

For some time, we have had a divergence between the household survey and the payroll numbers. Payroll numbers have not been as good as the household numbers. Household numbers are a survey of homes in America. Many think they are even more accurate, because they ask whether you are employed and whether you are working. The truth is a lot of people do not show up on a payroll because they are self-employed, they are consultants, or they operate a business out of their home. They help their spouse or family member with a job. They do not show up on a payroll. Also, a large number of people are working here illegally and are not counted. That is something we need to get more serious about.

It is odd to me that Members in this Senate who are most angry and most upset about unemployment seem to have no concern whatsoever about how many jobs are being taken by people coming into this country illegally. We are a nation of immigrants, and we believe in immigration. But we also want to know who is coming to make sure they are coming legally, they are not terrorists, and that they are not flooding our job market and putting Americans out of work who could have had those jobs.

So the question becomes, where did all these new jobs come from? I think we can say with some fairness and objectivity with the history of our current situation—not to try to be partisan in any way—President Bush last year said he believed this economy was not where it should be. Our unemployment rate was not where it should be. It was too high. We needed to increase employment in America, and we needed to increase growth. The way you increase employment in this country is to increase growth, so we set out to do that.

What did we do? We carried through on a plan to stimulate this economy through tax cuts for American citizens, businesses, and investment. We began to see some real change. Growth began to occur.

During the third quarter of last year, growth was 8.2 percent. That is the highest rate of growth in 20 years. The fourth quarter was over 4 percent. We expect, according to Mr. Greenspan, growth this year to be 5 percent. That is a tremendous level of growth. It is something we should be very proud of.

Economists also say that growth creates jobs. If the economy does not

grow, if businesses are not expanding, then they don't hire people. You don't have jobs created. If you want to create jobs, you have to have growth. So we have created growth.

There has been some concern about the number of jobs added as we began to grow. It has not been at the rate we would like to see. It is somewhat below historical averages. You would think jobs would increase faster considering the highest level of growth we have seen, but as we heard in the hearing this morning I attended—and I think most economists would agree—the problem has been productivity. Productivity has a short-term adverse impact on employment, but it is not a problem in the long term. Increased productivity means that a plant, a factory, or a business is doing better than they have done before. They are producing more widgets at less cost and less employment, and they are more efficient. In the long run, that is good. In the short run, it could mean an increase in unemployment.

We have had incredible increases in productivity and this has made us competitive in the world market. If you do not have productivity increases, how can a high-wage country like the United States compete with other countries around the world that pay less wages?

Productivity is the key to our being competitive in the world market. Everybody who is honest and who understands the situation would agree with that. But it has caused us to lag in jobs.

Growth is occurring. Now we see a 308,000-person increase in employment this month. It is really good news. I think it is something we should celebrate.

There has been so much political rhetoric going on. President Bush is a strong leader. He takes responsibility. He says he is not satisfied right now with the employment level in our country, although this unemployment rate we have today is below the 20-year average for unemployment in America. It is an unemployment rate that existed when President Clinton ran for reelection last time. The unemployment rate of 5.7 percent is not an extreme situation when viewed in historical terms. In fact, today's unemployment rate is less than the average rate for the decade of the 1980s and its less than the average rate for the decade of the 1990s.

Let me show you this chart that I think is pretty dramatic. It is entitled, "Best Is Yet To Come, U.S. Picked to Have the Strongest Gross Domestic Product Growth Over Next Year."

These were economists picking which countries have the greatest economic growth this year. The United States is almost 5 percent. All the rest of the countries—Australia, Canada, Britain, Spain, Japan, Sweden, Denmark, France, Euro Area, Belgium, Austria, Switzerland, Italy, Germany, and the Netherlands—all have lower growth.

Whose economy is doing well? Our economy is doing well. Why? We are

doing better for several reasons. One is we have lower taxes than those countries. Another is that we have fewer regulations than those countries. We are committed to a more free market economy. That produces growth. That is the engine for American prosperity. It always has been, and we should never abandon that and move to the Socialist state economies in these other countries.

This is tremendous. How people can come around and whine and complain and grumble about the kind of situation we are in now is beyond me.

This chart shows the gross domestic product growth in the past 12 months. The United States has the highest growth in gross domestic product of all of these nations: Australia, Japan, Britain, Spain, Sweden, Canada, Belgium, Austria, France, Euro Area, Denmark, Germany, Italy, Switzerland, and the Netherlands. All of those countries have lower growth rates than we do. The European Union unemployment rate is 8.8. Ours is 5.7. Canada's is 7.4.

