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Senate

The Senate met at 9:45 a.m. and was called to order by the President pro tempore.

PRAYER

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

Let us pray.

Eternal Lord God, who blesses and protects those who run to You for hope, You are our hiding place. You protect us from trouble and You put songs in our hearts. Forgive us when we have failed to act because of the paralysis of analysis. Remind us that all that is necessary for evil to triumph is for good people to do nothing.

Thank You for Your unfailing promises that illuminate our past through life. Thank You also for the privilege to serve and honor You.

Give our lawmakers wisdom for today's challenges. Point out to them the road they should follow. Be their teacher and watch over them as Your kindness provides them with a shield.

Strengthen our Nation with right living, and may each citizen live for Your honor. Protect our military and all who fight for freedom. We pray this in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

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

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will have a 60-minute period for morning business to allow Senators to make statements. Following that 1-hour period, the Senate will proceed to executive session for the consideration of the nomination of Condoleezza Rice to be Secretary of State. Chairman LUGAR will be here to manage the debate time on our side of the aisle. The order does provide for up to 9 hours of debate during today's session. I am not sure if all of that debate time will be necessary, but we do want to give every Senator the opportunity to speak if they so wish. We will remain in session until that debate is used or yielded back over the course of the afternoon or into the evening.

Tomorrow morning, for the information of our colleagues, the consent agreement allows for 40 minutes of closing remarks, and I now ask unanimous consent that the time, 60 minutes, be equally divided prior to the vote on the nomination. Mr. President, I now ask unanimous consent for that 60 minutes at this juncture.

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

Mr. FRIST. I expect that tomorrow morning we would begin that final debate on the Rice nomination immediately upon convening. I will be talking with the Democratic leadership, but I would like to convene and go straight to that debate.

I would also add that the Nicholson nomination for Secretary of Veterans Affairs was reported yesterday. We will be asking for a short time agreement on that nomination. As I mentioned yesterday, as the nominations do come from committee, we do want to consider them as soon as possible on the floor of the Senate.

Lastly, I remind my colleagues there will be additional nominations this week, and although this week will be a shorter week—we will be in session today and tomorrow—we will be seeking agreements over the course of this afternoon and tomorrow to proceed on these other nominations.

Mr. President I have a brief opening statement, but I would like to turn to the assistant Democratic leader.

ORDER OF PROCEDURE

Mr. DURBIN. If the majority leader will yield, consent has just been granted for 60 minutes of time for closing debate on the nomination of Condoleezza Rice, and the Democrats would like to allocate the 30 minutes we are allocated with 20 minutes to Senator BIDEN, 5 minutes to Senator BYRD, and 5 minutes to Senator BOXER.

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

60TH ANNIVERSARY OF THE LIBERATION OF AUSCHWITZ

Mr. FRIST. Mr. President, when Soviet troops reached Auschwitz in January 1945, they found only a few thousand thin, frail, emaciated survivors. SS soldiers, determined to carry out the final solution, had forced most of the surviving prisoners on a long death march into the heart of the Reich.

As they retreated, the German forces destroyed most of the warehouses and many of the documents at Auschwitz. But what they left stunned even the battle-hardened Soviet troops. One soldier describes the camp's inmates as ''skin and bones [who] could hardly stand on their feet.''

Soviet troops discovered hundreds of men's suits, more than 800,000 women's outfits, and more than 14,000 pounds of human hair.

One survivor recalls:

What was Auschwitz? It was hell. Hell. A death factory. If you weren't gassed, you were exhausted to death. If you weren't exhausted to death, you starved. If you didn't starve, you died of disease.

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

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It was at Auschwitz that Joseph Mengele performed his horrific experiments, injecting the hearts of live children with chloroform and performing all sorts of bizarre and vile surgeries on twins and pregnant women.

It was at Auschwitz that the Nazi killing machine first discovered and perfected the use of Zyklon-B to gas their innocent captives by the hundreds every day.

It was at Auschwitz that doomed prisoners, trapped inside the gas chambers with only a few choking minutes left to live, found the strength to scratch into the walls the words: Never forget.

This week, on January 27, the world will commemorate the 60th anniversary of the liberation of Auschwitz and the 1.5 million victims, most of them Jewish, who perished in the death machine's fires.

Vice President DICK CHENEY is leading an American delegation to stand alongside the 2,000 survivors, as well as surviving Red Army soldiers. He will be joined by Lynne, his wife, numerous world leaders, and by the Nobel Peace Prize Laureate Elie Wiesel.

It will be a time for reflection, a time for remembrance but also for determination—determination that mankind will never again stand by as innocents perish in the monstrous designs of tyrants and despots.

It will be a time to recommit ourselves to the battle against intolerance, against fanaticism and hatred, all of which can so easily poison the hearts of the most seemingly civilized men and women.

As Kofi Annan declared yesterday during the United Nations General Assembly first ever recognition of the Holocaust:

> The evil that destroyed 6 million Jews and others in those camps is one that still threatens all of us today.

Indeed, if you think of areas around the world, you think of the Darfur region today in western Sudan. To the innocents who perished, to those who survived and to the victims of genocide who now cry out, America's leaders hear your plea. We will never forget, and we will not stand by.

Auschwitz taught us that the war against tyranny is more than a war of territory, more than a war of geographic boundaries. It is a war against evil itself. As Justice Robert Jackson solemnly inveighed to the world at the start of the Nuremberg trials:

> The wrongs which we seek to condemn and punish have been so calculated, so malignant, so devastating that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.

NOMINATION OF CONDOLEEZZA RICE

Mr. FRIST. Mr. President, over the course of today, we will be considering the nomination of Condoleezza Rice to be Secretary of State. I want to be the first on this floor and on this day to honor Condoleezza Rice with our expression of strong support. She is an outstanding choice, and the American people are fortunate to have a public servant of her talent and her intellect.

During her tenure as National Security Adviser, Dr. Rice has been a steady and trusted adviser, a confidante of the President of the United States. In a role of crafting policy and helping guide decisionmaking, she has demonstrated extraordinary skill. But this should come as no surprise. Dr. Rice is a woman of remarkable accomplishments. Throughout her life, she has applied her razor-sharp mind and her steely determination to reach the highest peaks of achievement. And it started early.

Dr. Rice was born in Birmingham in 1954. By the age of 3, she was already a piano prodigy, playing hymnals for her family. By age 5, she was playing right alongside her mother on the church organ bench. At 19, Condoleezza Rice earned her bachelor degree in political science cum laude, Phi Beta Kappa from the University of Denver, and just a year later her master's from Notre Dame. At the young age of 26, having earned her Ph.D., Dr. Rice became an assistant professor at Stanford University. A decade later, Dr. Rice was elevated to the post of provost, which at Stanford and most universities is the equivalent of the chief operating officer of the university.

From 1989 to 1991, Dr. Rice served the first Bush administration as Director and then as Senior Director of Soviet and East European Affairs at the National Security Council. During this time, Dr. Rice brought her considerable expertise in Eastern European affairs to the administration's handling of the collapse of the Berlin Wall, Germany's reunification, and the transition of the Soviet Union to the Russian Federation. This, combined with her years of foreign policy experience, particularly in the post-9/11 context, makes her distinctly qualified to lead the Department of State.

We are a nation at war. As Secretary of State, Dr. Rice will be a key player in winning this war. She will have the responsibility of advancing democracy and freedom across the globe, not only to protect us from attack but to fulfill America's unique moral purpose. Outlaw regimes must be confronted. Dangerous weapons of proliferation must be stopped. Terrorist organizations must be destroyed. Dr. Rice has both the ability and the experience, from fighting the Cold War through fighting this war on terror, to meet these daunting challenges.

Dr. Rice possesses a rare combination of management and administrative experience, of public policy expertise, of high academic achievement and, not least importantly, a graciousness that will serve America's interests well in these difficult and challenging times. America needs a leader of her caliber.

Dr. Rice has said that while growing up, her dad John and her mother Angelena taught her that in a country where racial segregation and Jim Crow were an ugly fact of life, she had to be twice as good to get ahead. I think it is fair to say she has surpassed this high charge.

Dr. Rice is an author, a classically trained pianist, an ice skater, and tennis player. She speaks Russian fluently and is an avid fan of football. In fact, we are grateful she has set aside at least for the moment her ambition to become commissioner of the National Football League.

A woman of deep faith in God, liberty, and freedom, Condoleezza Rice will protect and serve our national interests. I should also note Dr. Rice would be the first African-American woman to serve as Secretary of State. I urge the Senate to give Dr. Rice their strong support. I hope and expect to see her confirmed swiftly so she can begin addressing the urgent threats and challenges that face our Nation.

I yield the floor.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. VITTER). Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes, with the first half of the time under the control of the majority leader or his designee and the second half of the time under the control of the Democratic leader or his designee.

The Senator from Colorado.

NOMINATION OF CONDOLEEZZA RICE

Mr. ALLARD. Mr. President, I thank the majority leader for his very strong support of President Bush's nominee, Dr. Condoleezza Rice. I like to think of her as a Coloradan. In Colorado, we are extremely proud of her record.

I rise today in strong support of President Bush's nominee for Secretary of State, Dr. Condoleezza Rice. I ask my colleagues to join me in approving this nominee so that she can assist President Bush in making his version of a more secure, democratic, and prosperous world for the benefit of the American people and the international community a reality.

As many already know, Dr. Rice was born and raised in Alabama. In 1969, her father moved their family to Colorado to take an academic position at the University of Denver. Dr. Rice soon enrolled in Denver's St. Mary's Academy, an independent Catholic school and the first integrated school she attended. After high school, she earned her bachelor's degree in political science, cum laude and Phi Beta Kappa, from the University of Denver in 1974 and returned a few years later to get her Ph.D. from the Graduate School of International Studies at the University of Denver in 1981.

Dr. Rice may have only spent a few years in Colorado but we in Colorado are certainly proud of what she has accomplished and like to consider her a daughter of the Centennial State.

Clearly, Condoleezza Rice is eminently qualified for the post of Secretary of State. I know many of my colleagues are aware of her years at Stanford University, including her service as provost. In addition, she served on the National Security Council during George H. W. Bush's administration as Director of Soviet and Eastern European Affairs, which witnessed the fall of the Berlin Wall. She has come full circle since then and again served on the National Security Council but this time as the national security adviser to our current President and has done a magnificent job during very turbulent times.

Since then, Dr. Rice has consistently provided the President with sound advice on national security and foreign policy. She has been balanced, fair, and determined to ensure that President Bush received the best possible advice.

Some have questioned Dr. Rice's role as national security adviser and how she shaped the Bush administration's policies since the tragedy of September 11, 2001—specifically, our action against the Saddam Hussein regime. I believe she was instrumental in encouraging the President to utilize every diplomatic approach possible. We should not forget that President Bush went to the United Nations, secured a Security Council resolution demanding disarmament, and worked with our closest allies to ensure that Saddam Hussein complied with his obligations. The President also sought authorization from this Congress, which over three-quarters of this body supported. Unfortunately, Saddam Hussein would not keep his end of the bargain and we were left with no choice but military action. I am thankful during this turbulent period that Dr. Rice ensured the President received advice from multiple viewpoints so he could make the bold decisions necessary for our security.

The Hussein regime is now out of power. The former dictator and killer of thousands is sitting in prison and the first democratic elections in Iraq are about to take place. Our Nation is more secure because a dangerous regime, with a history of aggression and links to terrorist organizations, is no longer in power.

Today, America has demonstrated its resolve in the global war on terror. American troops and their coalition allies have achieved this historic effort thanks to their sacrifice.

As democracy in Iraq succeeds, a message will be sent forth that freedom can be the future of every nation and that freedom improves the peace and security of the United States.

I am certain Dr. Rice will present this powerful message abroad with skill and determination. Just as importantly, Dr. Rice understands that successfully fighting the war on terror is not solely a military task. Dr. Rice will seek to use our powerful diplomatic leverage to better protect our Nation. She will also guide our Nation's diplomatic efforts to solve regional and civil conflicts in the Middle East, between Israel and its Arab neighbors, in Sudan, Congo, and Liberia, in the Balkans, in Cyprus, in Haiti, in Northern Ireland, and elsewhere. Her leadership in the important multilateral discussions with the North Koreans on their pursuit for weapons of mass destruction will be pivotal.

There are also other challenges which Dr. Rice must tackle with our social and economic development programs that the State Department manages. The promotion of free trade and investment worldwide, the fight against HIV/AIDS, and the implementation of the Millennium Challenge Account are but a few ways we can seek to provide our friends and allies around the globe with much needed stability and vitality.

When the President announced his intention to nominate Dr. Rice to be Secretary of State, he spoke of relying on her counsel, benefiting from her experience, and appreciating her sound and steady judgment. I am pleased that the President has sought to replace our current Secretary of State, Colin Powell, with another so well equipped for the challenges that lie ahead.

I would be remiss if I did not thank Secretary Powell for his service to our great Nation. He has given so much of himself while serving during his long and distinguished military career before finally leading the Department of State. These two Americans are two of our best. We are privileged that while Secretary Powell steps down to pursue new challenges, the United States has someone of Dr. Rice's credentials to continue to carry the torch of liberty abroad.

I urge my colleagues to confirm Condoleezza Rice as our 66th Secretary of State.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

SIXTIETH ANNIVERSARY OF THE LIBERATION OF AUSCHWITZ

Mr. COLEMAN. Mr. President, historians Will and Ariel Durant have told us, ''The present is the past rolled up for action and the past is the present unrolled for understanding.'' In our search for understanding and guidance for our actions, we are pausing today to commemorate one of the darkest moments of modern history, the Nazi Holocaust, the effort by the Nazi regime to exterminate the Jewish people. Six million Jews were sent to their death before the end of the death camps. Sixty years ago today, the Auschwitz death camp was liberated, bringing an end to the slaughter of well over 1 million people at that location alone. As unfathomable as that reality is, we need to seek to understand it in order to prevent it. I am not sure if we can ever truly understand it.

In some ways it is kind of bizarre, but we need to understand that while genocide in Germany, Cambodia, Rwanda, and elsewhere may end up as a kind of mass insanity in some almost bizarre way, it begins in a terribly misplaced idealism.

The Khmer Rouge thought that returning Cambodia to its rural beginnings was the way to create a good society. They became so convinced that modernity was destroying their people that they attempted to forcibly empty the cities and kill anyone with a professional degree or anyone who even wore glasses. They even kept careful records of those they killed because they assumed history would honor them for their actions. The Germans kept records, too. It is difficult for me to fathom they would believe that history would honor them for their actions.

The situation in Rwanda dates back to the colonial period, when European colonial powers favored Tutsis over Hutus. When independence was hastily granted and the Europeans departed, a seesaw of vengeance and reprisals began, which escalated unchecked for 30 years. When historic anger boiled over, with the failure of the international community to step in, a terrible period of violence claimed over half a million people.

The fact that genocide could happen in an industrialized, cultured nation that had produced Beethoven and Goethe is especially chilling. As we read the various accounts of what was happening in the Third Reich, it astounds us that people could come to such conclusions. It astounds us that so many good people could do nothing, did nothing. While millions were slaughtered, they turned their backs and shut their eyes.

Auschwitz was not conceived as a death camp. It was part of Hitler's and Albert Speer's master plans for bold new Nazi ''Cities of the East'' that would express their vision for society. Such projects required slave labor for which Jews and others were likely candidates. The rise of democratic socialism in Germany was in part a reaction to their hatred of communism in the Soviet Union. So they had a strategy to empty the lands of Poland and Russia for resettlement by an expanded Germany. Such was their grandiosity that human beings became objects to be used for their plans and obstacles to be destroyed. They dehumanized the Jewish people.

The lessons of these three examples is: Hatred combined with any number of other circumstances can explode into genocide. Even as the situations in Darfur and elsewhere continue, we would be naive and foolish to believe that mankind has ''learned its lesson.''

First, we need to go on the moral offensive whenever hatred arises. That is why I have risen on the floor several times to decry the growth of antisemitism in Europe. Even on American college campuses, antisemitism is raising its ugly head today. We need to speak out. We need to put a cork in the bottle. We need to make sure it does not spread.

Second, I think we need to understand that with American power comes responsibility. In concert with our allies in the U.N., we must be prepared to intervene when we can to prevent bad situations from going over the abyss into genocide. Diplomacy is by its nature slow and cautious while situations such as these are fast moving and can degenerate overnight. We need to find ways to respond quickly. The history of the quick action of the British in 1941 to stop the Farhud, a genocidal program against Iraqi Jews, is an event deserving more attention and more study.

There is one other reason for us to focus on these monstrously evil events. They provide stirring examples of the nobility and resiliency of human beings as well: The story of ''Schindler's List'', the compassionate soldiers who liberated the concentration camps. Soviet troops liberated Auschwitz on January 27, 1945, and were able to save about 7,000 prisoners from certain death. The stories of surviving prisoners themselves are remarkable. Those who managed to maintain their humanity in the most inhumane of circumstances inspired us all.

Victor Frankl offered this recollection:

> We who lived in concentration camps can remember the men who walked through the huts comforting others, giving away their last piece of bread. They may have been few in number, but they offer sufficient proof that everything can be taken from a man but one thing: the last of the human freedoms—to choose one's attitude in any given set of circumstances, to choose one's own way.

Frankl also wrote:

> A thought transfixed me: for the first time in my life I saw the truth as it is set into song by so many poets, proclaimed as the final truth by so many thinkers. The truth that love is the ultimate and highest goal to which man can aspire. Then I grasped the meaning of the greatest secret that human poetry and human thought and belief have to impart: The salvation of man is through love and in love.

The Holocaust and similar events discourage us with the realization of the extent of evil of which people are capable, and we must guard against it vigilantly. But they also display the highest and best human beings can rise to, which gives us courage and hope.

We will never, ever forget man's inhumanity to man in the Holocaust. We reflect on the liberation of Auschwitz, so we assure that we never forget. But at the same time we have a sense of courage and hope that in the worst of circumstances man can still turn to love and to faith and to salvation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, how much time do we have on our side?

The PRESIDING OFFICER. There is 11 minutes 50 seconds remaining.

NOMINATION OF CONDOLEEZZA RICE

Mr. THOMAS. Mr. President, as most of today's program will be based on Condoleezza Rice and her appointment to be Secretary of State, I rise to make some comments to show my admiration for Ms. Rice and my support for her to serve in this task. I certainly cannot think of a better candidate. I rise to offer my strong support for Dr. Rice because I believe she not only brings a remarkable record of public service and academic credentials to this position, but also great experience and integrity in troubled times, times of war.

I find it troublesome that we are here today, unfortunately, not so much to debate the qualifications of Dr. Rice, even though they are certainly impressive and she is equal to the task. Instead, to some extent we have chosen to return, at this time, to the honored position of trying to score political points by distorting the record of the President's decision to use force in Iraq. The ongoing operations in both Iraq and Afghanistan are critical components to the global war on terrorism, a war with the purpose of fundamentally changing the environment which has given rise to the power of the extremists in that part of the world. It remains an aggressive effort, not only to bring to justice the perpetrators of 9/11 but also the nations that aid and support them.

There has been a great deal of discussion, of course, with Dr. Rice about the facts that brought us into Iraq. The fact is, at that time everyone involved—whether it was the United States, whether it was Britain, whether it was the CIA—had this view of what the world was and that is what it was based on. Some of those views turned out not to be correct, but at the time that was the information we had.

So I certainly hope we can move forward here. I agree, everyone should have a right to say what they choose with regard to these nominations. On the other hand, they ought to be here for the purpose of examining those persons for that task, and not talking about the politics of all the surrounding issues.

I also have to say I am not at all surprised that someone nominated to serving on the Cabinet would be supportive of the President. If you were President, would you appoint people who disagreed with you and would not be with you, who would not support your positions? Of course not. So that is where we are.

At any rate, I support the decision to use force, supporting the action in Iraq today. We have to finish our work there. I think we are offering freedom and hope to the people of these poor and oppressed countries. The best way is to neutralize the effect of fanatical Islam. We continue to make progress with other nations, and that is great.

Dr. Rice has performed admirably in her role as National Security Adviser and will continue to serve the country well as Secretary of State. I urge my colleagues to join me in support of this nomination today and move it on down the line.

ISSUES FACING THE SENATE

Mr. THOMAS. Mr. President, I also wish to take a few minutes, as others have, to talk about some of the issues that will be before us. We have a great opportunity now to move forward on these issues, many of which we have discussed in the last session. Many are ready to be acted upon, and I hope we can do that.

We need to talk about taxes and simplifying taxes. We need to talk about ensuring that we have the tax support there to create jobs and strengthen the economy. We seem to be moving in the right direction. I think the tax reductions have proven themselves to be useful, but many of them, particularly on taxes such as the estate tax, unless that is made permanent so people can have confidence in their investments, they really do not fully do what we hoped they would do.

We need to continue to work to keep America safe; security is probably our top priority. We have made a considerable amount of change in that area. We need to continue to evaluate that, of course, and ensure that we have the best.

I hope we can come back to deal with the issue of energy—clean, economic energy. That is, again, one of the basic issues in creating jobs, in growing an economy, and one that we have worked on now for several years.

We had a long meeting yesterday. We had a series of meetings to talk about the need for conservation, to talk about the need for efficiency. We talked about the need for alternative sources of energy—renewable energy as well as domestic production. Those things are so important. Yet, somehow, we have not been able to move forward. I cannot think of anything that is more important to us than to have a policy with respect to the future, to be able to look into the future with regard to energy.

I suspect most of my friends here would agree that as they go home and meet with people, one of the issues that is most often talked about is the cost of health care. It is a tough issue. I think we have a good health care system, probably the best in the world, but we are getting to the point where access to that system is being limited by the cost. I am not just talking about Medicare or Medicaid; I am talking about health care generally. I am talking about families on the ranch,

talking about families on the ranch, for example, when they have to pay for their own and it costs $15,000 a year for insurance. I am talking about the things we might do to give more tax-free savings accounts so these insurance policies can be more for coverage of catastrophic events and be less expensive and we can have more ownership in them. Those are the kinds of things we need to take a look at.

We need to promote agriculture in our trade programs that will be coming up. Agriculture is a very difficult issue with respect to foreign trade, but it is very important.

I spent some time in Argentina at the global warming meeting and I got some insight as to what is happening in Brazil and Argentina in terms of livestock production, and it is going to be enormous. We have to be prepared.

Obviously, we will be talking about changes in Social Security. We will be meeting with the President today, with the Finance Committee, to get better ideas of what the details are, but clearly we need to do something there.

The highway bill—we have gone several years without the highway bill we passed some time ago. Can you think of anything more important in our communities than to maintain and develop new highways and keep them up? We have not done that, and we need to do it.

Tort reform—whether it is broad, whether it is class action suits, whether it is malpractice in health care—these are issues we need to accomplish. We talk about them, we argue about them, and then we walk away from them. It seems to me there are a number of those issues where we ought to just buckle down and come to the snugging post and do some things that need to be done.

Spending? I don't think any of us deny that we need to do something about spending. We need to do something about the deficit that we have created—that we have created. We need to do some things there.

I think we have some real opportunities to do some more than we have in the past. We have a chance to move forward.

Class action is apparently going to be out here soon. Clearly, there are some changes that need to be made. The whole tort reform area is difficult. Nevertheless, we ought to be able to do that.

Those are the things I hope we can take a long look at. I know we all have some different ideas about what the priorities ought to be. But it is pretty clear some of these things need to be handled. There are different views about how they need to be handled, but something needs to be done about them, and it is our responsibility to do that. We can fuss and have disagreements and walk off the floor and all that sort of thing, but the fact is, it is our responsibility to do things. It is our opportunity to do them now. I look forward to a productive session. I hope we can get started very soon.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

NOMINATION OF CONDOLEEZZA RICE

Mr. LIEBERMAN. Mr. President, I rise according to the order to speak as in morning business, but I will be addressing my remarks to the nomination of Dr. Rice to be Secretary of State.

First, in supporting Dr. Rice's nomination, I wish to set this in context. President Bush was reelected last November. He took the oath of office last Thursday and swore to protect and defend the Constitution of the United States. The Constitution and the laws give him the authority to nominate people who he wants to take leadership positions in his administration.

We, now, have our constitutional responsibility in the Senate of the United States to advise and consent. But I have always believed that our responsibility to advise and consent does not mean we have to agree with every opinion or every action the nominee has ever taken, but that nominee deserves the benefit of the doubt and our responsibility is to determine whether the nominee is fit for the position for which the President has nominated him or her, and whether the nominee, in our judgment, will serve in the national interest. Of course, I conclude that Dr. Condoleezza Rice met that standard at least and much more.

Second, this element of the context in which this nomination is put before us. We are at war. It is a war unlike any we have ever fought before. Here I speak of the world war with Islamic terrorism. It is joined on battlefields in places like Iraq, of course, but it is being fought in the shadows and corners against an enemy that is driven by fanaticism and acts without regard to human life—others or their own.

I embrace the best tradition of American foreign policy that says and always has said that partisanship should end at the Nation's shores. Note this: It doesn't say policy differences should end; it doesn't say ideological differences should end; it says partisanship should end at the Nation's shores, particularly so when our Nation is engaged in war, a global war on terrorism, a war in Iraq in which Americans have lost their lives in the cause of freedom and in protection of our security.

What I wish to say here is that the nomination of Secretary of State in a second term of a President naturally is an opportunity, appropriately, for people to raise questions about the foreign policy of that administration. But in the final analysis, I hope it is also an opportunity around this very qualified nominee for us to come together and say to one another and to the world, both our enemy and our allies, that in the final analysis Americans will stand shoulder to shoulder against terrorism, against the enemy in pursuit of the freedom and liberty and opportunity that Dr. Rice spoke about in her opening statement before the Foreign Relations Committee and that President Bush spoke about in his inaugural address last week.

One of the great strengths which Condoleezza Rice will bring to the office of Secretary of State is that the world knows she has the President's trust and confidence. I respect the right of any of my colleagues, of course, to reach a different decision today and to oppose this nomination, but I hope and believe that the Senate today across partisan lines will resoundingly endorse this nomination and send the message to friend and foe alike that while we have our disagreements, ultimately what unites us around this very qualified nominee in this hour of war is much greater than that which divides us. In times like these, it is important that the world not only know that this Secretary of State has the ear of the President, but that she has, if you will allow me to put it this way, America's heart—a heart that beats with the freedom and security and opportunity that we dream of for our own people and for the people of the world.

In the world today, we face a time of grave peril but also great promise. It is in many ways, it seems to me, like the time our predecessors faced after the Second World War at the outbreak of the Cold War. As then, now it is a hostile ideology which threatens freedom around the world as terrorism has replaced communism as liberty's foremost foe. Now, as then, it is the United States that must show leadership and resolve as the world's strongest nation in the face of this danger from terrorism to life and liberty—not just ourselves but everyone who does not exactly agree with the terrorists. Now, as then, the President and Members of Congress must depend on the advice and counsel of the Secretary of State as we craft the policies with an unblinking resolve that will rally our friends and rattle our enemies, that will diminish—we pray, eliminate—the perils we face and realize the extraordinary promises of our time.

The very first Secretary of State, Thomas Jefferson, once wrote:

> We confide in our strength without boasting of it. We respect that of others without fearing it.

Jefferson's 18th century insights will serve us well in the face of the 21st century threats we confront. I know Dr. Rice understands and appreciates that well.

Economic development and trade and foreign direction investment and the spread of modern technology and telecommunications have raised the standard of living throughout the world and connected people of the world as never before. But too many nations and people have been left behind because of failed governments or failed economies. They have become breeding

grounds for terrorists who threaten us all.

Today, there is hope. Members of democracy are beginning to glow where that powerful light has existed little or none before. The Afghans and the Palestinians have recently held successful elections. This Sunday, Iraq will hold a historic democratic election. I know the circumstances are difficult there, but having been there myself just a few weeks ago I can speak with some confidence that the turnout will be large and the affirmation of the Iraqi people for a better and freer future will be clear.

Whether these embers grow into beacons for the rest of the Arab world or fade into dark and cold will depend uniquely upon strong, skillful American leadership and diplomacy. I conclude that Dr. Condoleezza Rice is capable of such leadership.

Nuclear proliferation threatens the world as Iran and North Korea and others strive to develop deadly weapons which will make the arms race of the Cold War look sane in comparison. In response to these dangers, President Bush in his inaugural address and Dr. Rice in her testimony before the Senate Foreign Relations Committee last week have set down some basic principles which will guide our foreign and defense policy. They are based on values and hopes that have defined America: freedom, opportunity, faith, and community.

Let me read a paragraph of Dr. Rice's opening statement before the Foreign Relations Committee last Tuesday:

> In these momentous times, American diplomacy has three great tasks.
>
> First, we will unite the community of democracies in building an international system that is based on our shared values and the rule of law.
>
> Second, we will strengthen the community of democracies to fight the threats to our common security and alleviate the hopelessness that feeds terror.
>
> Third, we will spread freedom and democracy throughout the globe. That is the mission that the President has set for America in the world—and a great mission of American diplomacy today.

Let me read a few words from President Bush's inaugural last Thursday:

> We are led by events and common sense to one conclusion. The survival of liberty in our land increasingly depends on the success of liberty in other lands. The best hope for peace in our world is the expansion of freedom in all the world. This is not primarily the task of arms, though we will defend ourselves and our friends by force of arms when necessary. Freedom by its nature must be chosen and defended by citizens and sustained by the rule of law and the protection of minorities. Democratic reformers facing oppression, prison or exile can know America sees you for who you are—future leaders of your free country. The rulers of outlaw regimes can know that we still believe, as Abraham Lincoln did, that those who deny freedom to others deserve it not for themselves, and under the rule of a just God cannot long retain it.

These principles and policies are neither Republican nor Democratic; they are American. In fact, the words spoken by President Bush last Thursday could just as easily have been spoken by some of the great Democratic Presidents such as Woodrow Wilson, Franklin Roosevelt, Harry Truman, and John F. Kennedy. In fact, similar words were spoken by each of those Democratic Presidents at times of crisis—times of crisis similar in many ways to our own.

I hope, therefore, that we will now come together to implement those principles and policies in a way that will spread hope and security and build bridges throughout the world, that the President will reach out to Members of both parties in Congress, and we in turn will reach out halfway at least and meet him to implement these stirring, uniquely American goals and policies and principles with real programs that are effective public diplomacy and outreach of economic development of trade, of rule of law, of ultimately, most importantly, the spread of freedom and democracy. I conclude that Dr. Condoleezza Rice is uniquely prepared by ability and experience to lead this effort as Secretary of State.

I want to say a final word about Dr. Rice herself, whom I have come to know over the years.

President Bush has clearly nominated Dr. Rice to be Secretary of State because he values her experience, he knows her skill, and he trusts her counsel. No one believes this President chose this nominee for Secretary of State for reasons of gender or race. No one here will vote for her in this Senate for reasons of gender or race. But the fact is that Dr. Condoleezza Rice is an African-American woman. I believe, in addition to every other standard by which we judge and respond to this nomination, we should celebrate the fact that when she is confirmed, another barrier will be broken in American life. We should celebrate this fact because Dr. Rice's life speaks to the promise of America, and in very personal terms says to people throughout the world what America is about and what we hope for them.

Let us speak directly. Dr. Rice, born in 1954 in the then racially segregated South, knew the sting of bigotry. No one on the day of her birth could have rationally predicted she would grow up to be the Secretary of State of the United States of America. But she was blessed with great natural abilities, with a strong family, with an abiding faith in God. She worked hard, as others worked in her time, to break the barriers of segregation to establish the rule of law to create opportunities. She has earned the nomination the President has given her.

Just as no one in Birmingham, when this African-American girl was born in 1954, could have dreamed she would grow up to be Secretary of State of the most powerful country in the world, there are babies being born today in Baghdad and Ramallah and Kabul and Riyadh and in countries and cities throughout the world where no one could dream they might grow up to be President of their nation or Prime Minister or Foreign Minister or president of a high-tech enterprise or a professor at a great university. They will if we, working with the people of their countries, will it.

A great man once said if you will it, it is no dream. In this hour when our security is being threatened, the promise of opportunity can, in response to the source of those threats, become real for tens of millions of children being born and growing up in places today where there is no freedom and no hope. That is the great mission our country has today. Dr. Rice understands that. Her life, as I said, speaks to brave men and women of color who, like Dr. Rice, have worked to change our Nation. Now she can, and I believe will, help lead our Nation to change the world, and in doing so enhance our values and protect our security for our children and grandchildren, as well.

I urge my colleagues to support the nomination of Dr. Condoleezza Rice to be Secretary of State.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. I thank the Chair.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 147 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF CONDOLEEZZA RICE TO BE SECRETARY OF STATE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session for the consideration of Executive Calendar No. 4, which the clerk will report.

The assistant legislative clerk read the nomination of Condoleezza Rice, of California, to be Secretary of State.

The PRESIDING OFFICER. Under the previous order, there will be 9 hours of debate on the nomination equally divided between the two leaders or their designees.

The Senator from Indiana.

Mr. LUGAR. I thank the Chair. I yield myself as much time as I may require of the time on our side.

Mr. President, I have the pleasure and honor today of speaking in support of the nomination of Dr. Condoleezza Rice to be our Secretary of State.

As a result of her distinguished career as National Security Adviser to

President Bush and her earlier assignment on the NSC, she is well known to most Members of the Senate. I admire her accomplishments, and I am particularly thankful for the cooperation she has provided to the Senate Foreign Relations Committee and to me personally.

The enormously complex job before Dr. Rice will require all of her talents and experience. American credibility in the world, the progress in the war on terrorism, and our relationships with our allies will be greatly affected by the Secretary of State's actions and the effectiveness of the State Department in the coming years. Dr. Rice is highly qualified to meet those challenges. We recognize the deep personal commitment necessary to undertake this difficult assignment, and we are grateful that a leader of her stature is willing to step forward.

I had the good fortune to get to know Dr. Rice before she assumed the post of National Security Adviser to President Bush. Before President George W. Bush was elected, I enjoyed visits with Dr. Rice when we both attended Stanford University meetings on foreign policy hosted by former Secretary of State George Shultz. Secretary Shultz, a close friend of many of us in the Senate, was a very early supporter of the then-Governor Bush of Texas. He recognized Dr. Rice's prodigious talents and encouraged her leadership within the Bush foreign policy team. At the Stanford University meetings, Dr. Rice's analytical brilliance and broad knowledge of world affairs were evident. During the campaign for the Presidency of George Bush, she established a trusted relationship with then-Governor Bush that has carried through in her work as National Security Adviser to President Bush.

Last week, the Committee on Foreign Relations held exhaustive hearings on this nomination. Dr. Rice fielded questions on every imaginable subject for more than 10½ hours over 2 days. All 18 members of our committee took advantage of the opportunity to ask Dr. Rice questions. At the hearings, she responded to 199 questions, 129 from Democrats and 70 from Republicans. In addition, in advance of the hearings, members of the committee submitted 191 additional detailed questions for the record to Dr. Rice. Members received answers to each of those questions. Thus, Dr. Rice responded to a total of 390 questions from Senators.

In American history, few Cabinet members have provided as much information or answered as many questions as Dr. Rice answered during the confirmation process. She demonstrated that her understanding of U.S. foreign policy is comprehensive and insightful.

Our hearings served not only as an examination of Dr. Rice's substantial qualifications but also as a fundamental debate on the direction of American foreign policy. I believe this debate was useful to the Senate and to the American people. Having the opportunity to question a Secretary of State nominee is a key aspect of congressional oversight of any administration's foreign policy. Dr. Rice enthusiastically embraced this function of the hearing, and at many points she engaged in theoretical exchanges on national security choices.

Dr. Rice emphasized that support for freedom, democracy, and the rule of law would be at the core of U.S. foreign policy during her watch. She said:

> In these momentous times, American diplomacy has three great tasks. First, we will unite the community of democracies in building an international system that is based on our shared values and the rule of law. Second, we will strengthen the community of democracies to fight the threats to our common security and alleviate the hopelessness that feeds terror. And third, we will spread freedom and democracy throughout the globe.

The Secretary of State serves as the President's top foreign policy adviser, as our Nation's most visible emissary to the rest of the world, and as manager of one of the most important departments in our Government. Any one of these jobs would be a challenge for even the most talented public servant, but, as I told Dr. Rice during our hearings, the Secretary of State, at this critical time in our history, must excel in all three roles.

Since 2001, we have witnessed terrorists killing thousands of people in our country and the destruction of the World Trade Center and a part of the Pentagon. We have seen U.S. military personnel engaged in two difficult and costly wars. We have seen the expansion of a nihilistic form of terrorism that is only loosely attached to political objectives and is, therefore, very difficult to deter. We have seen frequent expressions of virulent anti-Americanism in many parts of the Islamic world. We have seen our alliances, our international standing, and our Federal budget strained by the hard choices we have to make in response to terrorism.

In this context, many diplomatic tasks must be approached with urgency. In particular, our success in Iraq is critical. The elections scheduled for January 30 must go forward, and the United States must work closely with Iraqi authorities to achieve the fairest and the most complete outcome. At the same time, we must understand that those forces that want to keep Iraq in chaos will commit violence and intimidation. Both Iraqis and the coalition will have to be resilient and flexible in the elections' aftermath.

The Bush administration and the State Department also must devote themselves to achieving a settlement of the Arab-Israeli conflict; to coming to grips with the nuclear proliferation problems in Iran and North Korea; to continuing urgent humanitarian efforts in Sudan, the Indian Ocean region, and elsewhere; to maintaining our commitment to the global fight against AIDS and other infectious diseases; to advancing democracy in Afghanistan, Ukraine, and elsewhere; to repairing alliances with longstanding friends in Europe; to reinvigorating our economic and security relationships in our own hemisphere; and to engaging with rapidly changing national powers, especially China, India, and Russia.

Even though this list of diplomatic priorities is daunting, it is not exhaustive, and it does not anticipate unforeseeable events. Just weeks ago, none of us could have predicted a tragic earthquake and a tsunami would change the face of the Indian Ocean region. Our efforts must include the expansion of our foreign policy capabilities so we are better prepared for crises that cannot be averted and better able to prevent those that can be.

With this in mind, I would observe that Congress must improve its own performance in foreign affairs, particularly in the area of legislation. The enthusiasm for engaging in the details of U.S. foreign policy the Senate demonstrated last week, and will again demonstrate today, too often has been absent when it is time to perform our legislative duties.

Even as Senators have cited shortcomings of administration policy in responding to extraordinarily difficult circumstances in Iraq and elsewhere, the Senate has allowed partisan fights and unrelated domestic legislation and disagreements over that legislation during the last Congress to delay the far simpler task of passing the foreign affairs authorization bill, for example. Now, this bill includes new initiatives and funding authority related to the security and productivity of our diplomats, our outreach to the Muslim world, our nonproliferation efforts, our foreign assistance, and innumerable other national security priorities. Yet politically motivated obstacles were thrown in the path of the bill almost cavalierly, as if Congress's duty to pass foreign affairs legislation had little connection to our success in Iraq or in our war against terrorism.

Even as we do our duty to oversee the foreign policy performance of the executive branch, we must take a sober look at our own performance. We must critique ourselves with the same diligence that we have applied to the administration. Every Senator should reflect on the troubling fact that we have not passed a comprehensive foreign assistance bill since 1985. This means that for 20 years we have depended primarily on stopgap measures and bandaids applied during the appropriations process to govern one of the major tools of U.S. foreign policy.

Only 24 Members of the current Senate body were here the last time we passed a comprehensive foreign aid bill. Our single largest foreign assistance program, the Millennium Challenge Account, cannot even be found in the core legislation affecting foreign assistance.

Moreover, many aspects of our foreign assistance law have not been updated since the original Foreign Assistance Act of 1961. Forty-four years ago, when our basic foreign assistance law was written, we were preoccupied with the Cold War, terrorism was a rare phenomenon, scientists had not identified the HIV/AIDS virus, the illegal trade in drugs was a small fraction of what it is today, dozens of present day countries did not exist, and only one Senator who still sits in this body was present.

Congress's most basic responsibility is to write and pass good legislation that provides clear direction to U.S. policy. In the area of foreign assistance, however, we are operating under an archaic Rube Goldberg contraption that has been patched hundreds of times. Much of the underlying law is irrelevant or redundant. Other parts are contradictory. As a result, the law is a confusing muddle that serves neither the interests of U.S. taxpayers nor our national security goals. We are tolerating this legislation of irresponsibility at a time of great national vulnerability.

Congress's failure in this area has more to do with inattention than with disagreement. In both 2003 and 2004, the Senate Foreign Relations Committee passed a foreign affairs authorization bill by a unanimous vote. In 2003, we were mere hours away from final Senate passage, when the bill was derailed by unrelated domestic issues.

We have not been blocked by intractable policy disagreements but by our devaluation of our own legislative role in foreign policy. We need to make a bipartisan decision that passing a foreign affairs authorization bill each Congress is as important as passing a defense authorization bill or a homeland security authorization bill. We must be prepared to fulfill our own core national security responsibilities.

Dr. Rice indicated her strong support for passage of a comprehensive foreign affairs bill. I know we will have a powerful advocate in Dr. Rice for such action.

I would like to emphasize another critical area of national security policy where Dr. Rice's advocacy has been strong, consistent, and persuasive. During the Foreign Relations Committee hearings last week, I opened the question period with three questions pertaining to the Nunn-Lugar program and other aspects of our nonproliferation efforts. In each case Dr. Rice expressed the administration's strongest commitment to the programs and to diplomatic objectives in question. She stated:

> I really can think of nothing more important than being able to proceed with the safe dismantlement of the Soviet arsenal, with nuclear safeguards to make certain that nuclear programs facilities and the like are well secured, and then the blending down—as we are doing—of a number of hazardous, potentially lethal materials that could be used to make nuclear weapons, as well as, of course . . . the chemical weapons. . . . It is just an extremely important program that I think you know that we continue to push.

In fact, the Bush administration has achieved a great deal in the area of nonproliferation. Dr. Rice has been a stalwart proponent of a robust Nunn-Lugar program. Chief among these successes is the rarely mentioned Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, informally known as ''10 plus 10 over 10.''

Under this agreement, negotiated by the Bush administration, the United States will spend $10 billion over the next 10 years to safeguard and to dismantle the weapons of mass destruction arsenal of the former Soviet Union. The other members of the G8 agreed collectively to spend another $10 billion over the same time period. Our commitment of funds is primarily money that we had planned to spend in any event through the Nunn-Lugar program and other associated efforts. With this agreement, the President effectively doubled the funds committed to securing weapons of mass destruction in Russia with minimal additional obligation to American taxpayers.

The Bush administration also has successfully recruited more than 60 countries to join the Proliferation Security Initiative Program that has enhanced our ability to interdict illegal weapons of mass destruction shipments around the world. Through the Energy Department, it established the Global Threat Reduction Initiative, which aims to secure high-risk nuclear and radiological materials globally. It has facilitated at several junctures the acceleration of Nunn-Lugar work at critical chemical weapons destruction facilities at Shchuchye in Russia through personal intervention by the President and by Dr. Rice. It finalized the deal with Libya to lay open that country's weapons of mass destruction programs. And it advocated passage of the IAEA additional protocol which greatly expands that international agency's ability to detect clandestine nuclear activities.

It secured the passage of U.N. Security Council Resolution 1540 in April 2004, which for the first time declared that weapons of mass destruction proliferation is illegal. It has also provided constant encouragement to the promising talks between India and Pakistan that represent the best chance in years to reduce tensions between these nuclear powers.

The President supported, through personal communication to congressional leaders, and signed into law the Nunn-Lugar Expansion Act, which establishes the authority to use Nunn-Lugar moneys and expertise outside the former Soviet Union.

In these cases and others, the President and his administration have embraced diplomacy and skillfully employed multilateralists in support of important nonproliferation objectives. I believe Dr. Rice's strong statements of support for nonproliferation programs last week demonstrate the Bush administration's continuing commitment to these vital objectives.

Last November, I introduced two new bills to strengthen U.S. nonproliferation efforts, and I will be introducing these bills again this week. They represent the fourth installment of the Nunn-Lugar legislation that I have offered since 1991. In that year, former Senator Sam Nunn of Georgia and I authored the Nunn-Lugar Act, which established the Cooperative Threat Reduction Program. That program has provided U.S. funding and expertise to help the former Soviet Union safeguard and dismantle an enormous stockpile of nuclear, chemical, and biological weapons, the means of delivery, and related materials.

In 1997, Senator Nunn and I were joined by Senator DOMENICI in introducing the Defense Against Weapons of Mass Destruction Act, which expanded Nunn-Lugar authorities in the former Soviet Union and provided weapons of mass destruction expertise to first responders in American cities.

In 2003, Congress adopted the Nunn-Lugar Expansion Act, which authorized the Nunn-Lugar program to operate outside the former Soviet Union to address proliferation threats.

The bills I am introducing this week would strengthen the Nunn-Lugar program and other nonproliferation efforts and provide them with greater flexibility to address emerging threats. To date, the Nunn-Lugar program has deactivated or destroyed 6,564 nuclear warheads, 568 ICBMs, 477 ICBM silos, 17 ICBM mobile missile launchers, 142 bombers, 761 nuclear air-to-surface missiles, 420 submarine missile launchers, 543 submarine-launched missiles, 28 nuclear submarines, and 194 nuclear test tunnels. The Nunn-Lugar program also facilitated the removal of all nuclear weapons from Ukraine, Belarus, and Kazakhstan. And after the fall of the Soviet Union, these three nations emerged as the third, fourth, and eighth largest nuclear powers in the world. Today, all three are nuclear weapons free as a result of the cooperative efforts under the Nunn-Lugar program.

In addition, the program provides the primary tool with which the United States is working with Russian authorities to identify, to safeguard, and to destroy Russia's massive chemical and biological warfare capacity. Countless individuals of great dedication, serving on the ground in the former Soviet Union and in our Government, have made the Nunn-Lugar program work. Nevertheless, from the beginning we have encountered resistance to the concept in both the United States and Russia.

In our own country opposition has sometimes been motivated by false perceptions that Nunn-Lugar money is foreign assistance or by the belief that Defense Department funds should only be spent on troops, weapons, or other warfighting capabilities. Until recently, we also faced a general disinterest in nonproliferation which made gaining support for Nunn-Lugar funding and activities an annual struggle.

The attacks of September 11 changed the political discourse radically on that subject. We have turned a corner. The public, the media, and political candidates are now paying more attention. In a remarkable moment in the first Presidential debate of 2004, both President Bush and Senator KERRY agreed that the No. 1 national security threat facing the United States was the prospect that weapons of mass destruction would fall into the hands of terrorists. The 9/11 Commission weighed in with another important endorsement of the Nunn-Lugar program saying that:

> Preventing the proliferation of [weapons of mass destruction] warrants a maximum effort—by strengthening counterproliferation efforts, expanding the Proliferation Security Initiative, and supporting the Cooperative Threat Reduction Program.

The report went on to say that:

> Nunn-Lugar . . . is now in need of expansion, improvement and resources.

The first new bill I have introduced is the Nunn-Lugar Cooperative Threat Reduction Act of 2005. This bill, which is cosponsored by Senators DOMENICI and HAGEL, would underscore the bipartisan consensus on Nunn-Lugar by streamlining and accelerating Nunn-Lugar implementation. It would grant more flexibility to the President and to the Secretary of Defense to undertake nonproliferation projects outside the former Soviet Union. It also would eliminate congressionally imposed conditions on Nunn-Lugar assistance that in the past have forced the suspension of time-sensitive nonproliferation projects.

The purpose of the bill is to reduce bureaucratic redtape and friction within our Government that hinder effective responses to nonproliferational opportunities and emergencies.

At last week's hearing, Dr. Rice reiterated the administration's strong support of the bill. She understands how important it is to prevent needless delays in our weapons dismantlement schedule.

Our recent experience in Albania is illustrative of the need to reduce bureaucratic delays. Last year in 2004, Albania appealed for help in destroying 16 tons of chemical agent left over from the Cold War. In August of last year, I visited this remote facility, the location of which still remains classified. Nunn-Lugar officials are working closely with Albanian leaders to destroy this dangerous stockpile. But from beginning to end, the bureaucratic process to authorize the dismantlement of chemical weapons in Albania took more than 3 months, largely because of requirements in current law. Fortunately, the situation in Albania was not a crisis. But we may not be able to afford these timelines in future nonproliferation emergencies.

The second piece of legislation that I will introduce is the Conventional Arms Threat Reduction Act of 2005 or CATRA. This legislation, cosponsored by Senator DOMENICI, is modeled on the original Nunn-Lugar Act. Its purpose is to provide the Department of State with a focused response to the threat posed by vulnerable stockpiles of conventional weapons around the world, including tactical missiles and man portable air defense systems, or MANPADS, as they are now more commonly called. Such missile systems could be used by terrorists to attack commercial airlines, military installations, and government facilities at home and abroad. Reports suggest that al-Qaida has attempted to acquire these kinds of weapons.

In addition, unsecured conventional weapons stockpiles are a major obstacle to peace, reconstruction, and economic development in regions suffering from instability. My bill declares it to be the policy of the United States to seek out surplus and unguarded stocks of conventional armaments, including small arms and light weapons and tactical missile systems, for elimination.

It authorizes the Department of State to carry out a global effort to destroy such weapons and to cooperate with allies and international organizations when possible. The Secretary of State is charged with devising a strategy for prioritizing, on a country-by-country basis, the obligation of funds in a global program of conventional arms elimination. Lastly, the Secretary is required to unify program planning, coordination, and implementation of the strategy into one office at the State Department and to request a budget commensurate with the risk posed by these weapons.

The Department of State has been working to address the threats posed by conventional weapons. But in my judgment, the current funding allocation and organizational structure are not up to the task. Only about $6 million was devoted to securing small arms and light weapons during the two-year period that covered FY 2003 and FY 2004. We need more focus on this problem and more funding to take advantage of opportunities to secure vulnerable stockpiles.

In August, I visited Albania, Ukraine, and Georgia. Each of these countries has large stockpiles of MANPADS and tactical missile systems and each has requested U.S. assistance to destroy them. On August 27, I stood in a remote Albanian military storage facility as the base commander unloaded a fully functioning MANPAD from its crate and readied it for use. This storage site contained 79 MANPADS that could have been used to attack an American commercial aircraft or installation. Fortunately, the MANPADS that I saw that day were destroyed on September 2, but there are many more like them throughout the world. Too often, conventional weapons are inadequately stored and protected. This presents grave risk to American military bases, embassy compounds, and even targets within the United States. We must develop a response that is commensurate with the threat.

I am offering these two bills, with the hope of passing them at the earliest opportunity. I anticipate and welcome strong support from Members of the Senate that reflects the priority status of U.S. non proliferation efforts.

Mr. President, I would like to highlight another topic that is critical to U.S. foreign policy. This is our effort to lead the global fight against the horrific HIV/AIDS pandemic. During the hearings on Dr. Rice's nomination, she responded to several questions on the administration's Global AIDS initiative. I was pleased that she reiterated the administration's strong commitment to fighting AIDS and underscored the importance of paying special attention to the needs of women, who are contracting AIDS at an accelerated rate.

In 2003, at the administration's urging, Congress passed comprehensive legislation that created the Office of the Global AIDS Coordinator and pledged $15 billion over five years to address the HIV/AIDS crisis. We must be mindful of the President's observation that, ''Time is not on our side,'' in combating this disease. In Africa, nearly 10,000 people contract the HIV virus each day. The United States has a clear moral obligation to respond generously and quickly to this crisis.

The United States has acted with unprecedented urgency in combating HIV/AIDS globally, and the President's emergency plan for HIV/AIDS Relief is showing clear signs of progress. In the first 8 months of the President's emergency plan, the United States has supported bilateral programs in 15 of the most afflicted countries in Africa, Asia and the Caribbean to provide antiretroviral treatment to those living with HIV/AIDS. I am pleased with the emergency plan's deep commitment to international cooperation. In fact, tomorrow, at the World Economic Forum in Davos, Switzerland, Ambassador Tobias will be joining the leaders of the World Health Organization, UNAIDS, and the Global Fund to report on the progress that has been made in making drug treatment available to the developing world.

The Senate Foreign Relations Committee continues to work closely with the administration to make the fight against HIV/AIDS a priority. Charged with the oversight of the President's initiative, we will continue to hold hearings and briefings on the subject of AIDS and the progress of the President's emergency plan for AIDS Relief. In 2004, for instance, we held a hearing focused on the intersection of HIV/AIDS and hunger. At this hearing, Ambassador Randall Tobias, the Global AIDS Coordinator, and Jim Morris, Executive Director of the World Food Program, testified about the devastating effects that the HIV/AIDS crisis is having on agricultural workers and the food supply in sub-Saharan Africa. In addition, we explored the special nutritional needs of individuals who are taking antiretroviral medication.

We are just beginning to understand how women, and young girls in particular, are especially vulnerable to HIV and AIDS, due to a combination of biological, cultural, economic, social and legal factors. Young girls constitute 75 percent of new infections in South Africa among individuals between 14 and 25 years of age. In Malawi, the National AIDS Commission has said that HIV and AIDS is killing more women than men, and that HIV-positive girls between 15 and 24 years of age outnumber males in the same age group by a six to one margin. Even in the United States, the disease is having a devastating effect on women, and is the leading cause of death among African American women ages 25 to 34.

Not only are women and girls more vulnerable to infection, they are also shouldering much of the burden of taking care of sick and dying relatives and friends. In addition, in the vast majority of cases, they are the caretakers of the estimated 14 million children who have been orphaned by this pandemic. Grandmothers often take the responsibility of caring for grandchildren, and older female children often take care of their younger siblings.