Something is being done right here. We are not quite as bad as people would like to moan and groan about.

We just added 300,000 new payroll jobs last month. These are not survey jobs. These are people who are on the payroll and who are paying withholding taxes—Social Security and Medicare taxes. These are substantially payroll and employment taxes. Things are moving along pretty well. I have been concerned. I don't think it is fair that many on the other side have blamed President Bush because the economy has not done as well as we would like and it slipped into recession.

I will take a moment to explain some things. Back when former President Bush was President, he had been in office a year or so, the Reagan boom had been going on, and all of a sudden we got into a slowdown. A lot of economists know why it occurred, but we got into a slowdown. We had negative growth a couple of quarters when former President Bush was in office, about his second year in office. President Clinton ran for office and said: It's the economy, stupid. He said the economy was bad and President Bush would be removed from office and he won, to a large degree, on that issue.

The truth was, by the time President Clinton took office, the economy had grown during the fourth year of President Bush's Presidency and President Clinton inherited a growing economy. The fourth quarter of President Bush's last year in office showed significant growth. So it is clear: President Clinton inherited a growing economy when he took office. And for most of his two terms in office, the economy performed well. I guess he gets credit for that, although I am not sure how much any President deserves credit for these things, but they think they do. So they get the credit and the blame, whether they deserve it or not.

So President Clinton enters office and the economy goes along well for a

while. But it was in trouble his last year in office. And during the 2000 campaign President Clinton and Vice President Gore spent a lot of time saying how wonderful the economy was and how much his Vice President, Mr. Gore, deserved credit for it, but, this just wasn't so. In fact, the economy had already begun to sink dramatically during President Clinton's last year in office.

For example, the NASDAQ exchange lost one-half of its value during the last year of President Clinton's tenure and before President Bush took office. When President Clinton was President, the economy was in trouble. Another fact is that during the third quarter of President Clinton's last year in office the economy experienced negative growth.

To compound the problem further, the first quarter President Bush inherited also experienced negative growth, even though the President hadn't been in office long enough to have this slowdown occur as the result of any of his policies. The fact is, President Bush inherited an economy from President Clinton that was already in trouble. There was no doubt about it. The numbers I have given are indisputable. President Bush's opponents want to ignore them and pretend that these facts did not happen. They want to promote the myth that President Bush is responsible for this economy, for the economic troubles we had, not that he inherited them.

But to his credit, President Bush has not whined or complained about the economic problems he inherited. Instead, he set about on a program to get our economy moving again by empowering the American people. He did this by allowing people to keep more of the money they earn instead of sending it to Washington to be spent by this gaggle in the Senate and the House. This President trusts the American people. In a nutshell his program is based on the premise that our economy functions best when we put more money into the hands of the people who earned it in the first place.

And the President's approach has created this growth we are now seeing. It resulted in 8.20-percent growth the third quarter of last year. It resulted in significant growth in the fourth quarter of last year. It is an approach that leads many people, such as Alan Greenspan, to predict the economy many sustain GDP growth of 5% this year. And it is an approach that has helped create the 300,000 new jobs we celebrate today.

Things are moving well. We want to see it continue. We want to see the unemployment numbers fall, and we want to see continued growth in productivity and jobs. In the long run, growth will determine whether we are successful as an economy and whether people will have jobs.

We hear all these things about China and Mexico being a threat to us, outsourcing and all these problems,

and we need to look at every single one of them and be very protective of jobs in America.

The President of the United States understands this. He understands that he is not president of the European Union. He is not president of the world. President Bush understands that he represents the United States of America. He is working every day to help our interests.

We have a lot to celebrate with these numbers today. They are really good. If we could maintain something close to that for the next 4, 5, or 6 months, we will feel a difference in income and revenue to the Government. We have 300,000 people now paying money to the Federal Government in taxes. One reason we have had a revenue shortage is because we have had less employment, so they are paying less taxes. If businesses are in a recession, they do not make a profit; the corporation does not pay a tax unless they make a profit.

Maybe we are back in the mood of growth and profitability and hiring that will make a difference not only in jobs for American citizens but maybe it will also make a difference for revenue to our Government and help us get this budget balanced again, which is something I feel very strongly about.