One such young girl is Fanny Madanitsa. Fanny is a 16-year-old girl living in Malawi with her two younger sisters and a brother. Life has been difficult for Fanny and her siblings since they lost their parents to AIDS. As the oldest child, Fanny must deal with the stress of taking care of her younger siblings. They live in a modest house and share one bed. Fanny dreams of being a nurse, but reaching this goal will be a challenge for her. She cannot always attend classes, as she sometimes has to look after her siblings. Because money is scarce, she has a difficult time paying for school materials and other costs of her education.

But Fanny is more fortunate that many girls in similar circumstances. With the help of her Village AIDS Committee, a community-based organization that has organized to take care of the orphans in its village, Fanny and her siblings receive food, soap, school materials and also medicines. Through the Village AIDS Committee, which receives support from Save the Children, the community assists Fanny in watching her siblings so she can attend school.

Last June, I introduced the Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2004. I will reintroduce this bill in the coming days. It was written with the support of the administration, and I have received letters from both the State Department and USAID endorsing its passage. My bill would require the United States Government to develop a comprehensive strategy for providing assistance to orphans and would authorize the President to support community-based organizations that provide basic care for orphans and vulnerable children.

Furthermore, my bill aims to improve enrollment and access to primary school education for orphans and vulnerable children by supporting programs that reduce the negative impact of school fees and other expenses. It also would reaffirm our commitment to international school lunch programs. School meals provide basic nutrition to children who otherwise do not have access to reliable food. They have been a proven incentive for poor and orphaned children to enroll in school.

In addition, many women and children who lose one or both parents often face difficulty in asserting their inheritance rights. Even when the inheritance rights of women and children are spelled out in law, such rights are difficult to claim and are seldom enforced. In many countries it is difficult or impossible for a widow—even if she has small children—to claim property after the death of her husband. This often leaves the most vulnerable children impoverished and homeless. My bill seeks to support programs that protect the inheritance rights of orphans and widows with children. I know that Dr. Rice is supportive of this legislation, and I am hopeful that, with bipartisan action, it will become law early this year.

The AIDS orphans crisis in sub-Saharan Africa has implications for political stability, development, and human welfare that extend far beyond the region. Turning the tide on this crisis will require a coordinated, comprehensive, and swift response. I know Dr. Rice shares the view that fighting Global AIDS must be a priority for U.S. foreign policy. I am hopeful that, with the President's Emergency Plan for AIDS Relief, the Global Fund, and Congressional initiatives, we can make great strides together in the battle against this pandemic.

In addition, I ask unanimous consent to have printed in the RECORD an editorial that I co-authored in the January 19 edition of the Washington Post with Patty Stonesifer, co-chair and President of the Bill and Melinda Gates Foundation.

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

[From the Washington Post, Jan. 19, 2005]

IN THE FOOTSTEPS OF HISTORY

(By Dorothy Height)

When Condoleezza Rice is sworn in as secretary of state, she will be following in the footsteps of Mary McLeod Bethune, the founder of the National Council of Negro Women. Mrs. Bethune was the first black woman to be called upon for policy help by the White House, when Republican President Calvin Coolidge asked her to take part in a conference on child care in 1928. She went on to work with Republican and Democratic presidents while always fighting to advance the interests of black women and children.

From Sojourner Truth speaking out in the abolitionist movement, to Constance Baker Motley as a voice in the courtroom to Shirley Chisholm as a candidate for president, African American women have braved a world that did not welcome their participation.

Ms. Rice will be the first woman of color to assume the highest diplomatic post in the U.S. government. As secretary of state, she will face challenges that confront women everywhere. As we engage the Muslim and Arab worlds, efforts are being renewed to suppress women's participation in education, politics and civil society. In Africa, HIV and AIDS are ravaging a generation of women and leaving millions of orphans to be comforted. In Central and Eastern Europe, women and girls are being sold into prostitution.

Despite the challenges she will face, Ms. Rice's appointment is a time for women of color to smile. Our nation finally will put forward a face that reflects the hopes of generations of black women to sit at the table of national and global affairs and participate as equals.

Many women sacrificed to make this moment possible. I pray that Ms. Rice will use this profound honor and heavy burden to represent our country with compassion, strength and integrity, while seeking peaceful solutions and working to make the world a better place for all people.

Mr. LUGAR. This editorial entitled ''Speeding an AIDS Vaccine'' lays out the case for improved global coordination in this area. Achievement of an AIDS vaccine would save millions of lives and billions of dollars in treatment costs in the coming decades. I am pleased that the Bush administration, through the NIH, already has taken the initiative to establish one Vaccine Research Center and has unveiled support for a second one. These centers are a critical element in improving global cooperation on the development of an AIDS vaccine.

Mr. President, I have cited just a small sample of critical issues on which work in both the executive and legislative branches is proceeding with good results. From my own conversations with Dr. Rice, I am confident that she understands that the President's foreign policy can be enhanced in the second term by a closer working relationship with Congress. In moving to head the State Department, she understands that much of this communication will depend on her. Last week's hearings were an excellent start. Her attitude throughout these arduous hearings was always accommodating and always respectful of the Senate's constitutional role in the nomination process. From the start she made clear her desire to have a wide-ranging discussion of U.S. foreign policy and to take all the questions that members wanted to ask.

If confirmed, it will be her duty to use the foundation of these hearings to build a consistent bridge of communication to the Congress. As legislators, we have equal responsibility in this process. We have the responsibility of educating ourselves about national security issues, even when they are not the top issues in headlines or polls. We have the responsibility to maintain good foreign affairs law, even when taking care of this duty yields little credit back home. We have the responsibility to ensure that our first impulse in foreign affairs is one of bipartisanship. And we have the responsibility to speak plainly when we disagree with the administration, but to avoid inflammatory rhetoric that is designed

merely to create partisan advantage or settle partisan scores.

I believe that we have the opportunity with the beginning of a new Presidential term to enhance the constructive role of Congress in foreign policy. We have made an excellent start during the past week. I thank all 18 Senators who participated in the Foreign Relations Committee hearings and all Senators who will join in the debate today. I strongly urge Members to vote in favor of the nomination of Dr. Rice to be Secretary of State. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the time allotted for Democratic Members under the agreement regarding the Rice nomination be modified as follows: The time for Senator LIEBERMAN be allocated to Senator BAYH; Senator DAYTON be allocated 15 minutes, 5 minutes from Senator BOXER's time and 10 minutes from the time controlled by Senator DURBIN.

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

Mr. KENNEDY. Mr. President, I commend my friend and colleague, the chairman of the Foreign Relations Committee, for the way he conducted the hearings on the nomination for Secretary of State. I think many of us who were not members of the committee but followed the hearings very closely were enormously impressed by the conduct of the hearings, by the flexibility he showed in permitting Senators to follow up on questions so we could reach the real nub of the situation and yet to move the hearings along in a timely way. That is part of the long tradition that is associated with the chairman of the committee, and it is one of the reasons, among others, that he is held in such high regard and respect in the Senate.

I intend to oppose Condoleezza Rice's nomination. There is no doubt that Dr. Rice has impressive credentials. Her life story is very moving, and she has extensive experience in foreign policy. In general, I believe the President should be able to choose his Cabinet officials, but this nomination is different because of the war in Iraq.

Dr. Rice was a key member of the national security team that developed and justified the rationale for war, and it has been a catastrophic failure, a continuing quagmire. In these circumstances, she should not be promoted to Secretary of State.

There is a critical question about accountability. Dr. Rice was a principal architect and advocate of the decision to go to war in Iraq at a time when our mission in Afghanistan was not complete and Osama bin Laden was a continuing threat because of our failure to track him down. In the Armed Services Committee before the war, generals advised against the rush to war, but Dr. Rice and others in the administration pressed forward anyway despite the clear warnings.

Dr. Rice was the first in the administration to invoke the terrifying image of a nuclear holocaust to justify the need to go to war in Iraq. On September 9, 2002, as Congress was first considering the resolution to authorize the war, Dr. Rice said: We do not want the smoking gun to become a mushroom cloud.

In fact, as we now know, there was significant disagreement in the intelligence community that Iraq had a nuclear weapons program, but Dr. Rice spoke instead about a consensus in the intelligence community that the infamous aluminum tubes were for the development of nuclear weapons. On the eve of the war many of us argued that inspectors should be given a chance to do their job and that America should share information to facilitate their work.

In a March 6, 2000, letter to Senator LEVIN, Dr. Rice assured the Congress that the United Nations inspectors had been briefed on every high or medium priority weapons of mass destruction missile and UAV-related site the U.S. intelligence community has identified. In fact, we had not done so. Dr. Rice was plain wrong.

The Intelligence Committee report on the prewar intelligence at page 418 stated:

> Public pronouncements by Administration officials that the Central Intelligence Agency had shared information on all high and moderate priority suspect sites with United Nations inspectors were factually incorrect.

Had Dr. Rice and others in the administration shared all of the information, it might have changed the course of history. We might have discovered that there were no weapons of mass destruction. The rush to war might have been stopped. We would have stayed focused on the real threat, kept faith with our allies, and would be safer today.

America is in deep trouble in Iraq today because of our misguided policy, and the quagmire is very real. Nearly 1,400 of our finest men and women in uniform have been killed and more than 10,000 have been wounded. We now know that Saddam had no nuclear weapons, had no weapons of mass destruction of any kind, and that the war has not made America safer from the threat of al-Qaida. Instead, as the National Intelligence Council recently stated, the war has made Iraq a breeding ground for terrorism that previously did not exist.

As a result, the war has made us less secure, not more secure. It has increased support for al-Qaida, made America more hated in the world, and made it much harder to win the real war against terrorism, the war against al-Qaida.

Before we can repair our broken policy, the administration needs to admit it is broken. Yet in 2 days of confirmation hearings, Dr. Rice categorically defended the President's decision to invade Iraq, saying the strategic decision to overthrow Saddam Hussein was the right one. She defended the President's decision to ignore the advice of GEN Eric Shinseki, the Army Chief of Staff, who thought that a large number of troops would be necessary if we went to war.

She said:

> I do believe that the plan and forces that we went in with were appropriate to the task.

She refused to disavow the shameful acts of torture that have undermined America's credibility in Iraq and the world.

When Senator DODD asked her whether in her personal view, as a matter of basic humanity, the interrogation techniques amounted to torture, she said:

> I'm not going to speak to any specific interrogation techniques . . . The determination of whether interrogation techniques are consistent with our international obligations and American law are made by the Justice Department. I don't want to comment on any specific interrogation techniques.

This is after Senator DODD asked about water-boarding and other interrogation techniques. She continued:

> I don't think that would be appropriate, and I think it would not be very good for American security.

Yet, as Secretary of State, Dr. Rice will be the chief human rights official for our Government. She will be responsible for monitoring human rights globally, and defending America's human rights record. She cannot abdicate that responsibility or hide behind the Justice Department if Secretary of State.

Dr. Rice also minimized the enormous challenge we face in training a competent Iraqi security force. She insisted 120,000 Iraqis now have been trained, when the quality of training for the vast majority of them is obviously very much in doubt.

There was no reason to go to war in Iraq when we did, the way we did, and for the false reasons we were given. As a principal architect of our failed policy, Dr. Rice is the wrong choice for Secretary of State. We need, instead, a Secretary who is open to a clearer vision and a better strategy to stabilize Iraq, to work with the international community, to bring our troops home with dignity and honor, and to restore our lost respect in the world.

The stakes are very high and the challenge is vast. Dr. Rice's failed record on Iraq makes her unqualified for promotion to Secretary of State and I urge the Senate to oppose her nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, First let me thank my colleagues, Senator BOXER and Senator DURBIN for making available this time for me to address the Senate regarding this nomination. I rise today to oppose the nomination of national security adviser Condoleezza Rice for Secretary of State. I do so because she misled me

about the situation in Iraq before and after the congressional resolution in October of 2002 authorizing that war, a resolution that I opposed. She misled other Members of Congress about the situation in Iraq, Members who have said they would have opposed that resolution if they had been told the truth, and she misled the people of Minnesota and Americans everywhere about the situation in Iraq before and after that war began.

It is a war in which 1,372 American soldiers have lost their lives, and over 10,000 have been wounded—many of them maimed for life. Thousands more have been scarred emotionally and physically. All of those families and thousands of other American families whose loved ones are now serving in Iraq are suffering serious financial and family hardships, and must wonder and worry every day and night for a year or longer whether their husbands, wives, fathers, mothers, sons, and daughters are still alive, will stay alive, and wonder when they will be coming home. For many, the answer is: Not soon.

I read in today's Washington Post that the Army is planning to keep its current troop strength in Iraq at 120,000 for at least 2 more years. I did not learn that information as a Member of Congress. I did not learn it as a member of the Senate Armed Services Committee where I regularly attend public hearings, classified meetings, and top secret briefings. I did not learn it from the U.S. military command in Iraq with whom I met in Baghdad last month. I read it in the Washington Post, just as I read last weekend that the Secretary of Defense has created his own new espionage arm by ''reinterpreting an existing law,'' without informing most, if any, Members of Congress and by reportedly ''reprogramming funds appropriated for other purposes;'' just as I learned last weekend by reading the New York Times that the Administration is exploring a reinterpretation of the law to allow secret U.S. commando units to operate in this country.

I also learned of official reports documenting horrible abuses of prisoners, innocent civilians as well as enemy combatants, at numerous locations in countries besides the Abu Ghraib prison in Iraq, which directly contradicts assurances we have been given repeatedly by administration officials in the Senate Armed Services Committee.

I might as well skip all the Senate Armed Services Committee hearings and meetings and top secret briefings and just read the papers—and thank goodness for a free and vigilant press to ferret out the truth and to report the truth, because we cannot get the truth from this administration.

Sadly, the attitude of too many of my colleagues across the aisle is: Our President, regardless whether he is wrong, wrong, or wrong, they defend him, they protect him, and they allow his top administration officials to get away with lying. Lying to Congress, lying to our committees, and lying to the American people. It is wrong. It is immoral. It is un-American. And it has to stop.

It stops by not promoting top administration officials who engage in the practice, who have been instrumental in deceiving Congress and the American people and, regrettably, that includes Dr. Rice.

Dr. Rice, in a television interview on September 8, 2002, as the administration was launching its campaign to scare the American people and stampede Congress about Saddam Hussein's supposedly urgent threat to our national security, shrewdly invoked the ultimate threat, that he possessed or would soon possess nuclear weapons. She said that day:

> We don't want the smoking gun to be a mushroom cloud.

Soon thereafter she and other top administration officials cited intercepted aluminum tubes as definite proof that Saddam Hussein had an active nuclear weapons program underway. Dr. Rice stated publicly at the time the tubes:

> . . . are only really suited for nuclear weapons programs, centrifuge programs.

In late September of 2002, shortly before we in Congress were to vote on the Iraq war resolution, Dr. Rice invited me, along with I believe five of my Senate colleagues, to the White House where we were briefed by her and then-CIA Director George Tenet. That briefing was classified. What I was shown and told conformed to Dr. Rice's public statements, with no qualification whatsoever. Now, of course, we have been told, after an exhaustive search for 18 months by over 1,400 United States weapons inspectors, that Saddam Hussein did not have an active nuclear weapons development program underway and that he apparently possessed no weapons of mass destruction of any kind. We have also been told that in the fall of 2002, right at the time of my meeting in the White House, right at the time of the Senate and the House's votes on the Iraq war resolution, the top nuclear experts at the U.S. Department of Energy and officials in other Federal agencies were disagreeing strongly with Dr. Rice's claim that those aluminum tubes could only have been intended for use in developing nuclear weapons materials.

That expert dissent and honest disagreement—a different point of view—was not communicated to me then nor was it brought to me later. I received no phone call or letter saying: Senator DAYTON just wanted to correct a misimpression that I unintentionally gave you at that meeting. I now have information that contradicts what we were told then. I still believe in my own views but I want you to be aware of others before you cast the most important vote of your Senate career or even a call or communication after that vote was cast. There was nothing.

When Senator BOXER rightly pressed Dr. Rice on this point in the Foreign Relations confirmation hearing, there was no admission even then of any mistake. In fact, she replied: ''I really hope that you will refrain from impugning my integrity. Thank you, very much.''

There is a saying that we judge ourselves by our intentions; others judge it by our actions.

I don't know what Dr. Rice's intentions were, but I do have direct experience with her actions. There was no slight misunderstanding, or a slip, or even a mistake that was limited to one meeting. This was a public statement made repeatedly by Dr. Rice and similar words by Vice President CHENEY and even by President Bush as part of an all-out campaign, which continues even today, to mobilize public support and maintain public support for the invasion of Iraq and for continuing war there regardless of what the facts were then, or are now, and it has been done by misrepresenting those facts, by distorting the facts, by withholding the facts, by hiding the truth, by hiding the truth in matters of life and death, of war and peace, that profoundly affect our national security, our international reputation, and our future well-being—and will for many years to come.

I don't like to impugn anyone's integrity. But I really do not like being lied to repeatedly, flagrantly, intentionally. It is wrong. It is undemocratic. It is un-American, and it is dangerous. It is very dangerous, and it is occurring far too frequently in this administration.

This Congress, this Senate must demand that it stop now. My vote against this nomination is my statement that this administration's lying must stop now. I urge my colleagues to join me in this demand, Democrat, Republicans, Independents. All of us first and foremost are Americans. We must be told the truth—for us to govern our country and to preserve our world. That is why we must vote against this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I ask unanimous consent that an editorial by Dorothy Height of the Washington Post of January 19 be printed in the RECORD.

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

[From the Washington Post, Jan. 19, 2005]

IN THE FOOTSTEPS OF HISTORY

(By Dorothy Height)

When Condoleezza Rice is sworn in as secretary of state, she will be following in the footsteps of Mary McLeod Bethune, the founder of the National Council of Negro Women. Mrs. Bethune was the first black woman to be called upon for policy help by the White House, when Republican President Calvin Coolidge asked her to take part in a conference on child care in 1928. She went on to work with Republican and Democratic presidents while always fighting to advance the interests of black woman and children.

From Sojourner Truth speaking out in the abolitionist movement, to Constance Baker Motley as a voice in the courtroom to Shirley Chisholm as a candidate for president,

African American women have braved a world that did not welcome their participation.

Ms. Rice will be the first woman of color to assume the highest diplomatic post in the U.S. government. As secretary of state, she will face challenges that confront women everywhere. As we engage the Muslim and Arab worlds, efforts are being renewed to suppress women's participation in education, politics and civil society. In Africa, HIV and AIDS are ravaging a generation of women and leaving millions of orphans to be comforted. In Central and Eastern Europe, woman and girls are being sold into prostitution.

Despite the challenges she will face, Ms. Rice's appointment is a time for women of color to smile. Our nation finally will put forward a face that reflects the hopes of generations of black women to sit at the table of national and global affairs and participates as equals.

Many women sacrificed to make this moment possible. I pray that Ms. Rice will use this profound honor and heavy burden to represent our country with compassion, strength and integrity, while seeking peaceful solutions and working to make the world a better place for all people.

Mr. LUGAR. Mr. President, I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, the President's nomination of Dr. Condoleezza Rice to be Secretary of State presents the Senate with a difficult decision. Dr. Rice will bring an impressive set of public policy and academic credentials to the job of Secretary of State. Her personal story is inspiring. Nonetheless, Dr. Rice's record on Iraq gives me great concern.

In her public statements, she clearly overstated and exaggerated the intelligence concerning Iraq before the war in order to support the President's decision to initiate military action against Iraq. Since the Iraq effort has run into great difficulty, she has also attempted to revise history as to why we went into Iraq.

I approach this issue as the ranking member of the Armed Services Committee and as a member of the Intelligence Committee. Both committees have devoted a great deal of time over the last 2 years to issues concerning Iraq, including the Intelligence Committee inquiry into prewar intelligence.

These inquiries indicated major problems with the intelligence on Iraq and how it was exaggerated or misused to make the case to the American people of the need to initiate an attack against Iraq. Dr. Rice is a major player in that effort—a frequent and highly visible public voice.

Dr. Rice is not directly responsible for the intelligence failures prior to the Iraq war. The intelligence community's many failures are catalogued in the 500-page report of the Senate Intelligence Committee. But Dr. Rice is responsible for her own distortions and exaggerations of the intelligence which was provided to her.

Here are a few of those exaggerations and distortions.

One of the most well known was the allegation that Iraq was trying to obtain uranium from Africa, which was cited to demonstrate that Iraq was reconstituting its nuclear weapons program. But our intelligence community did not believe it was true, and took numerous actions to make its concerns known—even urging the British not to publish the allegation in September of 2002.

So how did it happen that President Bush in his January 28, 2003, State of the Union speech said that ''The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa''?

When the CIA saw a draft of the President's Cincinnati speech for October 7, 2002, it asked the White House to delete the allegation that Iraq had been seeking uranium from Africa, and the White House did remove the reference entirely.

On October 5, 2002, the CIA sent a memo explaining its views to Steven Hadley, Dr. Rice's deputy. It sent another memo to Dr. Rice and to Mr. Hadley on October 6, again expressing doubt about the reports of Iraq's attempt to get uranium from Africa.

Finally, George Tenet, the Director of Central Intelligence himself, personally called Mr. Hadley to urge that the uranium allegation be removed from the speech—which it was.

This was not just some routine staff action or a low-level CIA analyst who called the National Security Council. It was a memorandum from the CIA to Dr. Rice, and the Director of Central Intelligence himself who called Dr. Rice's deputy to make it clear what his concerns were and to request the removal of the allegation.

Yet just 3½ months later the White House put the African uranium allegation back into a draft of the State of the Union speech. That draft made no mention of the British. It was a reference like the one that was removed from the Cincinnati speech a few months before. It asserted in that draft what purported to be the view of the U.S. Government—that Iraq had been trying to obtain uranium from Africa.

According to Director Tenet, shortly before the speech was delivered, the CIA received portions of the draft of the State of the Union to review, including the allegation about uranium from Africa. A senior CIA staff member called the National Security Council staff to repeat his concerns about the allegation. Instead of removing the text from the speech, the National Security Council and the White House changed the text to make reference to the British view, suggesting, of course, that the United States believed the British view to be accurate.

That formula was highly deceptive. The only reason to say the ''British have learned'' that Saddam Hussein was seeking uranium from Africa was to create the impression that we believed it.

But our intelligence community did not believe it. Indeed, they had attempted to dissuade the British from publishing the allegation in September, and they successfully made several high-level interventions with the White House in October to have the allegation removed from the President's Cincinnati speech. Concerning the British report, Director Tenet said the CIA ''differed with the British on the reliability of the uranium reporting.''

What was the role of Dr. Rice in all of this? I asked her in my questions for the record whether she was aware the intelligence community had doubts about the credibility of the reports, and if not, how she could not know, given all of the activity prior to the President's October 7 Cincinnati speech, including the memo to her.

In response, Dr. Rice said, ''I do not recall reading or receiving the CIA memo,'' and ''I do not recall Intelligence Community concerns about the credibility of reports about Iraq's attempts to obtain uranium from Africa either at the time of the Cincinnati speech or the State of the Union speech.''

Frankly, I am surprised and disappointed that the National Security Adviser would not remember an issue of this magnitude.

However, it was not only the President who made that allegation, Dr. Rice made it herself in an op-ed in the New York Times on January 23, 2003, 5 days before the State of the Union speech, and 3½ months after the same allegation had been removed from the Cincinnati speech at the CIA's request. She wrote that Iraq's declaration to the U.N. ''fails to account for or explain Iraq's efforts to get uranium from abroad.''

Another question I asked Dr. Rice for the record was whether, prior to the January 2003 State of the Union speech, she had discussed with Steven Hadley, her Deputy, the choice of wording in that portion of the speech and whether she was aware that the language had been changed to refer to the British rather than stating it as the U.S. Government's view. In her response she said:

Yes, I did discuss with Stephen Hadley concerns the intelligence community had about protecting sources and methods regarding reports on Iraq's attempts to procure uranium from Africa. These concerns were addressed by citing a foreign government service. I do not recall any discussion of concerns about the credibility of the report.

However, the CIA requested on three separate occasions that the reference in the Cincinnati speech be removed entirely because the CIA had doubts about the credibility of the reports.

In Dr. Rice's answers to my questions, while she failed to remember all the direct interventions by the CIA to have the uranium allegation removed from the President's Cincinnati speech, including a CIA memo to her, she instead relied on a single sentence from

the October 1, 2002, national intelligence estimate, asserting that ''Iraq also began vigorously trying to procure uranium and yellow cake'' from Africa.

There are four problems with her answers. First, after that national intelligence estimate was produced, the CIA made its multiple interventions with the National Security Council, including two memos and the call from DCI Tenet to Dr. Rice's Deputy, to have the uranium allegation removed from the draft October 7 Cincinnati speech because of the doubts about the credibility of the reports. It was then removed.

So the CIA's doubts about the reporting and the White House's removal of that allegation from the Cincinnati speech came after the hastily assembled national intelligence estimate of October 1, 2002.

Second, according to George Tenet, the Director of Central Intelligence, the CIA's concerns were with the credibility of the reports, not with sources and methods. In a statement issued in July of 2003, he said the CIA received portions of the draft speech shortly before it was given and that the CIA officials ''raised several concerns about the fragmentary nature of the intelligence with the National Security Council colleagues.'' In that statement he made no fewer than five references to CIA doubts about the reliability of the intelligence. He did not mention concerns about protecting sources and methods.

Third, in relying on one erroneous sentence in the NIE, Dr. Rice did not mention the opposing sentence in that same NIE written by the State Department's Bureau of Intelligence and Research, which stated that ''the claims of Iraqi pursuit of natural uranium in Africa are, in INR's assessment, highly dubious.'' So the NIE, which she referred to, also contained an explicit dissenting view on the issue of African uranium, but she ignored that portion of the NIE.

Finally, and most significantly, if the State of the Union speech was relying upon that one sentence in the national intelligence estimate, it would have presented the allegation about Iraq seeking African uranium as something the United States believed rather than something the ''British have learned.''

That is where Dr. Rice's answers unravel. If the NIE's erroneous statement that ''Iraq also began vigorously trying to procure uranium ore and yellowcake'' from Africa was the basis for the State of the Union speech representations, that speech would not have relied on the British view. It would have been stated as our own view. The problem is that it was not our view. The statement about the British learning of Iraq's efforts to obtain uranium in Africa was a conscious effort to create an impression that we believed something that we actually did not believe.

Now, there are other examples in which Dr. Rice exaggerated the intelligence or overstated the case to help persuade the public of the need to go to war against Iraq. Let me cite a few.

On September 8, 2002, Dr. Rice said on CNN:

> We do know that there have been shipments going into . . . Iraq, for instance, of . . . high quality aluminum tubes that are only really suited for nuclear weapons, centrifuge programs.

On July 30, 2003, she said that ''the consensus view of the American intelligence agency'' was that the aluminum tubes ''were most likely for this use''—meaning for centrifuges to make nuclear weapons.

However, contrary to her claim, there was no certainty and no consensus view within the intelligence community about the use of the aluminum tubes. In fact, there was a fundamental disagreement, and the Department of Energy, which has the Nation's foremost centrifuge experts, and the State Department did not believe the tubes were intended for centrifuges. They believed the tubes were intended for conventional artillery rockets. Their disagreeing views were explicitly included in the October 2002 national intelligence estimate.

In my questions for the record, I asked Dr. Rice why she had said there was a consensus when there was none. Her answer did not respond to my question. So the question remains: Why did she say there was a consensus when there was not a consensus, and why did she say they were ''only really suited for nuclear weapons'' when they were, in fact, not only suitable for other purposes but, indeed, had been used for other purposes by Iraq—namely, for conventional artillery rockets?

In summary, Dr. Rice made the public case against Iraq as having reconstituted its nuclear weapons program far stronger than was supported by the classified intelligence. She exaggerated and distorted the facts and the intelligence provided to her in order to help convince the American public of the need to go to war.

Dr. Rice has also not been forthcoming on the question of when she knew of the differences within the intelligence community relative to the intended use of the aluminum tubes. Senator BIDEN asked Dr. Rice in a written question before the confirmation hearings whether she knew of the longstanding debate within the intelligence community at the time of her September 8, 2002 statement that the aluminum tubes ''are only really suited for nuclear weapons programs, centrifuge programs,'' and when President Bush said four days later that ''Iraq has made several attempts to buy high-strength aluminum tubes used to enrich uranium for a nuclear weapon.''

She simply ducked the issue, and quoted a passage from the October 2002 NIE about a number of alleged Iraqi uranium enrichment activities—including the aluminum tubes—noting that the Department of Energy believed the tubes ''probably are not part of'' the nuclear program. She never answered the question of whether she was aware of the debate when she and the President made their erroneous statements.

One more example. On November 15, 2002, Dr. Rice said Saddam Hussein had been ''helping some al Qaeda operatives gain training in CBRN [Chemical, Biological, Radiological or Nuclear weapons].''

On March 9, 2003, shortly before the war, she made a statement about the links between Saddam and al Qaeda, including a ''very strong link to training al Qaeda in chemical and biological weapons techniques.''

On September 7, 2003, she said:

> we know there was training of al Qaeda in chemical and perhaps biological warfare.

Those comments indicated certainty that Iraq provided training in chemical and biological weapons to al-Qaida. But the CIA had said that the reports of training came from sources of ''varying reliability,'' and were ''contradictory,'' as the Senate Intelligence Committee report makes clear.

Dr. Rice took what was a possibility and portrayed it as a fact.

Prior to the war, senior administration officials repeatedly and publicly stated that the reason the United States had to be prepared to use military force, and then go to war against Saddam, was to disarm Iraq of its weapons of mass destruction, which Saddam was said to be likely to provide to terrorists like al-Qaida.

Before the war, Dr. Rice said the following, on September 25, 2002: ''This is a matter of disarming the Iraqi regime, because that's the danger, is that Saddam Hussein with nuclear, chemical, biological weapons will be a threat to his people, his neighbors, and to us.''

On March 9, 2003, just 10 days before the start of the war, she said: ''What the President is saying to the American people is . . . 'I will not stand by until the moment when Saddam Hussein is good at delivering biological weapons, by unmanned aerial vehicles.' ''

On April 10, 2003 Ari Fleischer, the President's spokesman, summarized the point succinctly: ''We have high confidence that they have weapons of mass destruction. That is what this war was about and it is about.''

When questioned about this issue at her confirmation hearing on January 18, Dr. Rice joined the effort to rewrite the history of the publicly stated reasons for attacking Iraq. She said: ''It wasn't just weapons of mass destruction. . . . It was the total picture, Senator, not just weapons of mass destruction, that caused us to decide that, post-September 11th, it was finally time to deal with Saddam Hussein.''

The simple fact is that before the war, the administration repeatedly and dramatically made the case for war on the issue of Iraq possessing and continuing to develop weapons of mass destruction, and the likelihood that Saddam Hussein would provide those weapons to terrorists like al Qaeda. For Dr.

Rice to suggest that there were many other, equally compelling, reasons to go to war simply does not square with the reality of how the administration persuaded the American people and the Congress of the need for war. Her suggestion is an effort to revise the history of the administration's presentations to the American people.

Dr. Rice again engaged in revisionist history about the Iraq military campaign during her nomination hearings before the Senate Foreign Relations Committee on January 18, 2005. Dr. Rice claimed: ''This was never going to be easy; it was always going to have ups and downs.''

Dr. Rice's statement is striking, not because of its substance, but because of how it stands in contrast to what the administration was telling Congress and the American people in the months before the invasion of Iraq.

The administration downplayed the difficulties of invading Iraq by claiming that we would be greeted as ''liberators'' by the Iraqi people. When Army Chief of Staff General Eric Shinseki predicted that ''several hundred thousand soldiers'' probably would be needed for the occupation of Iraq following the fall of Saddam Hussein, senior Defense Department officials rejected General Shinseki's assessment. Instead, Deputy Secretary of Defense Wolfowitz told the House Budget Committee before the start of the war: ''I am reasonably certain that they [the Iraqi people] will greet us as liberators, and that will help us to keep requirements down.'' He also said that ''the notion of hundreds of thousands of American troops is way off the mark.''

Vice President CHENEY also repeated this claim to downplay the cost of regime change in Iraq. During an appearance on NBC's ''Meet the Press'' on March 16, 2003, the Vice President said: ''The read we get on the people of Iraq is there is no question . . . they will welcome as liberators the United States when we come to do that.''

It was precisely the administration's rose-colored conviction that our troops would be hailed by the Iraqi people as liberators that resulted in the inexcusable failure to plan for a difficult and costly occupation of Iraq following the end of major hostilities.

Similarly, administration officials grossly underestimated the costs to the American people of rebuilding Iraq. In March 2003, Deputy Secretary of Defense Wolfowitz testified before Congress that Iraq ''can really finance its own reconstruction, and relatively soon.'' The next month, in April 2003, the head of the U.S. Agency for International Development publicly estimated that the American taxpayers' portion of Iraqi reconstruction costs would be $1.7 billion, adding that there were ''no plans for any further-on funding for this.'' Instead, Congress has approved over $20 billion in reconstruction funds for Iraq, and the final bill for the American taxpayer could reach hundreds of billions of dollars.

The Administration used the same rose-colored glasses in estimating the cost of rebuilding Iraq. Dr. Rice said there were always going to be ''ups and downs''. But before the war, the administration never talked about, never planned for, and never prepared the American people for the ''downs'' of rebuilding Iraq. It only focused on the ''ups''. So I find Dr. Rice's latest assessment that the administration never thought that the post-Saddam period was going to be easy to be startlingly at odds with the administration's claims in making the case for the Iraq war in the first place.

One of my main concerns about this administration, including Dr. Rice, is that there appears to be no accountability for the many mistakes.

Consider the case of George Tenet, the former Director of Central Intelligence, who covered the administration's exaggerations on Iraq. President Bush had been publicly saying things like ''on any given day,'' Saddam could provide WMD to terrorists, and that Saddam ''would like nothing more than to use a terrorist network to attack and kill and leave no fingerprints.'' President Bush repeatedly indicated that Saddam might give WMD to terrorists without provocation.

On October 7, 2002 DCI Tenet sent a letter to the Senate Intelligence Committee declassifying portions of its new National Intelligence Estimate on Iraq. That letter made clear that the intelligence community believed it was unlikely that Saddam would share WMD with terrorists, and said it would be an ''extreme step'' and a ''last chance to exact vengeance'' if the U.S. had already attacked Iraq.

So there was a clear inconsistency between the views of the intelligence community and the public comments of the President. Yet, incredibly, on October 8, 2002, just a few days before the Senate was to vote on the resolution to authorize the use of force against Iraq, DCI Tenet issued a statement to the press saying ''there is no inconsistency'' between the views in the letter and the President's views, which was simply false. Its motivation was transparent: An honest acknowledgment of inconsistency might have had a negative effect on the Senate vote.

Instead of being held accountable for that critical misstatement, and instead of being held accountable for the October 2002 NIE, which was rife with errors, all in the direction of making Iraq more threatening, including erroneous statements not based on the underlying intelligence, George Tenet was awarded the Presidential Medal of Freedom by President Bush. That is not accountability. Accountability for mistakes and failures, no matter how serious, is not the hallmark of this administration.

Dr. Rice's exaggerations and distortions concerning Iraq were an important part of the administration's effort to convince the American people of the need to go to war. Few things are as fateful as that decision.

Finally, Secretaries of State must be strong enough to tell a President what he may not want to hear. There is admittedly one recent glimmer of hope in that regard.

In response to my written question, Dr. Rice did acknowledge that ''there is of course a distinction'' between Saddam Hussein and al Qaeda when it comes to the war on terrorism. That stands in contrast to President Bush's claim on September 25, 2002, that ''[Y]ou can't distinguish between al Qaeda and Saddam when you talk about the war on terror.''

But that glimmer of independence is not enough to change my view that Dr. Rice should not be confirmed as Secretary of State.

The Bush administration's prewar distortions and exaggerations of intelligence concerning Iraq's weapons of mass destruction and ties to al Qaeda were the publicly stated basis for initiating the war.

I ask unanimous consent the questions and answers I asked of Dr. Rice also be printed in the RECORD following my statement.

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

(See exhibit 1.)

Mr. LEVIN. Finally, I think I have 1 additional minute. I will use that to conclude.

Voting to confirm Dr. Rice as Secretary of State would be a stamp of approval for her participation in the distortions and exaggerations of intelligence that the administration used before it initiated the war in Iraq, and the hubris which led to the administration's inexcusable failure to plan and prepare for the aftermath of the overthrow of Saddam Hussein, with tragic ongoing consequences.

I believe we must do all we can to support our troops in their efforts to create a democratic government in Iraq, despite the circumstances we are in. But I cannot, in good conscience, give my approval to the mistakes and misjudgments that helped to create those circumstances. I will, therefore, vote against the confirmation of Dr. Rice to be Secretary of State.

I thank the Chair and yield the floor.

EXHIBIT 1

QUESTIONS FOR THE RECORD FROM SENATOR CARL LEVIN TO DR. CONDOLEEZZA RICE, AND HER RESPONSES (IN CONJUNCTION WITH HER NOMINATION TO BE SECRETARY OF STATE)

URANIUM FROM AFRICA

1. The CIA had sent a memo to you and Mr. Hadley on October 6, 2002 concerning a draft of the President's scheduled October 7, 2002 Cincinnati speech. That memo included an explanation of the reasons why the CIA believed the reference to Iraq's attempts to obtain uranium from Africa should be deleted. The CIA had sent a previous memo to Mr. Hadley (and Mr. Gerson, who was the speechwriter) the day before that memo sent to you, again expressing its doubts about the reports of Iraq's attempts to get uranium from Africa. Finally, the Director of Central

Intelligence, George Tenet, called Mr. Hadley directly to ask that the reference to uranium from Africa be deleted from the October 7 speech. As a result of the CIA's multiple expressions of its doubts about these reports, the reference was deleted, and the October 2002 speech made no mention of Iraq's purported attempts to obtain uranium from Africa. Given all this and other activity, were you aware at that time (October 2002) that the Intelligence Community had doubts about the reports of Iraq's purported efforts to obtain uranium from Africa? Were you aware prior to January 28, 2003, the date of the President's State of the Union speech?

Answer: I do not recall Intelligence Community concerns about the credibility of reports about Iraq's attempts to obtain uranium from Africa either at the time of the Cincinnati speech or the State of the Union speech. I would note that the Senate Select Committee on Intelligence report on prewar intelligence assessments on Iraq stated:

''When coordinating the State of the Union, no Central Intelligence Agency (CIA) analysts or officials told the National Security Council (NSC) to remove the '6 words' or that there were concerns about the credibility of the Iraq-Niger uranium reporting.''

2. Prior to the State of the Union speech (January 28, 2003), did you ever discuss with the Director of Central Intelligence, George Tenet, the Intelligence Community's doubts about reports of Iraq's attempts to get uranium from Africa? If so, when was the first time you discussed the matter with him, and how many times did you discuss the issue prior to the State of the Union?

Answer: I do not recall discussing Intelligence Community doubts about such reports with Director Tenet prior to the State of the Union.

3. Prior to the State of the Union speech of January 2003, did you ever discuss with Stephen Hadley, your deputy, the choice of wording for the speech concerning Iraq's purported attempts to obtain uranium from Africa? Prior to the speech, were you aware that the language had been changed to make reference to the British having learned of such efforts, rather than stating it as the US Government view?

Answer: Yes, I did discuss with Stephen Hadley concerns the Intelligence Community had about protecting sources and methods regarding reports on Iraqi attempts to procure uranium from Africa. These concerns were addressed by citing a foreign government service. I do not recall any discussion of concerns about the credibility of the reports.

4. Were you at all involved in the decision-making process about the phraseology of the wording for the January 28, 2003 State of the Union speech concerning Iraq's purported attempts to obtain uranium from Africa (''The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa'')? Who was the author of the wording, and was the author aware that the CIA had serious doubts about the claim at least as early as September 2002?

Answer: Yes, I did discuss with Stephen Hadley concerns the Intelligence Community had about protecting sources and methods regarding reports on Iraqi attempts to procure uranium from Africa. The State of the Union speech was prepared by the President's speechwriters, in coordination with other members of the executive branch. I do not know who actually authored the words about Iraq's attempts to procure uranium from Africa.

5. On July 13, 2004 you said the following on Face the Nation: ''What I knew at the time is that no one had told us that there were concerns about the British reporting.'' Given all the activity indicating CIA doubts and concerns about the claim, including a CIA memo sent to you in early October 2002, how could you not know of the doubts and concerns?

Answer: I do not recall reading or receiving the CIA memo of October 2002. However, I was aware of the October 2002 National Intelligence Estimate stating ''Iraq also began vigorously trying to procure uranium ore and yellowcake; acquiring either could shorten the time Baghdad needs to produce nuclear weapons.''

6. On June 8, 2003, on ABC's This Week with George Stephanopoulos, you said ''At the time the State of the Union address was prepared, there were also other sources that said that they were, the Iraqis were seeking yellow-cake, uranium oxide, from Africa. And that was taken out of a British report. Clearly, that particular report, we learned subsequently, subsequently, was not credible. . . . The intelligence community did not know at that time or at levels that got to us that this, that there was serious questions about this report.''

How could you say such a thing when, before the State of the Union speech, the CIA had told the British of its doubts about the claim and urged them to remove it from their dossier; when the Director of Central Intelligence had personally called your Deputy, Stephen Hadley; when the DCI had sent a memo on October 5 to Mr. Hadley; and when he sent another memo to you and Mr. Hadley on October 6, all explaining why the claim should be removed from the President's October 7 Cincinnati speech, which it was. How can you claim that ''the intelligence community did not know at that time or at levels that got to us that this, that there was serious questions about this report''?

Answer: National Intelligence Estimates represent the authoritative judgment of the Intelligence Community. CIA also provided information citing Iraq's attempts to procure uranium from Africa to the White House four days before the State of the Union speech. I would also note that the Senate Intelligence Committee concluded that no CIA analysts or officials expressed doubt about the uranium reporting when coordinating on the State of the Union speech.

IRAQ: ALUMINUM TUBES

7. On July 30, 2003, you said ''the consensus view of the American intelligence agency'' [sic] was . . . that the aluminum tubes ''were most likely for this use,'' meaning for centrifuges to make nuclear weapons. However, there was no consensus view on the use of the aluminum tubes; there was a fundamental disagreement within the Intelligence Community, and the Department of Energy and the State Department did not believe the tubes were intended for centrifuges. Given that there was no consensus, why did you say there was?

Answer: The October 2002 National Intelligence Estimate established the Intelligence Community's authoritative assessment on the aluminum tubes issue. It stated:

''Most agencies believe that Saddam's personal interest in and Iraq's aggressive attempts to obtain high-strength aluminum tubes for centrifuge rotors—as well as Iraq's attempts to acquire magnets, high-speed balancing machines and machine tools—provide compelling evidence that Saddam is reconstituting a uranium enrichment effort for Baghdad's nuclear weapons program. (DOE agrees that reconstitution of the nuclear program is underway but assesses that the tubes are probably not part of the program.)'' A footnote noted INR's alternative view to the NIE's authoritative assessment.

NO DISTINCTION BETWEEN IRAQ AND AL QAEDA?

8. Do you make any distinction between Saddam Hussein and al Qaeda when it comes to the war on terror, or do you think they are indistinguishable?

Answer: Yes, there is of course a distinction, but Saddam Hussein did harbor terrorists and had many other ties to terrorists, including contacts with al Qaeda, as the 9–11 Commission recognized. And he was an avowed enemy of America and of our allies. The possibility that an outlaw state might pass a weapon of mass destruction to a terrorist is the greatest danger of our time.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I ask unanimous consent that when the Senate reconvenes at 2:15, the following be the order of speakers: Senator MCCONNELL, Senator BYRD, Senator HAGEL, Senator ALLEN, Senator BOXER, Senator ALEXANDER, Senator DURBIN, a Republican Senator, and Senator FEINSTEIN.

The PRESIDING OFFICER. Is there objection?

Mrs. HUTCHISON. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. No objection.

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

Mr. LUGAR. I thank the Chair. This will be helpful, I believe, so Senators can allocate their time. I would comment to the Chair this means that essentially the period from 2:15 to approximately 5 o'clock will be consumed by these Senators. But the order allows for 9 hours of debate, which means theoretically there could be 4 more hours-plus after that to accommodate other Senators.

Mr. President, I also ask unanimous consent that during quorum calls the time be charged equally against both sides.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Indiana.

Mr. BAYH. I ask my colleague from Texas, which of us was on the floor first?

Mrs. HUTCHISON. Mr. President, I do not know. I thought I was supposed to speak at 12:15, but if——

Mr. BAYH. I thought I was supposed to speak at 12:10. So I guess the trains are not running on schedule today.

Mrs. HUTCHISON. Mr. President, I ask the distinguished chairman, are there any other speakers or are Senator BAYH and I the last two?

Mr. LUGAR. My information is at some point Senator SALAZAR wishes to speak before the luncheons.

Mrs. HUTCHISON. I would suggest, then, that Senator BAYH go next and I be able to follow him.

Mr. LUGAR. And then Senator SALAZAR be accommodated. I ask unanimous consent that be the order.

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

The Senator from Indiana.

Mr. BAYH. Mr. President, I thank the Senator from Texas for her courtesy, and I pledge I will do my best to finish in 10 minutes or less.

It is a pleasure to be on the floor today with my friend and colleague from Indiana. I have often thought that events around the world, and particularly in Iraq, would have gone so much better if those in a position to make policy for our country had listened to his wise counsel and advice. It is not often I find myself in disagreement with my friend, but on this occasion I do.

I rise to express my opposition to the nomination of Condoleezza Rice and her proposed promotion to that of the position of Secretary of State—not because I object to her personally; I do not; not because I oppose the mission of establishing freedom and democracy in Iraq; on the contrary, I support it; but because I believe she has been a principal architect of policy errors that have tragically undermined our prospects for success in this endeavor.

Those in charge must be held accountable for mistakes. We must learn from them, correct them, so we may succeed in Iraq. If the President of the United States will not do this, then those in the Senate must.

The list of errors is lengthy and profound, and, unfortunately, many could have been avoided if Dr. Rice and others had only listened to the counsel offered from both sides of the aisle.

From the beginning of this undertaking, we have had inadequate troop strength to accomplish the mission. The mission was, of course, not to simply realize regime change in Iraq but, instead, to recognize and accomplish nation building at its most profound. We violated a fundamental tenet of planning for war, which is to plan for the worst and hope for the best. Instead, all too often in Iraq we have hoped for the best and, instead, are reaching the worst.

The advice to have greater troop strength was not partisan. Our colleagues, Senator MCCAIN, Senator HAGEL, and others, virtually pleaded with the administration to provide for greater security through troop strength on the ground. Those pleas fell on deaf ears.

We have never had a realistic plan for the aftermath of this conflict. The State Department made plans. They were disregarded. The CIA warned of the potential for a growing insurgency. Their concerns were dismissed. Senator LUGAR held hearings that were prescient in this regard, pointing out the importance of planning for the aftermath and the inadequacy of the preparation for the aftermath before the war. The results of those hearings were ignored.

This is no ordinary incompetence. Men and women are dying as a result of these mistakes. Accountability must be had. We dismissed the Iraqi Army.

In my trip to Iraq in December, one of our top ranking officials told me there that things today in Iraq would be 100-percent better—100-percent better—if we had only not dismissed the Iraqi Army; not the generals, not the human rights violators, not those who should be held accountable for their own actions, but the privates, the corporals, the lieutenants, the captains, those who should be on our side providing for stability and security in Iraq and now, tragically, are being paid to kill Americans because we sent them home and said they had no future in the Iraq that we were hoping to build.

Likewise, we disqualified all former Baathists from serving even in lower levels of the bureaucracy in that country. They could have helped us run the nation. They could have helped us to reassure the Sunni community that we wanted to reincorporate them in the future of Iraq. Instead, many of them are fighting us today in Iraq as well.

All of these mistakes have substantially undermined our prospects for success, and tragically so. The chaos that has arisen from the lack of security and stability has fed this insurgency.

I asked one of our top ranking officials in Iraq in December which was growing more quickly, our ability to train Iraqis to combat the insurgency or the insurgency itself? His two-word response: The insurgency. Unfortunately, in some regards we have even succeeded in discrediting the very cause for which we are fighting and dying today. I listened intently to the President's inaugural address on the steps of this Capitol in which he spoke repeatedly about the need to advocate freedom and liberty and democracy around the world, not only because it is in our interest but because it is in the interest of peace and stability across the planet as a whole. In that regard he is right.

But I could not help but recall the words of a member of the Iraqi Electoral Commission, a Turkoman from Kirkuk, who finally looked at me in Baghdad and said: Senator, you do not understand. For too many of my people, when they hear the word ''democracy,'' they think violence, they think disorder, they think death and economic disintegration.

It does not get much sadder than that. It is heartbreaking that the sacrifices that have been made, the idealism of our troops, America's prospects for success in Iraq, our very standing in the world, have too often been undercut by ineptitude at the highest levels of our own Government.

I think of a visit, 6 months ago, with some of our colleagues to Walter Reed Army Hospital to visit with some of the soldiers who have returned. They are constantly on my mind. I think of their idealism, their heroism, their perseverance in the face of an adversity that those of us who are not there can hardly imagine.

We have a moral obligation to provide better leadership than that which has been provided in this conflict. Too often this administration has suggested that the refusal to admit error, to learn from error, to correct error is a virtue. When lives and limbs are at stake, it is not.

As a former executive of our own State, I have always believed that accountability for performance is vitally important to success. If this President will not provide it, then it is up to those of us in the Senate to do so.

I believe with all of my heart that our country is strongest when we stand for freedom and democracy. We are attempting to accomplish the right thing in Iraq. We have been the authors of much of our own misery. As a result of that, I cannot find it in my heart or in my mind to vote for the promotion of Dr. Rice. Accountability is important. I will vote no and urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I have listened to some of the debate on this nomination. It is unfortunate that we have lost focus about what we should be doing in the confirmation of the Secretary of State. I don't think rehashing potential mistakes some think may have been made in the war on terrorism, specifically in Iraq, is something that should be brought up as a reason to vote against Condoleezza Rice for Secretary of State.

I, for one, will say mistakes have been made. I don't think war is ever perfect. You can't make an outline and say this is how a war is going to go and expect it to go in that exact way. However, I don't think anyone could have anticipated all that has happened or the kind of enemy that we face. An enemy that is willing to blow itself up to kill innocent people requires a different strategy and approach. We are making the adjustments.

One of the leaders who has kept a steady focus on the war on terrorism and our efforts in Iraq is the woman who is before us today. It is Condoleezza Rice who has kept the steady aim and helped our President see all of the minefields out there. This has strengthened our country, to stay the course in the war on terrorism. The stabilization of Iraq is a step forward to promoting peace worldwide.

Condoleezza Rice is absolutely the most qualified person to succeed a wonderful Secretary of State, Colin Powell. What do you want in a Secretary of State? What do you look for? What would foreign leaders look for in a Secretary of State?

No. 1: Somebody who has a deep understanding of foreign policy. Condoleezza Rice has had a 25-year career in foreign policy, an exemplary academic background, graduating with a Ph.D. in international studies with a Russian focus—concentration on Russian history and Russian relations—cum laude and Phi Beta Kappa. She has the absolute ability to do this job, unquestionably, and she has the experience. For 25 years she has served three Presidents, been a key adviser in the one of the most tumultuous times of our history, and after 9/11, brought our country together by focusing on an

enemy that is a new kind of enemy. Condoleezza Rice has done that, and she has done a great job.

No. 2: In looking for a Secretary of State, you want someone who is known to our country and known to foreign leaders. She will not be a stranger, speaking for our President. She is known to foreign leaders because as national security advisor, she has dealt with foreign leaders throughout the world. She has strong working relationships with world leaders, foreign ministers, national security advisers, and our closest allies. These relationships have been developed for over a quarter of a century. They will be valuable assets to our country and to her.

Having been a Soviet affairs specialist, who worked during the Cold War, she helped guide our Nation's efforts to promote freedom and democracy throughout that part of the world in the emerging Soviet republics. She helped guide our Nation to promote freedom throughout the world, by stressing the virtues of democracy, defying those who suggested that communism was here to stay and Eastern Europe could not be liberated. With the unification of Germany and the collapse of the Soviet Union, the Reagan administration made history with Condoleezza Rice in a key position.

No 3: You want a Secretary of State to be a trusted adviser to the President. There is no doubt the President and Dr. Rice know each other well. The President trusts her. And when foreign leaders talk to Condoleezza Rice, they will know she is speaking for the President, through offers made and pronouncements stated. Being a trusted adviser to the President is very important.

And, No. 4: You need someone who can manage a very large and important department of our Government with offices strewn throughout the world and with ambassadors reporting affairs in those countries. It will be important to have someone who is a good manager. She has served as Provost of Stanford University during her 6 years there, managing a diverse population.

On a personal note, I wrote a book called ''American Heroines,'' and one of the interviewees I had was Condoleezza Rice. I was talking to contemporary women who have broken barriers, and I interviewed Condoleezza Rice. I asked her the question: What is the best preparation for the rough and tumble of your job? She said: Without a doubt, being provost of Stanford University, because I dealt with 1,400 very smart people who were basically independent contractors, and I had to learn when to persuade, when to inform, and when to demand.

If that isn't a recipe for Secretary of State, I don't know one: When to persuade, when to inform, and when to demand. Diplomats need to know when to do each of these and she has honed these skills during her time as National Security Adviser, and most certainly while managing the 1,400-member faculty at Stanford University.

She has become a person uniquely qualified for this position. I am so proud to support her. She is a woman who is unflappable and has comported herself with dignity through the most trying times, through trying hearings and trying questioning. She has dealt with the largest crisis that we have had in our country, surely in the last 25 years, 9/11, finding out who the enemy is, where that enemy was being trained, and trying to make sure that we had a strategy to combat it.