These tax reductions have been mischaracterized. Right now, we are dealing with it, as part of our budget process that we need to complete. We need to extend the child tax credit of \$1,000 per child for a working family in America today. The marriage penalty falls on working families and the expansion of the 10-percent bracket—in other words, people who are used to paying 15 percent income taxes—the lower income taxpayers, some pay 10 percent, the middle group pays 15 percent—more people will be paying at a lower rate. All of those are in doubt right now. We need to make that happen, allow the American people to keep more of their money, follow the great American tradition—not the European Socialist tradition—the American tradition of individual responsibility, lower taxes, free markets, less regulation, and we will continue to beat the world in economic growth and productivity.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from New Jersey is recognized for 10 minutes.

#### ECONOMIC INDICATORS

Mr. CORZINE. Madam President, it is good news to have an increase in employment in America today. Everyone is pleased to see more jobs are coming into our economy and Democrats, as well as Republicans, are pleased to see more Americans are going to work.

But that said, working men and women, and everyone, has to understand numbers of 1 month do not indicate a change in whether one assesses economic policy working for average

Americans, for middle-class Americans, for moderate-income Americans, for those who are trying to make ends meet in our economy.

These good numbers we would like to see continued. We would like to see more Americans going to work, but the American people need to understand this number, this 1-month number, in the context of a whole 38 months of development of economic policy in this country, is a record that I believe, and I think many people would believe, has put enormous stress on the American people.

We are pleased with the job growth, but the fact is, we saw growth in the unemployed this month of about 184,000. We now have 8.4 million Americans unemployed in this economy. That is up substantially this month.

We have also seen the unemployment rate tick up about one-tenth of a percent. I heard some spinning about Senator KERRY saying 5.6 was pretty good in 1996. There is a difference when you come from 7.2 percent, which is where President Clinton's unemployment rate was when he came to office, going to 5.6—on the way, by the way, to 3.8 percent—than when we have a 5.6 or 5.7 percent rate, coming up from 4.2 percent, which is what the current administration inherited.

We have rising unemployment in this country, not declining. One month is a good thing to have happen, even a good quarter is a good thing to happen, but let's put it into the context of the 38 months of the stewardship of this administration's economic policies.

The fact is, we have had the worst record in 70 years, and it still stands. It has not been substantially altered by a 1-month performance in job growth in private sector jobs that we have seen since the Herbert Hoover years in the late 1920s and early 1930s.

The fact is, every other President from that point in time on—Roosevelt right through Clinton; including George Bush 1, Ronald Reagan, Carter—produced private sector jobs. And we have about a .7-percent decline in jobs under this administration in the private sector. We have lost about 2.6 million of those jobs, even after these numbers.

In fact, we have been producing more jobs in Government during the Presidency of someone who said they did not believe in Government—which is quite strange—relative to an emphasis on the private sector.

Again, I repeat, you have to look at this in the overall context. One month is good, and we are all pleased about that, but the fact is we have lost private sector jobs in this economy. It is a fact of which I think the American people have a real understanding.

Economic policy is something to analyze over a period of time, in context. It is not just a month. Remember, in the Clinton years, there were roughly 21 million jobs created—21 million jobs created—over that 8-year period. Right now, we have lost something in the

neighborhood of 2.5 to 2.6 million jobs over the term of this stewardship of the economy.

It is the context you have to think about, what kind of economic policy leads to sustained economic growth and sustained economic job creation, which is the end result that I think people will measure in their own lives—whether they have a job, whether they are working, whether they are actually able to take care of their families.

By the way, it is not just jobs; it is actually the earnings one gets on those jobs. One of the things that has been happening in our job market is, as people lose a job, and then they take another job, we have seen a 21-percent decline in the average wages of people who get reemployed.

So those factory workers in Edison, NJ, where our last Ford factory was closed—they go from a Ford manufacturing job to a service sector job that is, on average, 21 percent lower in real earnings than the job they had before. So they may be working but going into a Wal-Mart or going into hamburger flipping, which is not as good a job as the ones we are losing.

That is the problem in this economy, even though we might be seeing job growth. By the way, if you look at the actual numbers in this month's job creation, so many of them are in the service sector, where you are seeing this phenomenon happening, where there is a decline in the earnings of families and their purchasing power. They are losing their ability to go into the economy and have the strength to participate in the way they were before.

So it is not just the jobs; it is the quality of jobs that is at stake in the debate we have with regard to economic policy. So not only do we have a poor performance with regard to job creation, we have poor performance with regard to the quality and the earnings power that is associated with those jobs.