Condoleezza Rice will be a great Secretary of State. She will make her mark on this position as some of the best Secretaries of State in our history have done. She has the capability. She has the trusted ear of the President. She has the knowledge of foreign policy from 25 years of experience and relationships with heads of state and foreign ministers, friend and enemy alike, and will work well with them.

She is going to collaborate when collaboration is called for in our foreign policy but more importantly, she will protect America when it is necessary.

I am proud of this nomination. I am proud of the President for bringing her in as National Security Adviser, working with her, learning from her and teaching her at the same time. The relationship is perfect for the new challenge she will face.

She is up to this challenge. I have every faith in her. I hope our colleagues will look to the future, look to what she can do, and will not rehash things in the past for which she was not responsible. She deserves the opportunity to represent our country, and, more important, give the President of the United States the person he wants in this job. As we face a very difficult 4 years, he deserves to have the person he chose. I hope the vote will be overwhelming.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Colorado.

Mr. SALAZAR. Mr. President, I rise today in relation to the nomination of Dr. Rice to be Secretary of State. Section 2 of Article II of the Constitution obligates the Senate to advise and consent on the President's nominees for his cabinet.

That is a solemn duty, to be sure. So let me be clear up front that I will give my consent to Dr. Rice's nomination. I believe she is qualified for this important post and I am hopeful she will do an outstanding job advancing the interests and ideals of this great country.

As a U.S. Senator, given the gravity of the situation facing the United States in Iraq, I also want to take this moment to meet my obligation to advise Dr. Rice and the President.

I do this for one reason. We all serve here at the pleasure of the citizens of our States. Our efforts fail or succeed based on the informed consent of those citizens. Nowhere is that more clear than in the areas of war and peace. The consequences of war are clear. Like so many American families, my family knows the pain and sacrifice of war. My relatives have been killed on the soils of Europe and other places.

In World War II, we lost nearly half a million Americans. In the war in Iraq, we have lost 1,371 soldiers and more than 10,000 have been wounded. I visited some of our young brave men and women at Walter Reed Army Medical Center a few weeks ago and saw the struggles and pains of them and their families as they suffered from the wounds of war.

I support our troops and I pray and hope that their efforts in Iraq will have not been in vain and that the elections next week will usher in a new and free democracy in that nation.

Nor do I rise today out of some partisan spirit. In fact, over the last 3 weeks I have very publicly and very clearly spoken in favor of two other cabinet nominees. This is a patriotic obligation, not a partisan exercise.

As we look to the future, I believe strongly we must reflect on the past and constantly review and assess our performance for lessons learned for the American people. In fact, no one does a better job of this than the United States military. It invests great manpower and hours in after-action reviews to ensure that its doctrine, planning and execution were as good as it could have and should have been.

Such an after-action review for the aministration would, I think, reveal clear concerns. There has been a general lack of candor—to our troops and their families, to our taxpayers and even, to some extent, to ourselves. Only by addressing this failure can we hope to ensure the continued informed consent of the American people for this historic undertaking in Iraq.

This morning's paper reports that the Army is preparing to keep the level of U.S. troops in Iraq unchanged through the next 2 years. It is troubling because our troops have been told so many different things so many times that I fear they no longer know what lies ahead in their future.

I have to believe that was a troubling headline to read for the 150,000 families—including the more than 2,000 in Colorado—who have loved ones deployed to Iraq and the thousands of others who know that their loved ones will be redeploying to Iraq for a second or even a third tour.

This morning's newspaper also reports that the administration will seek an additional $80 billion for ongoing operations in Iraq. This is over and above the more than $149 billion already appropriated for this effort. Compare that with what the aministration told the American people on January 19, 2003, when it said that this entire effort would cost less than $50 billion.

I remind my colleagues that each and every dollar of this operation is money added to the deficit. That is money borrowed from foreign governments that will have to be paid for by our children.

As troubling as that deficit is, we will soon be faced with the challenge of deciding how to pay for many domestic issues, including most importantly, the health care our veterans have earned, and some are arguing we should tell the American people and our veterans that we simply cannot afford a level of care they have come to expect.

Lastly, I am concerned about what can only be called a lack of candor—and urgency—with ourselves and our decisions.

What else could explain the massive intelligence failures that preceded 9/11—the failure to see what was coming from al-Qaida, despite the years of its hateful rhetoric and despicable actions. And what else can explain the slowness in creating the Department on Homeland Security, or the lack of support for the 9/11 Commission and its clarion call for intelligence reform in the face of this hateful enemy. And what else—unless it was that, counter to all warnings from our military, we convinced ourselves that this effort in Iraq would be over in weeks, not years—can account for the fact that now, nearly 2 years since the start of this operation, our troops do not have the armor they need?

I end where I began, Mr. President. My advice is simple. To succeed in Iraq and elsewhere in the world, we need to heed the lessons learned over the past years. We need to be sure our intelligence is sound before we commit our troops, ensure our troops are prepared, and ensure our citizens are informed.

Educated, as she was, in Denver, I am confident Dr. Rice took to heart the candor and straight talk that we value in the West and in Colorado. Those will be important attributes for her to employ as she becomes Secretary of State.

I yield the floor.

Mr. LUGAR. Mr. President, I ask the Chair how much time remains on both sides of the aisle for debate this afternoon?

The PRESIDING OFFICER. The majority has 3 hours 35 minutes. The minority has 3 hours 39 minutes.

Mr. LUGAR. I thank the Chair and yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:45 p.m., recessed until 2:14 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

NOMINATION OF CONDOLEEZZA RICE TO BE SECRETARY OF STATE—CONTINUED

The PRESIDING OFFICER. The Senator from Nebraska.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Mr. President, I rise today to declare my unqualified support for the President's nominee to be America's 66th Secretary of State, Dr. Condoleezza Rice.

Dr. Rice's fitness for the job is plain to every Member of this Chamber. She has excelled in the foreign policy arena for 25 years and served three Presidents. She has built lasting, personal relationships with world leaders and foreign policymakers throughout the world. She has been one of the main authors of America's new approach to foreign policy in the aftermath of September 11. Most importantly, she has the complete trust and confidence of the President, and is perfectly poised to follow his leadership as America promotes freedom and democracy across the globe. Dr. Rice is the ideal person to lead the State Department at this time. The Department's mission will be to shatter the barriers to liberty and human dignity overseas, and Dr. Rice has already broken many barriers in her relatively short lifetime.

This remarkable woman was born in Birmingham, AL, in the same year that the Supreme Court of the United States handed down its Brown v. Board of Education decision. Few then would have believed that a young African-American girl, born under the heavy hand of Jim Crow, could one day become this Nation's chief diplomat. But Dr. Rice's mother, a music teacher named Angelina, and her father, the Reverend John Rice, knew their Condi was meant for great things, and Reverend Rice nicknamed his daughter ''Little Star.''

Dr. Rice may not have inherited great financial wealth from her parents, but she did inherit a love of learning. Her parents were both educators and made sure their only child could read prodigiously by age 5. At age 3, she had begun the piano lessons that would one day lead to her accompanying world-renowned cellist Yo-Yo Ma. She excelled in school and received her bachelor's degree with honors at the age of 19. She went on to earn her master's and Ph.D. in international studies, and later became, at age 38, the youngest provost in the history of Stanford University.

Her accomplished career led to her appointment as Assistant to the President for National Security Affairs in 2001. In that role, Dr. Rice has been at the center of some of the most important foreign policy decisions since President Harry Truman, George Marshall and Dean Acheson navigated the beginning of the Cold War.

In the past 4 years, she has helped formulate a national security strategy to protect the United States by draining the swamps that permit terrorism to flourish. She has been a key architect of the President's two-state solution in the Middle East—a policy that led to the first free and democratic Palestinian elections ever.

She has helped develop a more secure relationship between the United States and Russia, leading to record reductions in that country's amount of nuclear warheads. She has helped craft the important six-party talks designed to end North Korea's nuclear program.

She was at the center of the President's successful operation to remove the Taliban from Afghanistan and enable the Afghan people to practice democracy for the first time ever.

I might say, just having been in Afghanistan within the last couple of weeks, it is an enormous success story that we all have a right to feel proud about.

She led the effort to remove Saddam Hussein from power in Iraq, eliminate the possibility of his ever unleashing weapons of mass destruction, and liberate over 25 million Iraqis from his reign of terror.

We need Dr. Rice's leadership at this crucial time in America's history. As President Bush so eloquently stated last week in his second inaugural address, our country's safety is inextricably tied to the progress of freedom in faraway lands. Those lands are not so far away anymore. Two vast oceans are no defense against a small band of terrorists with a dirty bomb, a vial of ricin, or boxcutters.

In the post-September 11 world, our national security depends heavily on our foreign policy, and our foreign policy will be determined largely by our national security needs. Because the light of liberty chases away the shadows of resentment, intolerance, and violence that lead to attacks on America, it is in America's interests to promote freedom and democracy in every corner of the globe.

Democracy and economic development are crucial components to winning the global war on terror. Soon, if we finish our mission, Iraq will be a beacon of economic and political freedom in the Middle East, and the rogue despots of the region will watch helplessly as their citizens demand the freedoms and economic prosperity enjoyed by their Iraqi neighbors. That day will be very uncomfortable for them—and a victory for the free world.

The Department of State must be a primary actor in this mission, because American diplomacy will be the primary force to create a world more favored toward freedom. The global war on terror requires us to cooperate with other nations more than any other global conflict before. It requires focus in parts of the world that were unfamiliar to many Americans 3 years ago. We will need to argue the virtues of liberty and democracy to an audience that may be hearing such arguments for the first time.

America will need to rely on the multinational institutions that have

served her so well in the past to succeed in this new era. Our relations with NATO, the European Union, and other partners must be reassured and reaffirmed. And, just as we formed coalitions of the willing to liberate Afghanistan and Iraq, we should continue to cultivate alliances of democracies when the need arises, to serve as an example to the world that the best method of governing is to seek the consent of the governed.

For all of these hard tasks before us, I can think of no better person to ensure success than Dr. Rice. Her personal courage is eclipsed only by her professional pre-eminence. Her parents aptly named her ''Condoleezza'' after the Italian musical term ''con dolcezza'' which is a direction to play ''with sweetness.'' But she is also brilliant, compassionate, and determined to advance the President's vision of a world free from despotism.

The State Department will play the lead in American foreign policy. Its foreign-service officers are the face of America to millions worldwide. What better way to empower them than by confirming the President's most-trusted advisor as Secretary of State?

I wish to address briefly the criticisms that some of my colleagues have directed at Dr. Rice. As far as I can tell, no one has impugned her ability or moral integrity. Most of the criticisms seem to rest on the concern that she will not make it her primary mission as Secretary of State to disagree with the President.

Think about that. Some would suggest that the Secretary of State's job is to oppose the President's policies. The Senate has not attempted to so micromanage the relationship between the President and a cabinet officer since passing the Tenure of Office Act.

Let me be clear to my colleagues: It is the role of the President to set foreign policy. It is the role of the Secretary of State to execute it.

Of course, as America's top diplomat, Dr. Rice will be expected to bring her expertise on a wide variety of issues to the table. The President has chosen her because he values her opinion. But all foreign policy decisions ultimately rest with the President. For some to suggest that a Secretary of State should be some kind of agitator-in-residence, constantly complicating the implementation of policy, is irresponsible.

Furthermore, Dr. Rice enthusiastically subscribes to President Bush's doctrine of spreading liberty. She was in the White House on September 11 when it was feared the building would come under attack. From a bunker beneath the White House, she watched the footage of those two planes striking the Twin Towers over and over. She was with the President that night, when he first formulated the policy that America would make no distinction between the terrorists who committed those evil acts and those who harbored them.

Dr. Rice was with the President during Operation Enduring Freedom. She was with him when he made the case to the United Nations that Saddam Hussein must face serious consequences. And she was with the President when he decided to liberate Iraq and the world from Saddam Hussein's evil intent.

After sharing so many searing experiences, President Bush and Dr. Rice now share a vision for responding to them. This should be no surprise.

Like the President, Dr. Rice realizes that the challenges we face today are daunting and will take generations to overcome. Winning the Global War on Terror and spreading peace and freedom will not be easy. But few things worth doing are. This administration has taken the long view, and is committed to a long-term strategy, the reward for which is years in the future. Posterity will thank them, and this Congress, for seeing the fight through.

The liberation of Iraq was the right thing to do. We removed a tyrant who had both the means and the motive to attack America or her interests. I urge my colleagues who focus only on the setbacks, mistakes, or tragedies of Operation Iraqi Freedom: Take the long view.

If there had been as many television cameras at Omaha Beach on D–Day as there are in this chamber today, General Eisenhower would have been fired before sunset. War is messy, but history tells us we must see our fights through to the end. The goal of spreading peace and freedom in the Middle East is too important to suffer hypercritical, politicized attacks.

I am happy to praise Dr. Rice today. My experiences with her over the years justify every word I have said. But we should not be debating her nomination today. This Senate should have confirmed her on January 20.

Finally, I wish to leave you with a question for every Member of this body to ponder. It is too easy to snipe from the sidelines at nominees like Dr. Rice, who are willing to make great sacrifices to serve their country. So I ask, what positive actions can this Senate take to further the spread of peace, liberty and democracy over the globe?

I would refer my colleagues to the Asia Freedom Act of 2004, which Senator LUGAR and I proposed last November. The act provides an integrated and coherent framework for U.S. policy towards North and Southeast Asia. It ties U.S. foreign aid to commitments from governments in the region to better their records in democracy, civil liberties, cooperation in the global war on terror, and several other areas. It requires the State Department to judge these governments not by what they say, but rather the concrete actions they undertake to further democracy, security and stability in the region.

This act would contribute to the march of freedom from sea to sea. This is the kind of business this Senate should be focusing on. Advancing freedom, attacking terrorism and ending tyranny is the mission of our time. I have no doubt that this Senate recognizes that and will act with commensurate speed and wisdom.

America has passed weighty tests before. Sixty years ago, emerging wearily from a great war, this country began the struggle with another seemingly entrenched enemy—the Soviet Union and its scourge of Communism. When that battle began, Americans could not know when it would end. But they knew they had to fight it. In 1947, President Harry Truman spoke to a joint session of Congress about this new Cold War. He said, ''Great responsibilities have been placed upon us by the swift movement of events. I am confident that the Congress will face these responsibilities squarely.''

Now it falls to us to face our responsibilities just as squarely. We can, we will, and we must.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, how much time do I have?

The PRESIDING OFFICER. The time is 60 minutes.

Mr. BYRD. I thank the Chair.

Mr. President, in Federalist No. 77, Alexander Hamilton wrote:

> It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing.

Although Hamilton explains the importance of the role of the Senate in the appointment of officers of the United States, neither he nor the Constitution is specific about what criteria Senators must use to judge the qualifications of a nominee. The Constitution only requires that the Senate give its advice and consent. It is therefore left to Senators to use their own judgment in considering their vote. The factors involved in such judgments may vary among Senators, among nominees, and may even change in response to the needs of the times.

The position of Secretary of State is among the most important offices for which the Constitution requires the advice and the consent of the Senate. It is the Secretary of State who sits at the right hand of the President during meetings of the President's Cabinet. The Secretary of State is all the more important today, considering the enormous diplomatic challenges our country will face in the next 4 years.

I commend the Foreign Relations Committee for its work in bringing the

nomination of Dr. Condoleezza Rice to the Senate. Chairman Richard Lugar conducted 2 days of hearings for this nominee and the debate that began in the committee on this nomination is now being continued on the floor of the Senate. Senator BIDEN also provided a voice in great foreign policy experience during those hearings. I was particularly impressed by Senator BOXER who tackled her role on the committee with passion and with forthrightness, as did Senator KERRY.

There is no doubt that Dr. Rice has a remarkable record of personal achievement. She obtained her bachelor's degree at the tender age of 19—get that. Speaking as someone who did not earn a bachelor's degree until I had reached 77 years of age, I have a special appreciation for Dr. Rice's impressive academic achievement. It was a remarkable achievement indeed.

She then obtained a doctorate in international studies and quickly rose through the academic ranks to become provost of Stanford University. Dr. Rice has also gathered extensive experience in foreign policy matters. She is a recognized expert on matters relating to Russia and the former Soviet Union. She has twice worked on the National Security Council, once as the senior adviser on Soviet issues and most recently for 4 years as National Security Adviser.

Dr. Rice has had ample exposure to the nuances of international politics and by that measure she is certainly qualified for the position of Secretary of State.

The next Secretary of State will have large shoes to fill. I have closely watched the career of Colin Powell since he served as National Security Adviser to President Reagan and we worked together during the Senate consideration of the INF treaty of 1988. Colin Powell distinguished himself in his service as chairman of the Joint Chiefs of Staff, particularly during the 1991 Gulf War. When his nomination came before the Senate in 2001, I supported his confirmation and I supported it strongly based upon the strength of his record.

The vote that the Senate will conduct tomorrow, however, is not simply a formality to approve of a nominee's educational achievement or level of expertise. I do not subscribe to the notion that the Senate must confirm a President's nominees barring criminality or lack of experience. The Constitution enjoins Senators to use their judgment in considering nominations. I am particularly dismayed by accusations I have read that Senate Democrats, by insisting on having an opportunity to debate the nomination of Dr. Rice, have somehow been engaged in nothing more substantial than ''petty politics,'' partisan delaying tactics. Nothing, nothing, nothing could be further from the truth.

The Senate's role of advice and consent to Presidential nominations is not a ceremonial exercise. Here is the proof. Here is the record. Here is the document that requires more than just a ceremonial exercise.

I have stood in the Senate more times than I can count to defend the prerogatives of this institution and the separate but equal—with emphasis on the word ''equal''—powers of the three branches of Government. A unique power of the legislative branch is the Senate's role in providing advice and consent on the matter of nominations. That power is not vested in the Senate Foreign Relations Committee, it is not vested in any other committee, nor does it repose in a handful of Senate leaders. It is not a function of pomp and circumstance, and it was never intended by the Framers to be used to burnish the image of a President on Inauguration Day. Yet that is exactly what Senators were being pressured to do last week, to acquiesce mutely to the nomination of one of the most important members on the President's Cabinet without the slightest hiccup of debate or the smallest inconvenience of a rollcall vote.

And so, Mr. President, we are here today to fulfill our constitutional duty to consider the nomination of Dr. Rice to be Secretary of State.

I have carefully considered Dr. Rice's record as National Security Adviser in the 2 months that have passed since the President announced her nomination to be Secretary of State, and that record, I am afraid, is one of intimate—intimate—involvement in a number of administration foreign policies which I strongly oppose. These policies have fostered enormous opposition, both at home and abroad, to the White House's view of America's place in the world.

That view of America is one which encourages our Nation to flex its muscles without being bound by any calls for restraint. The most forceful explanation of this idea can be found in the ''National Security Strategy of the United States,'' a report which was issued by the White House in September 2002. Under this strategy, the President lays claim to an expansive power to use our military to strike other nations first, even if we have not been threatened or provoked to do so.

There is no question, of course, that the President of the United States has the inherent authority to repel attacks against our country, but this National Security Strategy is unconstitutional on its face. It takes the checks and balances established in the Constitution that limit the President's ability to use our military at his pleasure and throws them out the window.

This doctrine of preemptive strikes places the sole decision of war and peace in the hands of a President—one man or woman—and undermines the constitutional power of Congress to declare war. The Founding Fathers required that such an important issue of war be debated by the elected representatives of the people, the people out there, in the legislative branch precisely, because no single man could be trusted with such an awesome power as bringing a nation to war by his decision alone. And yet that is exactly what the National Security Strategy proposes.

Not only does this pernicious doctrine of preemptive war contradict the Constitution, it barely acknowledges the Constitution's existence. The National Security Strategy makes only one passing reference, one small passing reference, to the Constitution. It states that ''America's constitution''—that is ''constitution'' with a small ''c''—''has served us well''—as if the Constitution does not still serve this country well. One might ask if that reference to the Constitution is intended to be a compliment or an obituary.

As National Security Adviser, Dr. Rice was in charge of developing the National Security Strategy. She also spoke out forcefully in favor of the dangerous doctrine of preemptive war. In one speech, she argues that there need not be an imminent threat before the United States attacked another nation. ''So as a matter of common sense,'' said Dr. Rice, on October 1, 2002, ''the United States must be prepared to take action, when necessary, before threats have fully materialized.'' But that ''matter of common sense'' is nowhere to be found in the Constitution. For that matter, isn't it possible to disagree with this ''matter of common sense''? What is common sense to one might not be shared by another. What's more, matters of common sense can lead people to the wrong conclusions. John Dickinson, the chief author of the Articles of Confederation, said in 1787, ''Experience must be our only guide; reason may mislead us.''

As for me, I will heed the experience of the Founding Fathers as enshrined in the Constitution over the reason and ''common sense'' of the administration's National Security Strategy.

We can all agree that the President, any President, has the inherent duty and power to repel an attack on the United States. He doesn't have to call Congress into session to do that. That is a matter that confronts the Nation immediately and the people and our institutions are in imminent danger.

But where in the Constitution can the President claim the right to strike another nation before it has even threatened our country, as Dr. Rice asserted in that speech? To put it plainly, Dr. Rice has asserted that the President holds far more of the warpower than the Constitution grants him.

This doctrine of attacking countries before a threat has ''fully materialized'' was put into motion as soon as the National Security Strategy was released.

Beginning in September 2002, Dr. Rice also took a position on the frontlines of the administration's efforts to hype the danger of Saddam's weapons of mass destruction. Dr. Rice is responsible for some of the most overblown rhetoric that the administration used to scare the American

people into believing there was an imminent threat from Iraq. On September 8, 2002, Dr. Rice conjured visions of American citizens being consumed by mushroom clouds. On an appearance on CNN, she warned, ''The problem here is that there will always be some uncertainty about how quickly he,'' meaning Saddam, ''can acquire nuclear weapons. But we don't want the smoking gun to be a mushroom cloud.''

Dr. Rice also claimed that she had conclusive evidence about Iraq's alleged nuclear weapons program. During that same interview, she also said:

> We do know that he is actively pursuing a nuclear weapon. We do know that there have been shipments going into . . . Iraq, for instance, of aluminum tubes . . . that are really only suited for nuclear weapons programs.

Well, my fellow Senators, we now know that Iraq's nuclear program was a fiction. Charles Duelfer, the chief arms inspector of the CIA's Iraq Survey Group, reported on September 30, 2004 as follows:

> Saddam Husayn ended the nuclear program in 1991 following the Gulf War. [The Iraq Survey Group] found no evidence to suggest concerted efforts to restart the program.

But Dr. Rice's statements in 2002 were not only wrong, they also did not accurately reflect the intelligence reports of the time. Declassified portions of the CIA's National Intelligence Estimate from October 2002 make it abundantly clear that there were disagreements among our intelligence analysts about the state of Iraq's nuclear program. But Dr. Rice seriously misrepresented their disputes when she categorically stated:

> We do know that [Saddam] is actively pursuing a nuclear weapon.

Her allegation also misrepresented to the American people the controversy in those same intelligence reports about the aluminum tubes. Again, Dr. Rice said that these tubes were ''really only suited for nuclear weapons programs.'' But intelligence experts at the State Department and the Department of Energy believed that those tubes had nothing to do with building a nuclear weapon, and they made their dissent known in the October 2002 National Intelligence Estimate. This view, which was at odds with Dr. Rice's representations, was later confirmed by the International Atomic Energy Agency and our own CIA arms inspectors.

Well, Dr. Rice made other statements that helped to build a case for war by implying a link—a link—between Iraq and September 11. On multiple occasions, Dr. Rice spoke about the supposed evidence that Saddam and al-Qaida were in league with each other. For example, on September 25, 2002, Dr. Rice said on the PBS NewsHour:

> No one is trying to make an argument at this point that Saddam Hussein somehow had operational control of what happened on September 11, so we don't want to push this too far, but this is a story that is unfolding, and it is getting clear, and we're learning more. . . . But yes, there clearly are contact[s] between Al Qaeda and Iraq that can be documented; there clearly is testimony that some of the contacts have been important contacts and that there is a relationship there.

Well, what Dr. Rice did not say was that some of those supposed links were being called into question by our intelligence agencies, such as the alleged meeting between a 9/11 ringleader and an Iraqi intelligence agent in Prague that has now been debunked. These attempts to connect Iraq and al-Qaida appear to be a prime example of cherry-picking intelligence to hype the supposed threat of Iraq while keeping contrary evidence away from the American people, wrapped up in the redtape of top secret reports.

Dr. Rice pressed the point even further, creating scenarios that threatened tens of thousands of American lives, even when that threat was not supported by intelligence. On March 9, 2003, just 11 days before the invasion of Iraq, Dr. Rice appeared—where?—on Face the Nation. What did she say? She said:

> Now the al-Qaida is an organization that's quite dispersed and—and quite widespread in its effects, but it clearly has had links to the Iraqis, not to mention Iraqi links to all kinds of other terrorists. And what we do not want is the day when Saddam Hussein decides that he's had enough of dealing with sanctions, enough of dealing with, quote, unquote, ''containment,'' enough of dealing with America, and it's time to end it on his terms, by transferring one of these weapons, just a little vial of something, to a terrorist for blackmail or for worse.

How scary is that?

But the intelligence community had already addressed this scenario with great skepticism. In fact, the CIA's National Intelligence Estimate from October 2002 concluded that it had ''low confidence'' that Saddam would ever transfer any weapons of mass destruction—weapons that he did not have, as it turned out—to anyone outside of his control. This is yet more evidence of an abuse of intelligence in order to build the case for an unprovoked war with Iraq.

And what has been the effect of the first use of this reckless doctrine of preemptive war? In a most ironic and deadly twist, the false situation described by the administration before the war, namely, that Iraq was a training ground for terrorists poised to attack the United States, is exactly the situation that our war in Iraq has created.

But it was this unjustified war that created the situation that the President claimed he was trying to prevent. Violent extremists have flooded into Iraq from all corners of the world. Iraqis have taken up arms themselves to fight against the continuing U.S. occupation of their country.

According to a CIA report released in December 2004, intelligence analysts now see Iraq, destabilized by the administration's ill-conceived war, as the training ground for a new generation of terrorists. That is from the report ''Mapping the Global Future: Report of the National Intelligence Council's 2020 Project,'' page 94.

It should be profoundly disturbing to all Americans if the most dangerous breeding ground for terrorism has shifted from Afghanistan to Iraq simply because of the administration's ill-advised rush to war in March 2003.

Dr. Rice's role in the war against Iraq was not limited to building the case for an unprecedented, preemptive invasion of a country that had not attacked us first. Her role also extends to the administration's failed efforts to establish peace in Iraq.

In October 2003, 5 months after he declared ''mission accomplished,'' the President created the Iraq Stabilization Group, headed by Dr. Rice. The task of the Iraq Stabilization Group was to coordinate efforts to speed reconstruction aid to help bring the violence in Iraq to an end.

But what has the Iraq Stabilization Group accomplished under the leadership of Dr. Rice? When she took the helm of the stabilization group, 319 U.S. troops had been killed in Iraq. That number now stands at 1,368, as of today, Tuesday, January 25, 2005. More than 10,600 troops have been wounded, and what horrible wounds. The cost of the war has spiraled to $149 billion. That is $149 for every minute since Jesus Christ was born. And the White House is on the verge of asking Congress for another $80 billion.

Despite the mandate of the Iraq Stabilization Group, the situation in Iraq has gone from bad to worse. More ominously, the level of violence only keeps growing week after week after week, month after month, and no administration official, whether from the White House, the Pentagon, or Foggy Bottom has made any predictions about when the violence will finally subside.

Furthermore, of the $18.4 billion in Iraqi reconstruction aid appropriated by Congress in October 2003, the administration has spent only $2.7 billion. Now, with these funds moving so slowly, it is hard to believe that the Iraq Stabilization Group has had any success at all in speeding the reconstruction efforts in Iraq. For all of the hue and cry about the need to speed up aid to Iraq, one wonders if there should be more tough questions asked of Dr. Rice about what she has accomplished as the head of this group.

There are also many unanswered questions about Dr. Rice's record as the National Security Adviser. Richard Clarke, the former White House counterterrorism adviser, had leveled scathing criticism against Dr. Rice and the National Security Council for failing to recognize the threat from al-Qaida and Osama bin Laden in the months leading up to the September 11, 2001, terrorist attack. In particular, Mr. Clarke states that he submitted a request on January 25, 2001, for an urgent meeting of the National Security Council on the threat of al-Qaida.

However, due to decisions made by Dr. Rice and her staff, that urgent meeting did not occur until too late. The meeting was not actually called until September 4, 2001.

Mr. Clarke, who was widely acknowledged as one of the Government's leading authorities on terrorism at that time, told the 9/11 Commission he was so frustrated with those decisions that he asked to be reassigned to different issues and the Bush White House approved that request.

Dr. Rice appeared before the 9/11 Commission on April 8, 2004, but, if anything, her testimony raised only more questions about what the President and others knew about the threat to New York City and Washington, DC, in the weeks before the attacks, and whether more could have been done to prevent them.

Why wasn't any action taken when she and the President received an intelligence report on August 6, 2001, entitled ''Bin Laden Determined to Attack Inside the United States''? Why did Dr. Rice and President Bush reassign Richard Clarke, the leading terrorism expert in the White House, soon after taking office in 2001? Why did it take 9 months for Dr. Rice to call the first high-level National Security Council meeting on the threat of Osama bin Laden?

As the Senate debates her nomination today, we still have not heard full answers from Dr. Rice to these questions.

In addition to Mr. Clarke's criticism, Dr. David Kay, the former CIA weapons inspector in Iraq, also has strong words for the National Security Council and its role in the runup to the war in Iraq. When Dr. Kay appeared before the Senate Intelligence Committee on August 18, 2004, to analyze why the administration's prewar intelligence was so wrong about weapons of mass destruction, he described the National Security Council as the ''dog that didn't bark'' to warn the President about the weaknesses of those intelligence reports.

Dr. Kay continued:

> Every President who has been successful, at least that I know of, in the history of this republic, has developed both informal and formal means of getting checks on whether people who tell him things are in fact telling him the whole truth. . . . The recent history has been a reliance on the NSC system to do it. I quite frankly think that that has not served this President very well.

What Dr. Kay appeared to state was his view that the National Security Council, under the leadership of Dr. Rice, did not do a sufficient job of raising doubts about the quality of the intelligence about Iraq. On the contrary, based upon Dr. Rice's statements that I quoted earlier, her rhetoric even went beyond the questionable intelligence that the CIA had available on Iraq in order to hype the threats of aluminum tubes, mushroom clouds, and connections between Iraq and September 11.

In light of the massive reorganization of our intelligence agencies enacted by Congress last year, shouldn't this nomination spur the Senate to stop, look, and listen about what has been going on in the National Security Council for the last 4 years? Don't these serious questions about the failings of the National Security Council under Dr. Rice deserve a more thorough examination before the Senate votes to confirm her as the next Secretary of State?

Mr. President, accountability has become an old-fashioned notion in some circles these days. But accountability is not a negotiable commodity when it comes to the highest circles of our Nation's Government. The accountability of Government officials is an obligation, not a luxury. Yet accountability is an obligation that this President and this President's administration appear loathe to fulfill.

Instead of being held to account for their actions, the architects of the policies that led our Nation down the road into war with Iraq, policies based on faulty intelligence and phantom weapons of mass destruction, have been rewarded by the President with accolades and promotions. Instead of admitting to mistakes in the war on Iraq, instead of admitting to its disastrous aftermath, the President and his inner circle of advisers continue to cling to myths and misconceptions.

The only notion of accountability that this President is willing to acknowledge is the November elections, which he has described as a moment of accountability and an endorsement of his policies. Unfortunately, after-the-fact validation of victory is hardly the standard of accountability that the American people have the right to expect from their elected officials. It is one thing to accept responsibility for success; it is quite another to accept accountability for failure. Sadly, failure has tainted far too many aspects of our Nation's international policies over the past 4 years, culminating in the deadly insurgency that has resulted from the invasion of Iraq.

With respect to this particular nomination, I believe there needs to be accountability for the mistakes and missteps that have led the United States into the dilemma in which it finds itself today, besieged by increasing violence in Iraq, battling an unprecedented decline in world opinion, and increasingly isolated from our allies due to our provocative, belligerent, bellicose, and unilateralist foreign policy. Whether the administration will continue to pursue these policies cannot be known to Senators today as we prepare to cast our vote. At her confirmation hearing on January 18, Dr. Rice proclaimed that our interaction with the rest of the world must be a conversation, not a monologue, but 2 days later, President Bush gave an inaugural address that seemed to rattle sabers at any nation that he does not consider to be free.

Before Senators cast their votes, we must wonder whether we are casting our lot for more diplomacy or more belligerence, reconciliation, or more confrontation. Which face of this Dr. Jekyll and Mr. Hyde foreign policy will be revealed in the next 4 years?

Although I do not question her credentials, I do oppose many of the critical decisions Dr. Rice has made during her 4 years as National Security Adviser. She has a record, and the record is there for us to judge. There remain too many unanswered questions about Dr. Rice's failure to protect our country before the tragic attacks of September 11, her public efforts to politicize intelligence, and her often stated allegiance to the doctrine of preemption.

To confirm Dr. Rice to be the next Secretary of State is to say to the American people and to the world that the answers to those questions are no longer important. Her confirmation will almost certainly be viewed as another endorsement of the administration's unconstitutional doctrine of preemptive strikes, its bullying policies of unilateralism, and its callous rejection of our longstanding allies.

Dr. Rice's record in many ways is one to be greatly admired. She is a very intelligent lady, very knowledgeable about the subject matter, very warm and congenial, but the stakes for the United States are too high. I cannot endorse higher responsibilities for those who helped to set our great country down the path of increasing isolation, enmity in the world, and a war that has no end. When will our boys come home? When will our men and women be able to sit down at the table with their families and their friends in their own communities again? For these reasons, I shall cast my vote in opposition to the confirmation of Condoleezza Rice to be the next Secretary of State.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HAGEL. Mr. President, I rise today in support of President Bush's nominee for Secretary of State, Dr. Condoleezza Rice.

Hers is a remarkable personal story, from her upbringing in Birmingham, AL, during the era of Bull Connor, to the White House, to her nomination as Secretary of State. She is a woman of many parts, an accomplished musician, a leading academic and policy intellectual, and a dedicated public official. This is a nomination all of America can be proud of.

Dr. Rice has served with distinction as assistant to the President for national security, as well as in other National Security Council positions. She comes to this job well-qualified and prepared to take on her new responsibilities.

America's challenges over the next four years will be formidable. U.S. foreign policy cannot be separated from our energy, economic, defense and domestic policies. It all falls within the ''arch of our national interest.'' There will be windows of opportunity, but they will open and close quickly.

Foreign policy will require a strategic agility that, whenever possible, gets ahead of problems, strengthens U.S. security and alliances, and promotes American interests, credibility, and global freedom.

Last week, Dr. Rice faced approximately 11 hours of probing and difficult questions about U.S. foreign policy, including the war in Iraq. Dr. Rice deserves credit for her thoughtful answers, patience, and I might say, grace under that questioning.

In her testimony, Dr. Rice said that, ''the time for diplomacy is now.'' She understands that our success in the war on terrorism, Iraq, the Middle East, and throughout the world depends on the strength of our alliances. Our alliances should be understood as a means to expand our influence, not as a constraint on our power. The expansion of democracy and freedom in the world should be a shared interest and value with all nations.

Dr. Rice also noted that, ''America and all free nations are facing a generational struggle against a new and deadly ideology of hatred that we cannot ignore.'' She stressed the importance of public diplomacy to counter this ideology of hate, including increasing our exchanges with the rest of the world. A unilateralist course would only complicate our relations with the Muslim world.

Dr. Rice's nomination has offered an opportunity for the Senate to consider not only the merits of the nominee, but the foreign policy challenges that we face. The Senate should be a forum for debate about foreign policy.

The former Chairman of the Senate Foreign Relations Committee, J. William Fulbright, observed that the Congress has a:

> traditional responsibility, in keeping with the spirit if not the precise words of the Constitution, to serve as a forum of diverse opinions and as a channel of communication between the American people and their government.

Chairman LUGAR's distinguished leadership of the Foreign Relations Committee has been in concert with the former chairman's words.

Senator Fulbright received criticism for holding public hearings on Vietnam, especially with a President of his own party in office.

He later wrote that he held those hearings:

> in the hope of helping to shape a true consensus in the long run, even at the cost of dispelling the image of a false one in the short run.

The Senate should not be party to a false consensus on Iraq. The stakes are too high.

America is fighting a counter-insurgency war in a complicated and diverse region, in a country with an intense and long standing anti-colonial tradition, deep ethnic and sectarian divisions, and a political system and culture brutalized for more than three decades by a tyrannical dictatorship, more than a decade of international sanctions, and three costly wars.

America's exit strategy for Iraq is linked to the capabilities of the Iraqi government and security forces to take responsibility for their future. That has not yet happened. Iraq may be free, but it is not yet stable, secure, or governable. Since Iraq's liberation, American and coalition forces are what have held the country together.

Despite the sacrifice and courage of our brave men and women fighting in Iraq, and the sacrifice and courage of many Iraqis, the Iraqi state cannot yet reliably deliver services or security to its people.

The elections on January 30 will be a critical benchmark for Iraqi sovereignty. Elections alone will not bring stability and security to Iraq. But they are an essential and historic step.

All Americans should be concerned about what is happening in Iraq. Iraq will influence and constrain America's foreign policy for years to come. It is our top foreign policy priority, and there are no easy answers or easy options.

Hopefully, Iraq will someday be a democratic example for the Middle East. But Iraq could also become a failed state. We cannot let this happen.

These are big issues that will affect every American in some way. The Senate is an appropriate forum to debate our policies that will be applied to dealing with these issues.

To sustain any foreign policy will require the informed consent of the American people through their voices in Congress. Dr. Rice understands this clearly.

Let me conclude by once again noting that Dr. Rice has the intelligence, experience, and integrity for this job. She has the President's confidence.

In my interactions and conversations with Dr. Rice over the last four years, she has always been candid and honest, and she listens. It is also important that Dr. Rice always be brutally frank with the President. She must give him the bad news as well as the good news, and when she disagrees with other members of the Cabinet and the President and Vice President, she must say so. I believe she will do that.

I look forward to working with Dr. Rice in support of American interests and security. I urge my colleagues to vote in favor of her nomination.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Virginia, Mr. ALLEN.

Mr. ALLEN. Mr. President, I rise today to voice my strong support of the nomination of Dr. Condoleezza Rice to be our next Secretary of State. She comes to this position and this nomination with unquestioned credentials and the experience to carry out the U.S. foreign policy during these very trying times. She is, in my view, the personification of the American dream. Although she grew up in the days of segregation, applying herself and working hard allowed her to advance through academia, and clearly also in this President's administration.

The goals of this administration are not just the goals of the Bush administration; they ought to be the goals of America and all other freedom-loving people around the world.

Dr. Rice, in her testimony before the Foreign Relations Committee, talked about the advancement of freedom. The President mentioned it several times in his inaugural address. What we aim to do as Americans, for our own security but also because of our care for fellow human beings here on this Earth, is to make sure they have freedom—freedom of opportunity regardless of one's race, ethnicity, gender, or religious beliefs.

We are trying to advance what I like to call the four pillars of freedom: No. 1, freedom of religion; No. 2, freedom of expression; No. 3, private ownership of property; and, No. 4, the rule of law to help adjudicate disputes as well as protect those God-given rights.

Dr. Rice, through her own life history and through her service to this administration, has the background that is going to help us and help others during this heroic time.

The President nominated Dr. Rice because he trusts her. She has provided him counsel during these turbulent times in our Nation's history. She was part of the effort in formulating the Nation's response and ultimately toppling a despotic and repressive regime in Afghanistan.

Following the 9/11 attacks in the United States, the world recognized the necessity of having a global, international war against terrorism. As National Security Adviser, Dr. Rice had been at the forefront of this effort and advised President Bush on how best to execute the war on terror and help ensure that the United States is not attacked again.

The global war on terror is not over. We all know it is ongoing and we know it is challenging. There have been some criticisms from those on the other side of the aisle, but there are also positives. It would be nice, once in a while, to talk about some of the positives.

We have captured numerous senior-level al-Qaida figures. They have been killed or they have been captured, and hundreds of others are on the run.

We are working with other countries—even those which are not necessarily with us in the military action in Iraq. They are helping in trying to intercept financial assistance to terrorist organizations.

Another positive is the fall of the Taliban in Afghanistan, and that repressive regime has been replaced by an unprecedented but promising democracy in Afghanistan.

The Government of Pakistan, which, prior to 9/11, was aligned with that Taliban government in Afghanistan, has become a strong and helpful ally in the global war against terrorism.

In Libya, Muammar Qadhafi, who was a thorn in our side—a threat, clearly; a terrorist state—has been convinced to give up his nuclear ambitions and rejoin the world community.

And our military has liberated 25 million Iraqis from the murderous regime of Saddam Hussein.

While conditions on the ground in Iraq continue to be difficult—no one is going to question that—if the Iraqis coalesce around the new, popularly elected government, it will likely have the positive repercussions that we would like to see throughout the Middle East region. Shortly they will be having an election.

I think Dr. Rice's active role in these events provide her with valuable preparation to serve our country as Secretary of State. Having worked closely with President Bush on national security and foreign policy matters for the previous 4 years, Dr. Rice is uniquely qualified to communicate this President's message, our position, to capitals around the world.

All of us are a composition of our life experiences. From rising above discrimination and racism in her youth to her work during the fall of the Soviet Union, to her role in liberating the people of Afghanistan and Iraq, Dr. Rice is very well prepared to advocate freedom and democracy around the world.

Before the Foreign Relations Committee we heard several hours of testimony. We have heard comments in this Chamber. Detractors have used some bump-and-run defenses and tactics against her. Opponents have framed the war on Iraq—and Dr. Rice as having stated this—as one solely based on Saddam Hussein's possession of weapons of mass destruction; that our only reason for going in and using military action in Iraq was weapons of mass destruction.

I will grant you, that was a pressing, salient concern, but that was not the only reason. Weapons of mass destruction was a major reason; however, this body voted on an authorization measure that outlined a much broader case. If you want to use a legal term, it was a multi-count indictment against the Saddam Hussein regime.

The resolution that we passed by a strong margin noted Iraq's brutal repression of its civilian population and its unwillingness to repatriate non-Iraqi citizens. We all know how they had used weapons of mass destruction against their own people.

Congress also went on record as supporting using the necessary means to enforce multiple United Nations resolutions that had been ignored and flouted by the Iraqi regime, including shooting at some of our planes in the no-fly zones in the north and to some extent in the southern part of Iraq as well.

The Iraq Liberation Act of 1998 expressed the sense of Congress that it should be the policy of the United States to support efforts to remove from power Saddam's regime and promote the emergence of a democratic government.

Senator BYRD—and I was listening to his comments—mentioned common sense. I listened to the remarks of the senior Senator from Massachusetts, Mr. KENNEDY, earlier on. He is criticizing Dr. Rice for supporting President Bush's policies. He said that ''might have changed the course of history had she not given the reasons and the advice that she did to the President.''

Because of that, that she agrees with President Bush, has been an architect and key adviser, because of that support, because of that knowledge, because of the advice she has given in the past and presently, she should not be Secretary of State for this President.

If one wants to use common sense, why would any Executive bring on a Cabinet Secretary—particularly one as important as Secretary of State—if that person does not share his views, his values, his philosophy, his goals for our country, as well as have that President's trust?

Also, looking through the comments that have been made by others, the junior Senator from Indiana said why he is going to be voting against Dr. Rice, complaining that there was too little troop strength, dismissal of the Iraqi army, and the refusal to include Baathists in the armies and security efforts there in Iraq. Opponents have held Dr. Rice personally accountable for the decision to disband the Iraqi army and remove members of the Baathist Party from Iraq's government.

Let us again use some common sense. When we are reflecting on this decision, it is easy, I suppose, to Monday morning quarterback and criticize and question whether that was wise. But at the time of that decision—it was clear that institutions that were repressing the people of Iraq was the Baathist Party. So the Baathist component of the insurgency, which some are saying should have been incorporated, they are the ones who are carrying on these terror attacks—not just on Americans and coalition forces but also on Iraqi civilians.

To me, it is illogical to be criticizing Dr. Rice for any of the decisions that were made insofar as Baathists and the security forces of Iraq when these same people could have been infiltrating the security forces, not knowing what sort of information they might transmit to other guerillas or terrorists on the outside. To criticize that, again, doesn't make much sense to me because they are the ones who are most concerned that the Baathist Party was thrown out of power. They had their good bureaucratic jobs. They had all the power. They had all the privileges. To criticize for not incorporating them into the interim government and the security forces doesn't make a great deal of sense.

You also hear, again, from the junior Senator from Indiana—and others have said this as well—that those in charge must be held accountable for the mistakes. That is why they are going to vote against Dr. Rice. Dr. Rice allowed in the committee hearing of the Foreign Relations Committee that every decision that was made was not the right decision; that they did it with the best of intentions, the right principles, based on the evidence and information they had. But if you are going to criticize the pursuit of regime change, the liberation of Iraq, the advancement of freedom in countries such as Iraq, which is in very short order, within a week, going to have elections for the first time ever, what is the solution if you are going to criticize all of this? To tuck tail and run? I don't think that is what the American people want. The American people want to see freedom in Iraq because they recognize it is good for fellow human beings, but also the logic that it also makes this country much more secure.

In analyzing all of the statements, they are not talking about her fitness or her qualifications to serve as Secretary of State. The opponents have used this nomination to launch these broadside attacks on the Bush administration and use the Monday morning quarterback approach to dissect every decision out of context. We have heard about a lot of this, again, in the Foreign Relations Committee.

But even there, I want to repeat, Dr. Rice did not say that every decision was perfect. She allowed as much during those hearings. But let us also note that 25 million Iraqis have been freed from Saddam's repressive regime. In 5 days, these people are going to have elections. They are going to be forming their own government. From statements of clerics and otherwise, they seem to want a constitution and a government that allows for individual rights, where people's rights will be enhanced and not diminished on account of their ethnicity or their religious beliefs, and also unprecedented opportunities for women to serve in government.

One other thing to note is with Saddam out of power, which seems to be criticized indirectly, we don't have Saddam's regime giving $35,000 to parents to send their children on suicide-murder missions into Israel. Instead of that repressive regime sending terrorist attackers into Israel, also disrupting the whole region, now we have the chance of elections in Iraq for the first time ever, a first step towards a representative democracy.

I ask my colleagues to be cognizant. This is not an agency head. It is a Cabinet Secretariat, the Secretary of State, which is arguably the most important Cabinet position in the Government. The Vice President obviously is very important, but the Secretary of State, particularly in a time with all the diplomatic relations and all the efforts that we are going to need to be making and continue to make to get allies, converts, and assistance from other countries around the world, it is important that the President's representative to the rest of the world is a person who advocates and garners further support for our position in matters of great consequence to our country.

I ask my colleagues to be careful in your criticism. People can say whatever they want. They will say something, and I will say that doesn't make sense; here is a more logical approach. That sort of bantering back and forth is fine. But in the criticism and statements and also trying to divide opinion on this nomination of Dr. Rice, be careful not to diminish her credibility in the eyes of those in capitals around the world. Detractors can do this country a great disservice by playing too hard a partisan game. We need to show a unity of purpose to advance freedom. Folks can second-guess, criticize. That is all fine. But while doing that, a more positive and constructive approach would be to say, here is where a mistake was made; here is where we need to hitch up; here is the stage of events in Iraq; and here are some positive, constructive ideas to help us achieve this goal; that all Americans, regardless of whether you are Republican, Democrat, Independent, or don't care about politics, all Americans are inspired to the idea that our fellow human beings can live in freedom and opportunity; that their children are not starving and hungry when they go to bed, where there is a better world.

Indeed, our new doctrine is peace through liberty, peace through strength. That mattered against the Soviet Union. The doctrine in the future, in my view, is peace through liberty. As more people are tasting that sweet nectar of liberty, it is good for them, and it helps our security as a country.

As we listen to some of these partisan detractors and statements, be cognizant that the rest of the world is watching. Do not diminish Dr. Rice's credibility in capitals around the world. Also, try to be positive in your ideas of where we need to go in the future rather than just carping and sniping on decisions made in the past. I do not see any value in attacking Dr. Rice personally or inhibiting her ability to bring our allies along, on board, whether or not they were in every aspect of the military action in Iraq.

In sum, obviously, I believe Dr. Rice will be an outstanding Secretary of State. It is unfortunate some of this has devolved into an overly partisan attack. This debate, as it goes forward this afternoon, this evening, and tomorrow, can end on a more positive, constructive sense. I ask my colleagues in a respectful way to recognize that inspirational path that Dr. Rice has taken to this nomination. Please focus and review her impeccable credentials and experience on the matters of foreign policy. Upon doing so, I believe it is clear she should be confirmed overwhelmingly, strongly, and proudly as our next Secretary of State.

I ask unanimous consent that an article from today's Wall Street Journal by Brendan Miniter entitled ''Woman of the Year, Instead of Celebrating Condi Rice, Democrats Nip at Her Ankles,'' be printed in the RECORD.

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

[From the Wall Street Journal, Jan. 25, 2005]

WOMAN OF THE YEAR:

INSTEAD OF CELEBRATING CONDI RICE, DEMOCRATS NIP AT HER ANKLES

(By Brendan Miniter)

With 24 new women elected to the House and five to the Senate, 1992 was called the ''year of the woman.'' But how much did Barbara Boxer, Patty Murray or Carol Moseley Braun really change the world? Now, though, a woman is on the rise who has already helped reshape geopolitics. Today Condoleezza Rice will face another round of hearings as she prepares to be confirmed as secretary of state—a position Thomas Jefferson, James Madison and James Monroe used as a springboard into the presidency. If Ms. Rice were a Democrat, the media would have dubbed 2005 the ''year of Condi.''

Ms. Rice has already exerted tremendous influence on world affairs. As President Bush's national security adviser, she was instrumental in developing the administration's response to 9/11 into a policy that involved more than raiding terrorist camps throughout the world. Ms. Rice, who well understands the larger global political forces at work since the end of the Cold War, was one of a handful of powerbrokers who came to realize the best defense against terrorism was to spread freedom and democracy in the world.

There has been some public doubt whether Ms. Rice actually believes in the policies of this administration. But that has been much wishful thinking by administration critics. Before the Iraq war, she passionately made the case for removing Saddam Hussein. Minutes before one speech on the issue—at an event sponsored by the Manhattan Institute—I had the opportunity to talk with her one on one about Iraq. What I quickly realized was that the policy of peace through liberty was something she cared personally about. Now, as she has been tapped to head the State Department and after President Bush dedicated his second inaugural address to the idea that America's best defense is promoting human liberty, there should be little doubt as to the central role Ms. Rice has played and will continue to play in shaping American foreign policy and the global political landscape.

Ms. Rice has been loyal to Mr. Bush, but she is an intellectual power in her own right. She has the president's ear and has been deeply immersed in the movement to halt the spread of tyranny by waging a war of ideas since long before Ronald Reagan consigned the Soviet Union to the ash heap of history. This is the year Ms. Rice steps onto the public stage; a year her influence and her intellect is no longer confined to the quiet rooms of power. Her rise deserves to be celebrated.

That it isn't—and that Senate Democrats instead are delaying her confirmation—says more about the Bush administration's opponents than it does about her. Every day she must face those who would rather that someone like her—with her intelligence, political savvy and personal appeal (and anyone who has met her knows, she has a warm, personal touch)—hadn't come along at all. So they ignore her, deny her influence or send out a legion of ankle biters who recycle the same complaints that won John Kerry 251 electoral votes—mostly that the administration she serves promotes torture or that she is too much of a hardliner to soothe relations with other nations.

These criticisms ring hollow, of course. The Abu Ghraib prosecutions dispel the accusations of systematic torture. As for soothing relations, either foreign leaders see their interests in line with the U.S. or the divisions will persist. France and Germany aren't childishly sulking about some perceived personal rebuke; they genuinely disagree with American policies. Only by subverting American foreign policy could anyone engender the kind of international ''cooperation'' John Kerry and the Democratic establishment so desperately seek.

Ms. Rice has persisted in the face of her critics. It is no wonder then, that some on the right speculate that she will one day seek elective office—governor or senator in California, or maybe even the presidency. It is a plausible idea. A high profile and good character translate into political power, and she has enough of both to be a political player. Of course, before doing so she'd have to flesh out her views on a wide range of domestic subjects. It's also one of the reasons Democrats would like to tarnish her now, before she becomes a formidable candidate. It is a fair bet, though, that Ms. Rice isn't now playing for a new job four years out. Serving ably as secretary of state is of paramount importance. Judging by her remarks before the Senate so far, this is something Ms. Rice clearly understands. Which is why we should be celebrating this as the year of Condi Rice.

The PRESIDING OFFICER (Mr. BURNS). The Senator from California.

Mrs. BOXER. Mr. President, I compliment my colleagues on both sides of the aisle for a very good and thoughtful debate today on this particular nominee.

I come to the Senate today to report and inform my colleagues on the Secretary of State confirmation hearings held in the Foreign Relations Committee last week.

By now, everyone knows I posed some very direct questions to Dr. Rice about her statements leading up to the Iraqi war and beyond. As National Security Adviser, Dr. Rice gave confidential advice to the President regarding the war in Iraq. She also made the case for the war in Iraq to the American people through hours of television appearances and commentary.