I think it is hard to hear some of the celebration and spinning that I have heard this morning on some of the television stations and from others who are focusing only on the good news of the 308,000 jobs created. That is great. How about the 184,000 people who lost their jobs? How about the 8.4 million people who are unemployed? How about the 2 million people who are on long-term unemployment in this country, who are detached or who have dropped out and are not looking for jobs? It is the highest number we have ever seen.

By the way, if you added that into the unemployment rate—the people who have stopped looking because they have given up hope looking for a job—the unemployment rate would be 7.2 percent. This is not just a single number. I know there is going to be a lot of focus on it, and that is a good thing. I

hope it sustains itself over a long period of time so we can start correcting this malaise we have in our jobs market around this country. And it is serious.

People know about outsourcing. They know about offshoring. They know about the fact that the minimum wage has not increased so that real earnings can grow for working men and women in America. There is a real problem.

In January 2001, we had about 700,000 long-term unemployed. Today, we have 2 million. You tell me whether that is a good stewardship of our economic policy and our jobs policy in this country. Where I come from that does not sound like a good performance.

I saw one of my esteemed colleagues from the other side of the aisle—I know he was trying to make a positive case—saying we have record employment at 138.4 million jobs in this country. That may be true, but last time I checked the population just keeps growing every month. Every month, the population keeps growing. If the employment rate does not go up, do you know what. What happens this week or what happened in this month's numbers is exactly what is taking place. We get rising unemployment, particularly when you add in all those people who have dropped out of the workforce. It is not that hard to do fractions. If you keep the base the same, and the numbers go up, you are going to get a changed number. And that is what is happening. It is hard for me to understand why we want to take victory laps when there are 8.4 million Americans without jobs.

Now, this is something we all hope turns and continues along the path. By the way, it is sure coming at a fairly serious price. The last time I checked, the President's own OMB Director was projecting we are going to have a \$540 billion budget deficit. I guess if you go out with a credit card and spend up a storm, you can get some activity going on in the marketplace. If you go to the malls and spend until you are in debt to the point where you cannot sustain it over a long period of time, you can get some economic stimulus, but that does not mean that is good economic policy. In fact, that means we are mortgaging our children's future so we can get results now. Funny, we want results about 6 months in front of an election, but we are spending in an uncontrolled manner, and almost everyone, on both sides of the aisle, is troubled. Spending and tax cuts and borrowing just make no sense, but they are getting some results in stimulating the economy. I do think we have a good thing going on with regard to the Federal Reserve. We have had the lowest interest rates now for 15, 16, 17 months—the lowest interest rates in 45 years. That actually does put some stimulus in the economy.

We could not do any more with regard to trying to stimulate. The problem is, we did not do it very efficiently. We put it in all at the top income brackets, and it sort of trickles down.

And that may create jobs. But I want to go back to what I think maybe is as important as anything that needs to be analyzed in the job market. When we trade manufacturing jobs, white collar technology jobs, for service sector jobs, what happens to the American people? Their standard of income goes down.

Madam President, \$44,570 is the average wage for a job that was lost in 2001. And the average wage today, when you get a new job, is \$35,410, according to this calculation. That is a decline of 21 percent. When you go from manufacturing and high-technology jobs to service jobs, you see a deterioration in the real earnings of the American people. That is happening. And we still have a major unemployment problem in this country: 8.4 million people, 2 million of whom are unemployed on a long-term basis. We have the longest average tenure on unemployment we have had in 20 years.

So, yes, it is a good thing that we saw 308,000 jobs created this month. It is a good thing that we are starting to see some pickup. But by my calculation—and by anyone's calculation—we still have the worst job performance record of any President since Herbert Hoover. Those are the facts. People can talk about the facts however they want. We have not performed for the American people in creating jobs and creating real earnings that will make a difference in their lives.

So I hope we do not start celebrating and spinning so much that we lose track of what the reality is for people in their own lives—certainly what is the reality for those people in Edison, NJ, who just had their Ford plant closed. I can tell you, it is happening all across my State. We have seen the elimination of high-quality jobs, and people are replacing them with those lower earning ones. I think we have serious issues to debate as we go through this campaign season. We ought to stay focused on the facts—both the number of jobs created and the quality of those jobs. I look forward to having greater discussion about these issues in the weeks and months ahead.

Thank you, Madam President.

ADJOURNMENT UNTIL MONDAY,  
APRIL 5, 2004, AT 1 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 1 p.m., on Monday, April 5.

Thereupon, the Senate, at 11:24 a.m., adjourned until Monday, April 5, 2004, at 1 p.m.