My questions, every one of them, revolved around her own words. As a result of my questions and comments at the hearing, I have been hailed as both a hero and a petty person. I have been called both courageous and partisan. I have been very surprised at this response. Tens of thousands of people signed a petition asking me to hold Dr. Rice accountable for her past statements.

The reason I am so surprised at this reaction is that I believe I am doing my job. It is as simple at that. I am on the Foreign Relations Committee. This is a very high profile nominee. This is a Secretary of State nomination in a time of war. My constituents want me to be thorough. They want me to exercise the appropriate role of a Senator.

Let's look for a moment at what that role is, how it was defined by our Founding Fathers. Article II, section 2, clause 2, of the Constitution, which I have sworn to uphold, says the President:

shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all

other officers of the United States, whose appointments are not herein otherwise provided for.

The Cabinet is covered in Article II, section 2, clause 2, of the U.S. Constitution.

Now, if you read this, it does not say anywhere in here that the President shall nominate and the Senate shall confirm. It says the President ''shall nominate, and by and with the Advice and Consent of the Senate'' shall make the appointments.

Why is it our Founders believed it was crucial for the Senate to play such a strong role in the selection of these very important and powerful members of the administration and members of the bench? It is because our Founders believed that the executive branch must never be too powerful or too overbearing.

In Federal No. 76, Alexander Hamilton wrote:

It will readily be comprehended that a man who had himself the sole disposition of offices would be governed much more by his private inclinations and interests than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body . . .

In today's vernacular, any President needs a check and balance. That certainly applies today, and it would apply to a Democratic President as much as to a Republican President.

Our Founders are clear, and the Constitution is clear. Again, it does not say anywhere in the Constitution that a President, Democratic or Republican, has free rein in the selection of his or her Cabinet. That is exactly what the Founders did not want. They wanted the President, and I will quote Alexander Hamilton again, to ''submit the propriety of his choice to the discussion and determination of a different and independent body.'' And that body is the Senate.

It also doesn't say anywhere in the Constitution that the only reason for a Senator to vote no on a Presidential nominee is because of some personal or legal impediment of that nominee. It leaves the door open. Senators have to ponder each and every one of these nominations. It is very rare that I step forward to oppose one. I have opposed just a couple. I have approved hundreds.

Let me be clear. I will never be deterred—and I know my colleagues feel the same, I believe, on both sides of the aisle—I will never be deterred from doing a job the Constitution requires of me or it would be wrong to have taken the oath and raise my right hand to God and swear to uphold the Constitution if I did not take this role seriously.

I make a special comment to the White House Chief of Staff, who called Members of the Senate petty for seeking time to speak out on this particular nomination. It is important to know that the White House Chief of Staff does a great job for the President, but he does not run the Senate. I know he finds the constitutional requirement of advice and consent perhaps a nuisance, and others have as well in the White House, be they Republicans or Democrats. It is the system of government we have inherited from our Founders. As we go around the world, hoping to bring freedom and liberty to people, we better make sure we get it right here. This is very important, whether it is fair and free elections that really work so people do not stand in line for 10 hours and wait until 4 in the morning to vote, that we fix that, and that we, in fact, act as a check and balance in these nominations.

I have been motivated by a lot of people in my life. One of them is Martin Luther King. I wish to share something he said which is not as widely quoted as other things. He said that our lives begin to end the day we become silent about things that matter. That is important for everyone to take to heart. Sometimes it is easier to be silent, to just go along, even if in your heart you know there are certain issues that have to be put out on the table. But the fact is, our lives begin to end the day we become silent about things that matter.

Why does this nomination matter so much to me and to my constituents and to the tens of thousands who signed a petition that they sent to me? It is because we are looking at a Secretary of State nomination in a time of war, someone who is very loyal to this President. And, of course, the President picked someone loyal to him. I do not fault him for that in any way, shape, or form. But what matters is this war. A very strong majority of Americans are worried about this war, and they are worried about what comes next.

So, yes, it matters, and it is our job to look at these nominees very seriously. I think it would be terribly condescending to have someone of the caliber of Dr. Rice, with all her intelligence and qualifications and her record of public service with this administration, and not ask the tough questions. That would be condescending. That would be wrong.

Now, I am so honored to serve on the Foreign Relations Committee with the Senator from Virginia, who just made a very eloquent talk. I know he would join me in saying that RICHARD LUGAR is one of the fairest chairmen with whom we have ever served. He allowed members on both sides of the aisle to ask any questions they wanted. He supported our right to do so. To me, RICHARD LUGAR is a model chairman. And I want to thank my colleagues on both sides of the aisle who asked very important questions of this nominee on everything from exit strategy in Iraq, to issues surrounding the torture question, to policies in Latin America, to tsunami relief. All of these colleagues from both sides of the aisle asked very important questions. As for me, I had five areas of questioning, and I want to lay them out briefly for the Senate.

Now, one more point as to why I believed it was so important to ask Dr. Rice these questions. I think everyone remembers when Dr. Rice went on television and talked about the mushroom cloud that we could get courtesy of Saddam Hussein—an evil tyrant, absolutely. In my opinion, as I said in the committee, he ought to rot. So let's not get confused on that point. I do not know any American who feels any differently. The question is, How many people had to die? That is an important question. How many people had to be wounded? That is an important question.

Let me tell you, 1,368 soldiers are dead, as of the latest numbers that we got this morning from the Department of Defense, and 10,502 wounded. My understanding is that about a third of them may well come home in tremendous need of mental health counseling to try to help them cope with the horrors they have seen, those brave, incredible soldiers. As I said in the committee, and I say it again on the floor of the Senate, not one of them died in vain. Not one of them got injured in vain because when your Commander in Chief sends you to fight in a war, it is the most noble of things to do that. And they have done that.

President Bush, in his inaugural address, talked about bringing freedom to countries that do not have it. He did not specify how. Now, the nongovernmental organization, Freedom House, estimates there are 49 countries in the world that are not free. The group believes there are another 54 countries that are considered only partly free. I worry about sending more troops on military missions based on hyped up rhetoric. That is why these questions are so important.

So the first set of questions that I posed to Dr. Rice had to do with her comments about Saddam's nuclear program. On July 30, 2003, Dr. Rice was asked by PBS NewsHour's Gwen Ifill if she continued to stand by the claims made about Saddam's nuclear program in the days and months leading up to the war.

In what appears to be an effort to downplay the nuclear weapons scare tactics, she said:

It was a case that said he is trying to reconstitute. He's trying to acquire nuclear weapons.

And then she says:

Nobody ever said that it was going to be the next year. . . .

Well, that was false, because 9 months before that, this is what the President said:

If the Iraqi regime is able to produce, buy, or steal an amount of highly enriched uranium a little larger than a single softball, it could have a nuclear weapon in less than a year.

So she tells the American people nobody ever said he would have a weapon within a year, when in fact the President himself made that comment.

Then, later, a year after she said nobody has ever said this, she herself says it:

. . . the intelligence assessment was that he was reconstituting his nuclear programs;

that, left unchecked, he would have a nuclear weapon by the end of the year. . . .

That is what she says to Fox News.

So first she says nobody ever said it. We showed her the fact that the President did. And then she contradicts herself. She contradicts the President and then she contradicts herself.

Now, this is very troubling. I wanted to give her a chance to correct the record. Did Dr. Rice correct the record? Let me tell you what she said. She had two responses. First she said to this committee, my committee:

The fact is that we did face a very difficult intelligence challenge in trying to understand what Saddam Hussein had in terms of weapons of mass destruction.

Notice she does not mention the word ''nuclear weapons.'' And she says: We had a very difficult challenge. But that is a contradiction because on July 31, 2003, this is what she told a German TV station:

Going into the war against Iraq, we had very strong intelligence. I've been in this business for 20 years. And some of the strongest intelligence cases that I've seen. . . . We had very strong intelligence going in.

So she tells the committee: We faced a difficult intelligence challenge—when she had told a German TV station: It was the best intelligence we ever had. This is contradictory, plus she never ever addresses the issue that we asked her about. Why did you contradict the President and why did she contradict herself?

Then she had a second response. She pointed to the Duelfer report and cited it but failed to tell the whole story where the Duelfer report said:

Saddam Hussein ended the nuclear program in 1991 following the Gulf War.

There you go. She never said that. She never cited that. She cited other quotes from the Duelfer report.

So her answers to the questions I asked her, saying once that Saddam would not have a weapon within a year, and another to me saying he would, her answers are completely nonresponsive to the question and raise more credibility lapses.

Then we have another area of aluminum tubes. On September 8, 2002, Dr. Rice was on CNN's Late Edition with Wolf Blitzer and made this statement:

We do know that there have been shipments going . . . into Iraq, for instance, of aluminum tubes that really are only suited to . . . nuclear weapons programs. . . .

And then President Bush repeated the same thing:

Our intelligence sources tell us that (Saddam) has attempted to purchase high-strength aluminum tubes suitable for nuclear weapons production.

I pointed out to Dr. Rice that the Department of Energy thought otherwise as far back as April 11, 2001. They said the ''specifications [for the tubes] are not consistent with a gas centrifuge end use. . . .''

On May 9, 2001, they said:

The Intelligence Community's original analysis of these tubes focused on their possible use in developing gas centrifuges for the enrichment of uranium. Further investigation reveals, however, Iraq has purchased similar aluminum tubes previously to manufacture chambers for a multiple rocket launcher.

In other words, not suitable for nuclear weapons.

Then in July 2002, Australian intelligence said tube evidence is ''patchy and inconclusive.'' And IAEA said they are ''not directly suitable'' for uranium enrichment and are ''consistent'' with making ordinary artillery rockets.

So we laid this all out there for Dr. Rice, and she refused again to correct the record. She had a chance.

This is what she said at the hearing after she saw all of this:

We didn't go to war because of aluminum tubes.

That is what she said to the committee. Well, if that is the case, why did President Bush cite the aluminum tubes in his speech in which he made the case for the war? He said:

Our intelligence sources tell us that he [Saddam] has attempted to purchase high strength aluminum tubes suitable for nuclear weapons production.

So you can't say that the aluminum tubes were not a reason for going to war when the President used it in his speech where he was building support for the war. She doesn't answer the question. She doesn't correct the record. It is very troubling.

The third issue I raised was the matter of linking Saddam to al-Qaida which she did over and over again. I voted for the war against Osama bin Laden. I believed the President when he said we are going to get him dead or alive. I thought we wouldn't stop—we wouldn't turn away—and that we would not end until we broke the back of al-Qaida.

Well, unfortunately, when we went into Iraq—and this was sold to us in part by Dr. Rice; she viewed that as her job; I think the President gave that job to her—we took our eye off al-Qaida. We took our eye off bin Laden. And the consequences are being seen and felt.

Dr. Rice told the committee that the terrorists ''are on the run.'' The truth is, they are now in 60 countries when before 9/11 they were in 45 countries.

I want to read to you a paragraph that best expresses my views on the impact of the Iraqi war on the war against terrorism. It was written by one of the world's experts on terror, Peter Bergen, 5 months ago:

What we have done in Iraq is what bin Laden could not have hoped for in his wildest dreams: We invaded an oil-rich Muslim nation in the heart of the Middle East, the very type of imperial adventure that bin Laden has long predicted was the United States' long-term goal in the region. We deposed the secular socialist Saddam, whom bin Laden long despised, ignited Sunni and Shia fundamentalist fervor in Iraq, and have now provoked a ''defensive'' jihad that has galvanized jihad-minded Muslims around the world. It is hard to imagine a set of policies better designed to sabotage the war on terrorism.

This conclusion was supported by the CIA Director's think tank.

I ask unanimous consent to print in the RECORD an article that describes this recent report that says Iraq has replaced Afghanistan as the training ground for the next generation of ''professionalized'' terrorists.

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

[From the Washington Post, Jan. 14, 2005]

IRAQ NEW TERROR BREEDING GROUND; WAR CREATED HAVEN, CIA ADVISERS REPORT

(By Dana Priest)

Iraq has replaced Afghanistan as the training ground for the next generation of ''professionalized'' terrorists, according to a report released yesterday by the National Intelligence Council, the CIA director's think tank.

Iraq provides terrorists with ''a training ground, a recruitment ground, the opportunity for enhancing technical skills,'' said David B. Low, the national intelligence officer for transnational threats. ''There is even, under the best scenario, over time, the likelihood that some of the jihadists who are not killed there will, in a sense, go home, wherever home is, and will therefore disperse to various other countries.''

Low's comments came during a rare briefing by the council on its new report on long-term global trends. It took a year to produce and includes the analysis of 1,000 U.S. and foreign experts. Within the 119-page report is an evaluation of Iraq's new role as a breeding ground for Islamic terrorists.

President Bush has frequently described the Iraq war as an integral part of U.S. efforts to combat terrorism. But the council's report suggests the conflict has also helped terrorists by creating a haven for them in the chaos of war.

''At the moment,'' NIC Chairman Robert L. Hutchings said, Iraq ''is a magnet for international terrorist activity.''

Before the U.S. invasion, the CIA said Saddam Hussein had only circumstantial ties with several al Qaeda members. Osama bin Laden rejected the idea of forming an alliance with Hussein and viewed him as an enemy of the jihadist movement because the Iraqi leader rejected radical Islamic ideals and ran a secular government.

Bush described the war in Iraq as a means to promote democracy in the Middle East. ''A free Iraq can be a source of hope for all the Middle East,'' he said one month before the invasion. ''Instead of threatening its neighbors and harboring terrorists, Iraq can be an example of progress and prosperity in a region that needs both.''

But as instability in Iraq grew after the toppling of Hussein, and resentment toward the United States intensified in the Muslim world, hundreds of foreign terrorists flooded into Iraq across its unguarded borders. They found tons of unprotected weapons caches that, military officials say, they are now using against U.S. troops. Foreign terrorists are believed to make up a large portion of today's suicide bombers, and U.S. intelligence officials say these foreigners are forming tactical, ever-changing alliances with former Baathist fighters and other insurgents.

''The al-Qa'ida membership that was distinguished by having trained in Afghanistan will gradually dissipate, to be replaced in part by the dispersion of the experienced survivors of the conflict in Iraq,'' the report says.

According to the NIC report, Iraq has joined the list of conflicts—including the Israeli-Palestinian stalemate, and independence movements in Chechnya, Kashmir, Mindanao in the Philippines, and southern Thailand—that have deepened solidarity

among Muslims and helped spread radical Islamic ideology.

At the same time, the report says that by 2020, al Qaeda ''will be superseded'' by other Islamic extremist groups that will merge with local separatist movements. Most terrorism experts say this is already well underway. The NIC says this kind of ever-morphing decentralized movement is much more difficult to uncover and defeat.

Terrorists are able to easily communicate, train and recruit through the Internet, and their threat will become ''an eclectic array of groups, cells and individuals that do not need a stationary headquarters,'' the council's report says. ''Training materials, targeting guidance, weapons know-how, and fund-raising will become virtual (i.e. online).''

The report, titled ''Mapping the Global Future,'' highlights the effects of globalization and other economic and social trends. But NIC officials said their greatest concern remains the possibility that terrorists may acquire biological weapons and, although less likely, a nuclear device.

The council is tasked with midterm and strategic analysis, and advises the CIA director. ''The NIC's goal,'' one NIC publication states, ''is to provide policymakers with the best, unvarnished, and unbiased information—regardless of whether analytic judgments conform to U.S. policy.''

Other than reports and studies, the council produces classified National Intelligence Estimates, which represent the consensus among U.S. intelligence agencies on specific issues.

Yesterday, Hutchings, former assistant dean of the Woodrow Wilson School of Public and International Affairs at Princeton University, said the NIC report tried to avoid analyzing the effect of U.S. policy on global trends to avoid being drawn into partisan politics.

Among the report's major findings is that the likelihood of ''great power conflict escalating into total war . . . is lower than at any time in the past century.'' However, ''at no time since the formation of the Western alliance system in 1949 have the shape and nature of international alignments been in such a state of flux as they have in the past decade.''

The report also says the emergence of China and India as new global economic powerhouses ''will be the most challenging of all'' Washington's regional relationships. It also says that in the competition with Asia over technological advances, the United States ''may lose its edge'' in some sectors.

(Mr. MARTINEZ assumed the Chair.)

Mrs. BOXER. Here is the thing. Dr. Rice told the American people that there were strong ties between Saddam Hussein's Iraq and Osama bin Laden and al-Qaida. These are her words:

> We clearly know that there were in the past and have been contacts between senior Iraqi officials and members of al-Qaeda going back for actually quite a long time.
>
> And there are some al-Qaeda personnel who found refuge in Baghdad.

Now, I want to show a map that the State Department put out, and it was accompanied by a letter from President Bush, a month after 9/11. Here is the map. The red indicates where there are al-Qaida cells. Unfortunately, we notice the United States is red. That is why we have to win this war. This is the list where al-Qaida or affiliated groups have operated, and this is a month after 9/11, put out by this administration. No Iraq. So how do you then go on television, look the American people in the eye, and tell them that in fact—and I will go back to her quote again:

> We clearly know that there were in the past and have been contacts between senior Iraqi officials and members of al-Qaeda going back for actually quite a long time.
>
> And there are some al-Qaeda personnel who found refuge in Baghdad.

She did not tell the full story there, and I gave her a chance to do it.

It is really troubling to me. After all this time, these are the things she could have said: I never checked out that map. You are right, Senator, there were no al-Qaida there. But she didn't do that. She could have listened to what the experts were saying about how bin Laden loathed Saddam Hussein, two despicable tyrants who hated each other.

Peter Bergen said:

> . . . I met bin Laden in '97 and . . . asked him at the end of the interview . . . his opinion of Saddam Hussein. And [bin Laden] said, ''Well, Saddam is a bad Muslim and he took Kuwait for his own self-aggrandizement.''

In November 2001, the former head of the Saudi intelligence said:

> Iraq doesn't come very high in the estimation of Osama bin Laden. . . .He thinks of [Saddam Hussein] as an apostate, an infidel, or someone who is not worthy of being a fellow Muslim.

Then the bipartisan 9/11 Commission says there is ''no collaborative'' relationship between Iraq and al-Qaida, and Dr. Rice received that memo on September 18, 2001, and still she went before the American people. When I asked her about it, she said:

> As to the question of al Qaeda and its presence in Iraq, I think we did say that there was never an issue of operational control . . . that Saddam Hussein had nothing to do with 9/11 as far as we know or could tell.
>
> It wasn't a question of operational alliance. It was a question of an attitude about terrorism that allowed Zarqawi to be in Baghdad and to operate out of Baghdad.

Well, those statements continued to mislead. There is no question about it. When she says there wasn't an operational alliance and she believed there never was, why was it that aboard the USS *Abraham Lincoln*, when President Bush had that famous sign ''mission accomplished,'' he said:

> The liberation of Iraq is a crucial advance in the campaign against terror. We have removed an ally of al Qaeda.

How do you tell the committee that this administration never thought there was an operational link, when the President, standing on the USS *Abraham Lincoln*, was saying mission accomplished, and the major fighting is behind us?

He said:

> In the war against Saddam, we have removed an ally of al Qaeda.

It isn't right to continue this kind of talk when you already know from the 9/11 Commission that it isn't true, and you know from looking at the State Department that it wasn't true. Yet it all continues.

In her point about allowing Zarqawi to be in Baghdad, she failed to mention a CIA document that was reportedly sent to the White House in September 2004 that states there is no conclusive evidence that Saddam harbored Zarqawi.

Last October, a senior U.S. official told ABC News there was, in fact, no evidence that Saddam even knew Zarqawi was in Baghdad. So we are not being told the whole truth. We are not being given all of the facts. I have to say that I think it is a disservice to the American people.

The fourth issue I raised with Dr. Rice concerns U.S. relations with Iran during the Iraq-Iran war. That sounds like, why would I raise that because that war was in the 1980s? It is important because, in making her case for the war in Iraq, Dr. Rice cited Saddam's deplorable use of chemical weapons during the Iran-Iraq war. It certainly was a sin against humanity. She failed to mention, however, that it was Special Envoy Donald Rumsfeld—here he is in this picture—in December 1983 who met with Saddam 1 month after the United States confirmed he was using chemical weapons almost daily against Iran. In an attempt to support Iraq during that war, Iraq was removed from the terrorism list in 1982. None other than Donald Rumsfeld was giving the good news to Saddam Hussein and tried to restore full diplomatic relations. As a matter of fact, during this whole Iran-Iraq war, we all know the story that American firms were selling materials to Saddam Hussein.

Now, this is what Dr. Rice said. She said:

> I will say it right now. The U.S. Government has often, as the President said, supported regimes in the hope that they would bring stability. We have been in the Middle East sometimes blind to the freedom deficit. We are not going to do that anymore. What happened with Saddam is probably evidence that that policy was not a very wise policy.

That is an understatement. It was a horrific policy. It was a terrible policy. It was a policy of appeasing Saddam Hussein, making sure that he had the weapons, because we were essentially taking his side quietly in the Iran-Iraq war, and Donald Rumsfeld was super involved in it, and here is the picture to prove it.

Now, I do appreciate that Dr. Rice said it probably was not a very wise policy. I was glad to hear her say that. But you know what. She doesn't explain to us why. When she cited Iraq's use of chemical weapons against Iran as a justification for the U.S. attack on Iraq, she doesn't mention that the U.S. Government was working at that very same time to reestablish robust relations with Saddam. Indeed, our own Government took Saddam off the terror list, and the American people deserve to know that from her, when she advanced this issue as a reason for the war. Full disclosure. Give the whole story.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 24 minutes.

Mrs. BOXER. Mr. President, I raise the issue of Dr. Rice's opposition to a provision in the intelligence reform bill that would have outlawed the use of cruel, inhumane, or degrading treatment of foreign prisoners by intelligence officials. The section of this provision is here. It was passed unanimously by the Senate. The overall amendment was written by Senators MCCAIN and LIEBERMAN, but this particular provision was written by Senator DURBIN:

> Prohibition on torture or cruel, inhumane, or degrading treatment or punishment.
>
> In general, no prisoner shall be subject to torture or cruel, inhumane, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States.

That is very straightforward. When I asked Dr. Rice, why did you sign a letter with Mr. Bolton and object to this provision and ask that it be stricken, she had a couple of different responses. The first response she gave me was:

> This is duplicative of language that was in the Defense Department bill.

So I checked with the authors of this provision, and I said: Is it true that this is duplicative? They said the language is in the Department of Defense, but it does not apply to the CIA and intelligence officers who work outside of the DOD. So I explained it to her, and she argued with me and she said it is not true, it is duplicative. I said: Do you think Senators MCCAIN, LIEBERMAN, and DURBIN don't know what they are doing when they added this to the intelligence bill? She didn't answer. The fact is, this is not duplicative. This is necessary so that we cover those intelligence officials who may not be part of the Department of Defense but are part of other agencies not covered by the Department of Defense.

And then she went on and said:

> We did not want to afford to people who did not—shouldn't enjoy certain protections those protections. And the Geneva Conventions should not apply to terrorists like al-Qaida. They can't or you will stretch the meaning of the Geneva Convention.

That was her second problem with it, which was that you are granting more rights than the Geneva Conventions. However, this explanation makes no sense because the following language was also part of this, which is:

> Nothing in this section shall affect the status of any person under the Geneva Conventions or whether any person is entitled to the protections of the Geneva Conventions.

So she gave two reasons as to why she wrote a letter and demanded this be removed from the intelligence bill, neither of which is true. It is not duplicative, and there is no problem with the Geneva Conventions because we make a special exception for them.

But that is not all. The next day, Dr. Rice came back and changed what she said the day before. She said she doesn't oppose the subsection that clearly prohibited torture and cruel, inhumane, or degrading treatment. She said she opposes other provisions in the section.

Well, Mr. President, this was the operative language of the section. That second day's excuse just doesn't hold up under scrutiny because she wrote in a letter—this is what Dr. Rice wrote to the committee.

Mrs. BOXER. This says:

> The administration also opposes [she names the section] which provides legal protections to foreign prisoners to which they are not now entitled under applicable law and policy.

And she says that section 1095 of the Defense Authorization Act already addresses this issue. So Dr. Rice's own words in the letter contradict what she told the committee.

Now, this issue of torture is one that matters. It matters to me for many reasons. The first is it is about our humanity. It is about our humanity. Second is that it is about our soldiers, who may find themselves in captivity and in a circumstance where they might well get treated the way we are treating people we capture. That is why the protective words here and living up to our treaties or obligations of our Constitution and international treaties are so important. It is not some vague academic discussion; it is very serious.

Now, I went and saw, as many colleagues did, the pictures from Abu Ghraib prison. As long as I live, they will be seared in my memory. There are a lot more pictures that the public didn't see. I can tell you—and I think I can say this of most of my colleagues I was sitting with from both sides of the aisle—I could barely watch what was shown.

I am sometimes torn to talk about what I saw. I have done it in small groups where my constituents have asked me what I saw, but I will not do it today. I do not want to do it, but let it be said that the kinds of pictures that I saw do not reflect our country or our values. We have to be united on this.

Senator DODD asked Dr. Rice to please tell us her personal views on torture, and he laid out a couple of examples of torture. She demurred and would not respond to those specific questions. I thought that was a moment in time where she could have sent out a signal to the whole world about America. She said for sure that Abu Ghraib was terrible. She was eloquent on the point. In fact, I will read to my colleagues what she said right after Abu Ghraib:

> What took place at the Abu Ghraib prison does not represent America. Our nation is a compassionate country that believes in freedom. The U.S. government is deeply sorry for what has happened to some Abu Ghraib prisoners and people worldwide should be assured that President Bush is determined to learn the full truth of the prisoner reports in Iraq.

Those comments at that time were very important. They were the type of comments that I think pull us all together. It was a comment that reflected humanity.

Then we have this language that she writes a couple of months after she makes this beautiful speech in October saying she opposes this provision that says no prisoner shall be subject to torture or cruel, inhuman or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States. She writes a letter opposing this section after she makes this beautiful speech.

When I asked her to explain it, she gives me reasons that just do not hold up, that it is duplicative, which it is not, that she really did not oppose it, which cannot possibly be true because we have her letter in writing where she did.

There is no doubt that Dr. Rice has the resume, the story, the intelligence, and the experience to be Secretary of State. She certainly is loyal to this President, we know that, and I think that is important. The President wants to have someone who is loyal. He should also want to have someone who will be independent such as Colin Powell was.

After 9 hours of grueling questions and answers before the committee, she proved her endurance for the job. In responding to me, she used a very clever tactic that we all learn in politics, which is to go after the questioner, why are you attacking me, and then do not answer the questions. It was OK that she did that. I did not mind that she did that. But she did not answer the questions. That is the point.

I believe the committee gave Dr. Rice the opportunity to speak candidly and set the record straight. It is not only my questions. Senator BIDEN asked her how many Iraqi security forces were trained, and without blinking an eye she said 120,000. And he said, wait a minute—and anyone who knows Senator BIDEN knows that he kind of roots for someone when they sit in the hot seat—let us really be candid here. He said: I went to Iraq and I was told by the military that there is nothing close to 120,000. He said he was told there were 4,000. She stuck by the 120,000.

Later, when others were asked in the administration, such as Ambassador Negroponte, he would not put out a number but he sure did not say 120,000.

Everyone with a heart and a pulse knows it is not 120,000 trained troops, because as Senator BIDEN said at that hearing, if there are 120,000 trained Iraqi troops to protect the Iraqi people, why in God's name are we there in the numbers we are and keeping people there, who are leaving their families, for extra tours of duty? She would not budge.

I am troubled because we gave Dr. Rice every opportunity to speak candidly, set the record straight, and she just did not do that.

In her role as National Security Adviser, she was not responsible for coming to the Senate Foreign Relations Committee or the House equivalent committee. Now she is going to be responsible for that. She could not have

a friendlier chairman than Senator LUGAR in terms of being given every opportunity to work with our committee. I know Senator BIDEN and Senator LUGAR work together just like brothers. This is a very bipartisan committee. We are going to see Dr. Rice there very often because she will be confirmed. I hope when she comes back before the committee that she will be more candid with the committee.

At this time I am judging her on her answers to these questions. She dodged so many of them and again resorted to half the story and even got herself in deeper water in some of her responses. So I cannot support this nomination.

The cost of the policy in Iraq, a policy that she embraced wholeheartedly, a policy that she did, in fact, bring to the American people and she led them to certain conclusions that turned out not to be true, whether it was the aluminum tubes, the ties to al-Qaida, whether it was her half argument on the Iran-Iraq war, whether it was her obvious contradictory statements on we never said he would have a nuclear weapon in a year one day and then the next year she said we did not say that, it is too hard to overlook these things.

I will close with the Martin Luther King quote, which I will not recite exactly but I do agree that our lives begin to end when we stop caring about things that matter. Accountability matters. Truth telling matters. The whole truth matters. Responsibility matters. The advice and consent role of the Senate is one that is really very important. I hope my colleagues on both sides will recognize that this Senate is at its best when we have some of these tough debates.

It is not as if we are having a vote to confirm a Cabinet position that will not have as much reach. It is not as if we are voting to confirm a position where the individual is brand new and does not have a record. This is a very important position in a time of war where the nominee had a record of making many statements to the American people. I believe that out of respect for the American people, out of respect for the Senate, out of respect for the Foreign Relations Committee, and out of respect to Condoleezza Rice herself, we needed to ask these questions.

Now that he is on the floor again, I would say to Senator LUGAR what I said before, that he is such a fair chairman. All of us on the committee have such respect for him. I look forward to working with him on many issues. I think there will be many times where we will be voting the same way. We will not be today, but that is just one time. There will be many other occasions where we will be together.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Tennessee is now recognized.

Mr. ALEXANDER. Mr. President, I rise in support of the nomination of Dr. Condoleezza Rice to be America's next Secretary of State. President Bush has made an excellent choice for this preeminent position in his Cabinet. Her experience as National Security Adviser will make her even more effective than one normally might be. When foreign leaders talk with Dr. Rice, they will know she is speaking with the President's voice.

I had the privilege of attending much of the 9-plus hours of hearings. Dr. Rice got about every kind of question. She handled the questions, I thought, with dignity, with intelligence, with grace. It was an excellent performance. It augurs well for her time as a U.S. Secretary of State. I am proud to support her.

The major issue confronting Dr. Rice and our Nation today is the war in Iraq. At the hearings to which I just referred, some of my colleagues talked about needing an exit strategy. I disagree. I don't believe we need an exit strategy in Iraq. We need a success strategy. But such a strategy may mean taking a little more realistic view of what we mean by success. It is one thing to help people win their freedom, as we did in Iraq. It is another to help a country become a stable, pluralistic democracy, a flourishing society. We need to ask ourselves how many American lives are we willing to sacrifice to do this? How long are we willing for it to take? And what is our standard for success?

We should be thinking well beyond Iraq. The next time the opportunity occurs for the United States to undertake what we now call regime change, or nation building, what lessons have we learned in Iraq? During his campaign for the Presidency in 2000, President Bush was critical of nation building. That was before September 11, 2001. Today the situation has obviously changed.

Our initial war in Iraq was a stunning success. What came afterwards has been a series of miscalculations. But the United States has engaged in nation building more than a dozen times since World War II and, based on those experiences, should we not have anticipated that nation building in Iraq would have required more troops, more money, and taken longer than we expected? And what do those lessons say about our future policy toward nation building?

I asked Dr. Rice about this when she appeared before the Foreign Relations Committee. One lesson she said we learned was that we need to train our own diplomatic personnel with the skills of nation building. She said we need to learn how to help a country set up a new, independent judiciary, how to establish a currency, how to train up police forces, among other things. I am sure other lessons will be learned as we move forward, and we should be humble enough to learn them.

I would hope that our experience in Iraq has reminded us of what a major commitment regime change and nation building require. I hope the next time someone suggests to this President, or to any future President, that he pursue regime change, that one of his advisers, perhaps Dr. Rice, will say: Mr. President, based on the history of postwar reconstruction and what we have learned in Iraq, any regime change is likely to take us several years, is likely to cost us hundreds of billions of dollars, and require the sacrifice of thousands of lives. If it is in our national interest to go ahead, then the President may decide that, but he needs to have that advice. And we need to discuss that as we did in the hearing the other day.

American history is the story of setting noble goals and struggling to reach them and often falling short. We sincerely say, in our country, that anything is possible, that all men are created equal, that no child will be left behind—even though we know down deep we will fall short and we know we will then have to pick ourselves up and keep trying again to reach those noble goals.

We also said we want to make the world safe for democracy, and we remember an inaugural speech 44 years ago in which a new President named John F. Kennedy said we would ''pay any price, bear any burden'' to defend freedom. And we heard last Thursday President Bush echo those sentiments when he said to the people of the world: When you stand for your liberty, we will stand with you.

Yet there is obviously a limit to what we can do and to what we are willing to do and to the number of lives we will sacrifice to secure the blessings of freedom and democracy for others. So, now that we have a new Secretary of State—almost have one—new Iraqi elections within the next few days, and we are about to spend another $80 billion in Iraq, now is a good time to be clearer about what our success strategy would be in Iraq. When I asked Dr. Rice about this in her hearing, she acknowledged we need a success strategy but didn't want to commit to a timetable.

In a Washington Post op-ed this morning, two of Dr. Rice's predecessors, Secretaries Henry Kissinger and George Shultz, agreed we should not set a specific timetable for pulling out our troops. But they also go further than Dr. Rice did in the hearing in outlining the framework for what a success strategy in Iraq might look like.

Dr. Kissinger and Dr. Shultz wrote this:

> A successful strategy needs to answer these questions: Are we waging ''one war'' in which military and political efforts are mutually reinforcing? Are the institutions guiding and monitoring these tasks sufficiently coordinated? Is our strategic goal to achieve complete security in at least some key towns and major communication routes (defined as reducing violence to historical criminal levels)? This would be in accordance with the maxim that complete security in 70 percent of the country is better than 70 percent security in 100 percent of the country—because

fully secure areas can be models and magnets for those who are suffering in insecure places. Do we have a policy for eliminating the sanctuaries in Syria and Iran from which the enemy can be instructed, supplied, and given refuge and time to regroup? Are we designing a policy that can produce results for the people and prevent civil strife for control of the State and its oil revenue? Are we maintaining American public support so that staged surges of extreme violence do not break domestic public confidence at a time when the enemy may, in fact, be on the verge of failure? And are we gaining international understanding and willingness to play a constructive role in what is a global threat to peace and security?

An exit strategy based on performance, not artificial time limits, will judge progress by the ability to produce positive answers to these questions.

That is what Secretaries Kissinger and Shultz wrote this morning. I ask unanimous consent the article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ALEXANDER. When Dr. Rice comes back to the committee as Secretary Rice—and she will be there often—I hope she will address these questions and say more about what our objectives are. When she does, I also wouldn't mind if she acknowledges when things aren't going well, or when we need to change our strategy or tactics because our earlier approach is not working. I think such acknowledgments only strengthen the administration's credibility and reassure us that needed adjustments are being made.

At President Reagan's funeral last June, former Senator Jack Danforth said the text for his homily was ''the obvious,'' Matthew 5:14–16.

You are the light of the world. A city built on a hill cannot be hid. No one after lighting a lamp puts it in a bushel basket, but on a lampstand, and it gives light to all in the house. In the same way, let your light shine before others, so that they may see your good works, and give glory to your father in heaven.

From our beginning, that vision of the city on a hill has helped to define what it means to be an American and provided America with a moral mission. It helps explain why we invaded Iraq, why we fought wars ''to make the world safe for democracy,'' and why President Bush said last Thursday:

All who live in tyranny and hopelessness can know: the United States will not ignore your oppression, or excuse your oppressors.

It is why we are forever involving ourselves in other nations' business. It is why when I was in Mozambique last summer I found 800 Americans, 400 of them missionaries and most of the rest diplomats or aid workers.

But is it possible that too much nation building runs the risk of extending too far the vision of the city on the hill?

Letting a light shine so others may see our good works does not necessarily mean we must invade a country and change its regime and reshape it until it begins to look like us. It may mean instead that we strive harder to understand and celebrate our own values of democracy, of equal opportunity, of individualism, of tolerance, the rule of law and other principles that unite us and that we hope will be exported to other parts of the world. How we ourselves live would then become our most persuasive claim to real leadership in a world filled with people hungry to know how to live their lives.

For example, in my own experience—and Dr. Rice said at the hearings in her experience—we have found that sometimes the most effective way to export our values is to train foreign students at our American universities who then return home to become leaders in their own countries.

Of course, we Americans will never say that only some men are created equal, that only some children will not be left behind, or that we will pay only some price to defend freedom. But perhaps we should be thinking more about strategies for extending freedom and democracy in the world other than nation building and determine what those strategies are and when they most appropriately might be used.

Thank you, Mr. President.

EXHIBIT 1

[From the Washington Post, Jan. 25, 2005]

RESULTS, NOT TIMETABLES, MATTER IN IRAQ

(By Henry A. Kissinger and George P. Shultz)

The debate on Iraq is taking a new turn. The Iraqi elections scheduled for Jan. 30, only recently viewed as a culmination, are described as inaugurating a civil war. The timing and the voting arrangements have become controversial. All this is a way of foreshadowing a demand for an exit strategy, by which many critics mean some sort of explicit time limit on the U.S. effort.

We reject this counsel. The implications of the term ''exit strategy'' must be clearly understood; there can be no fudging of consequences. The essential prerequisite for an acceptable exit strategy is a sustainable outcome, not an arbitrary time limit. For the outcome in Iraq will shape the next decade of American foreign policy. A debacle would usher in a series of convulsions in the region as radicals and fundamentalists moved for dominance, with the wind seemingly at their backs. Wherever there are significant Muslim populations, radical elements would be emboldened. As the rest of the world related to this reality, its sense of direction would be impaired by the demonstration of American confusion in Iraq. A precipitate American withdrawal would be almost certain to cause a civil war that would dwarf Yugoslavia's, and it would be compounded as neighbors escalated their current involvement into full-scale intervention.

We owe it to ourselves to become clear about what post-election outcome is compatible with our values and global security. And we owe it to the Iraqis to strive for an outcome that can further their capacity to shape their future.

The mechanical part of success is relatively easy to define: establishment of a government considered sufficiently legitimate by the Iraqi people to permit recruitment of an army able and willing to defend its institutions. That goal cannot be expedited by an arbitrary deadline that would be, above all, likely to confuse both ally and adversary. The political and military efforts cannot be separated. Training an army in a political vacuum has proved insufficient. If we cannot carry out both the political and military tasks, we will not be able to accomplish either.

But what is such a government? Optimists and idealists posit that a full panoply of Western democratic institutions can be created in a time frame the American political process will sustain. Reality is likely to disappoint these expectations. Iraq is a society riven by centuries of religious and ethnic conflicts; it has little or no experience with representative institutions. The challenge is to define political objectives that, even when falling short of the maximum goal, nevertheless represent significant progress and enlist support across the various ethnic groups. The elections of Jan. 30 should therefore be interpreted as the indispensable first phase of a political evolution from military occupation to political legitimacy.

Optimists also argue that, since the Shiites make up about 60 percent of the population and the Kurds 15 to 20 percent, and since neither wants Sunni domination, a democratic majority exists almost automatically. In that view, the Iraqi Shiite leaders have come to appreciate the benefits of democratization and the secular state by witnessing the consequences of their absence under the Shiite theocracy in neighboring Iran.

A pluralistic, Shiite-led society would indeed be a happy outcome. But we must take care not to base policy on the wish becoming father to the thought. If a democratic process is to unify Iraq peacefully, a great deal depends on how the Shiite majority defines majority rule.

So far the subtle Shiite leaders, hardened by having survived decades of Saddam Hussein's tyranny, have been ambiguous about their goals. They have insisted on early elections—indeed, the date of Jan. 30 was established on the basis of a near-ultimatum by the most eminent Shiite leader, Grand Ayatollah Ali Sistani. The Shiites have also urged voting procedures based on national candidate lists, which work against federal and regional political institutions. Recent Shiite pronouncements have affirmed the goal of a secular state but have left open the interpretation of majority rule. An absolutist application of majority rule would make it difficult to achieve political legitimacy. The Kurdish minority and the Sunni portion of the country would be in permanent opposition.

Western democracy developed in homogeneous societies; minorities found majority rule acceptable because they had a prospect of becoming majorities, and majorities were restrained in the exercise of their power by their temporary status and by judicially enforced minority guarantees. Such an equation does not operate where minority status is permanently established by religious affiliation and compounded by ethnic differences and decades of brutal dictatorship. Majority rule in such circumstances is perceived as an alternative version of the oppression of the weak by the powerful. In multiethnic societies, minority rights must be protected by structural and constitutional safeguards. Federalism mitigates the scope for potential arbitrariness of the numerical majority and defines autonomy on a specific range of issues.

The reaction to intransigent Sunni brutality and the relative Shiite quiet must not tempt us into identifying Iraqi legitimacy with unchecked Shiite rule. The American experience with Shiite theocracy in Iran since 1979 does not inspire confidence in our ability to forecast Shiite evolution or the prospects of a Shiite-dominated bloc extending to the Mediterranean. A thoughtful

American policy will not mortgage itself to one side in a religious conflict fervently conducted for 1,000 years.

The Constituent Assembly emerging from the elections will be sovereign to some extent. But the United States' continuing leverage should be focused on four key objectives: (1) to prevent any group from using the political process to establish the kind of dominance previously enjoyed by the Sunnis; (2) to prevent any areas from slipping into Taliban conditions as havens and recruitment centers for terrorists; (3) to keep Shiite government from turning into a theocracy, Iranian or indigenous; (4) to leave scope for regional autonomy within the Iraqi democratic process.

The United States has every interest in conducting a dialogue with all parties to encourage the emergence of a secular leadership of nationalists and regional representatives. The outcome of constitution-building should be a federation, with an emphasis on regional autonomy. Any group pushing its claims beyond these limits should be brought to understand the consequences of a breakup of the Iraqi state into its constituent elements, including an Iranian-dominated south, an Islamist-Hussein Sunni center and invasion of the Kurdish region by its neighbors.

A calibrated American policy would seek to split that part of the Sunni community eager to conduct a normal life from the part that is fighting to reestablish Sunni control. The United States needs to continue building an Iraqi army, which, under conditions of Sunni insurrection, will be increasingly composed of Shiite recruits—producing an unwinnable situation for the Sunni rejectionists. But it should not cross the line into replacing Sunni dictatorship with Shiite theocracy. It is a fine line, but the success of Iraq policy may depend on the ability to walk it.

The legitimacy of the political institutions emerging in Iraq depends significantly on international acceptance of the new government. An international contact group should be formed to advise on the political and economic reconstruction of Iraq. Such a step would be a gesture of confident leadership, especially as America's security and financial contributions will remain pivotal. Our European allies must not shame themselves and the traditional alliance by continuing to stand aloof from even a political process that, whatever their view of recent history, will affect their future even more than ours. Nor should we treat countries such as India and Russia, with their large Muslim populations, as spectators to outcomes on which their domestic stability may well depend.

Desirable political objectives will remain theoretical until adequate security is established in Iraq. In an atmosphere of political assassination, wholesale murder and brigandage, when the road from Baghdad to its international airport is the scene of daily terrorist or criminal incidents, no government will long be able to sustain public confidence. Training, equipping and motivating effective Iraqi armed forces is a precondition to all the other efforts. Yet no matter how well trained and equipped, that army will not fight except for a government in which it has confidence. This vicious circle needs to be broken.

It is axiomatic that guerrillas win if they do not lose. And in Iraq the guerrillas are not losing, at least not in the Sunni region, at least not visibly. A successful strategy needs to answer these questions: Are we waging ''one war'' in which military and political efforts are mutually reinforcing? Are the institutions guiding and monitoring these tasks sufficiently coordinated? Is our strategic goal to achieve complete security in at least some key towns and major communication routes (defined as reducing violence to historical criminal levels)? This would be in accordance with the maxim that complete security in 70 percent of the country is better than 70 percent security in 100 percent of the country—because fully secure areas can be models and magnets for those who are suffering in insecure places. Do we have a policy for eliminating the sanctuaries in Syria and Iran from which the enemy can be instructed, supplied, and given refuge and time to regroup? Are we designing a policy that can produce results for the people and prevent civil strife for control of the state and its oil revenue? Are we maintaining American public support so that staged surges of extreme violence do not break domestic public confidence at a time when the enemy may, in fact, be on the verge of failure? And are we gaining international understanding and willingness to play a constructive role in what is a global threat to peace and security?

An exit strategy based on performance, not artificial time limits, will judge progress by the ability to produce positive answers to these questions. In the immediate future, a significant portion of the anti-insurrection effort will have to be carried out by the United States. A premature shift from combat operations to training missions might create a gap that permits the insurrection to rally its potential. But as Iraqi forces increase in number and capability, and as the political construction proceeds after the election, a realistic exit strategy will emerge.

There is no magic formula for a quick, non-catastrophic exit. But there is an obligation to do our utmost to bring about an outcome that will mark a major step forward in the war against terrorism, in the transformation of the Middle East and toward a more peaceful and democratic world order.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, it is my understanding that under a previous order I am allowed 20 minutes. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. I understand Senator REED of Rhode Island is also on the list to speak. Is he not? I make inquiry of the Chair: Under the order, is Senator REED of Rhode Island also allotted time?

Mr. LUGAR. Mr. President, if I may respond to the distinguished Senator, Senator REED is on a list but is not designated precisely. Perhaps while the speaker is speaking we can work this out.

Mr. DURBIN. I recommend that even though he may miss part of my speech.

Thank you, Mr. President.

President Bush has nominated Condoleezza Rice as Secretary of State. It is one of the highest positions in our Government. She is a person of considerable accomplishment and formidable intellect. I have watched her service from afar, and this morning I had my first opportunity to meet her personally. Dr. Rice came by my office and we sat down for half an hour and discussed many different issues. I was impressed with her ability and with her forthright approach.

I will tell you that I am also troubled. I am troubled because I followed closely the exchange between Dr. Rice and Senator BOXER during the confirmation hearing before the Foreign Relations Committee. The reason I followed this closely was not only because it was important and it related to the issue of torture but because it involved an amendment which I had drafted. As every American I have met, I was shocked by the information and photographs that came out of Abu Ghraib; troubled by reports from Guantanamo.

As a result, I joined in a bipartisan effort in both the Department of Defense authorization bill, as well as later in the intelligence reform bill, to put a clear restatement of American law to a vote, that the United States is prohibited from engaging in torture, or cruel, inhuman or degrading treatment. It is important to restate this principle and value so there would be no questions asked as to whether the United States had deviated from the legal standard which we had held for over 50 years—a standard first embodied in the Geneva Conventions and then in the Convention on Torture, and in other places in our laws.

My anti-torture amendment passed in the Senate, went to conference on the Department of Defense authorization bill, but it was changed slightly from a prohibition to a statement of policy. I didn't care much for the change, but I accepted it because I thought it still preserved the basic goal, which was to restate our country's policy against torture. The part that did not change was my amendment's requirement that the Department of Defense report regularly on any violations of this policy against torture. That was what happened in the Department of Defense bill.

Then came the intelligence reform bill, and I felt it was important that we try again to restate our law of prohibition against torture. It was equally important that the reporting requirements for violations apply not only to the military agencies as we did in the Defense bill, but also apply to the variety of different intelligence agencies covered by the intelligence bill.

I tried with both bipartisan amendments to cover the circumstances of those who would take into detention someone during the course of war in Iraq or Afghanistan or some other place.

This amendment passed and it was sent to conference. I followed the conference closely as a Senate conferee and a member of the Governmental Affairs Committee.

I was surprised and disappointed to learn as I went to conference that a message had come down from the White House—specifically from Dr. Rice and OMB Director Joshua Bolten—which said they objected to my amendment which condemned torture by any American, including members of the American intelligence community.

I couldn't believe it—they first accepted the underlying policy goals and

the reporting requirements of this same amendment for the Department of Defense, and now they were making an exception when it came to intelligence agencies.

I have to tell you that I am very troubled by that. When Senator BOXER asked repeated questions of Dr. Rice on the issue, she received conflicting answers. So I returned to the same question this morning. I asked Dr. Rice point blank: Why did you object to that amendment? She said incorrectly: We had already taken care of that. Your Department of Defense amendment took care of intelligence agencies.

That is not the case. The Department of Defense amendment which I offered, which she should have read and apparently did not read, had reporting requirements for the Department of Defense but not for the intelligence agencies. My intelligence reform bill amendment would have extended these requirements for the intelligence agencies.

I am disappointed by that. It is not just another amendment being offered on the floor. Taking away any personal pride and authorship in this, it was a timely amendment after the Abu Ghraib prison scandal to try to restate for America and the world where we stood and where our principles are. Yet this administration opposed it. I am troubled by it. I understand Senator BOXER is even more troubled by it.

This is a critical moment in our history. It is critical because of the war in Iraq to pick up the morning paper—most Americans probably did as well—and read in this paper that the Pentagon announced there will be 120,000 American soldiers in Iraq for at least 2 more years. It is a stunning and sad admission.

I remember when the invasion took place. I remember a colleague of mine from Indiana—who happens to be the chairman of the committee before us today, Senator LUGAR—and his statement. I don't know if he still holds to this position, but I have quoted him at length. He said at the moment of our invasion in Iraq that we are likely to be there for 5 years. When I repeated his statement and believed it to be true, many people said: We are sure you are wrong. We are going to be home more quickly than that. After we knock Saddam Hussein out of power, the Iraqi people will take over and we will come home.

Here we are 2 years in the conflict, 1,400 Americans have been killed, 10,000 or 12,000 injured—more by the day—hundreds of incidents of insurgency, terrorism, and we are still there.

I went to Litchfield, IL, 3 weeks ago to watch an MP Illinois Guard unit go off for their deployment for 18 months. There are 80, all men, in this unit. I shook hands with each of them and looked them in the eye and gave them all my best wishes, as did the crowd at the Litchfield High School gym. As I looked at them, I thought: Is there any possibility they will be home soon? This report in the morning paper says the answer is no.

What troubles me is not that it is a situation demanding of Americans. We have risen to challenges before. But what troubles me the most about this is I think it evidences one of the most profound failures in a democracy. When leaders of a democratic government mislead the people of the country in relation to a war and an invasion of another country, I think that is the lowest point one can reach. Note that I said misleading and not intentionally misleading. There is a big difference.

In this situation, it is the argument of President Bush and his White House that it is true—they misled the American people about the presence of weapons of mass destruction, about nuclear weapons, about aluminum tubes, about connections with al-Qaida, about unmanned aerial vehicles. The list goes on and on. But their argument is, well, we had intelligence; we received bad information. If we told the American people something was wrong, don't blame us; blame the intelligence agencies.

That has been the position of the White House. That is a sad defense when you consider where we are today, with 150,000 American troops with their lives in danger after being misled by the White House about the circumstances surrounding Iraq.

Dr. Rice, as the National Security Adviser, was in the room and at the table when decisions were made. She has to accept responsibility for what she said, which has been quoted at length on the floor. Some of the suggestions about nuclear threats, some of the suggestions about the threats of Saddam Hussein out of the mouth of Dr. Rice were just plain wrong and repeated. That, to me, is very troubling.

Five days from today, Iraq is scheduled to hold its first election in nearly half a century. It is a step forward. We want to see this move toward democracy. I hope it is just not an occasion for more bloodshed. I hope it is not just an occasion for more bloodshed. It may be.

We have to ask what kind of election this will be. How many people will vote? That is an indicator of whether the election reflects the popular will. Is it an election which will be carried out with integrity? Is it one where the people clearly have a choice and where the election ballots are counted?

We have to ask what kind of elections they will be if candidates' names cannot be published, if polling places cannot be designated, and when few Sunni Muslims are likely to participate. However successful the elections may be, we all know that the bloodshed will not end at that point. Our present policies in Iraq seem unlikely to bring an end to the killing there any time soon.

Last year, Congress allocated $18 billion for the reconstruction of Iraq for the basic necessities of life—electricity, clean water. Only $2.2 billion of that amount has been spent. Why? Because it is unsafe to spend the rest. It is so unsafe that anything we build is likely to be blown up as soon as we build it. The violence we see there reflects the frustration of the people of Iraq who think the occupying United States Army is not improving their lives. We are caught in this vicious circle. We cannot rebuild Iraq because what we build will likely be destroyed, and until we rebuild Iraq, the people will not feel their fate has improved by the occupation of the American troops. Maybe this election will change that dynamic. I certainly hope so.

Now comes the administration saying they are going to need $80 to $100 billion more to continue this war. I was 1 of 23 Senators who voted against the authorization for this war; 1 Republican and 22 Democrats voted against it. After that vote, though, we had an opportunity to vote for the money for the troops. I voted for every single penny this administration has asked for. I will tell you why. I think to myself, what if it were your son or daughter in uniforms risking their lives, would you shortchange them anything? The answer is, clearly, no.

Yet despite all the money we have put into Iraq, one of the soldiers from Tennessee stands up and asks the Secretary of Defense a few weeks ago: Why do I have to dig through junk piles to find pieces of steel to protect my humvee? What is going on, Mr. Secretary? His answer was hardly satisfying or responsive. For all the money we have given to this administration, we cannot say they have spent it well when it comes to protecting our troops.

I have a friend with a son in uniform, in service in Iraq. He and his wife came up with $2,000 to buy body armor for their son, which they sent to him in Iraq. We are spending billions of dollars, and individual families have to send body armor to their soldiers.

Humvees—I don't have to tell you the story there. In the middle of last year, this administration discontinued armoring humvees even though there were hundreds, if not thousands, still vulnerable. Now they have resumed after that one Tennessee soldier had the courage to stand up.

Dr. Rice estimates there are 120,000 trained Iraqi forces under arms. Senator BIDEN of Delaware and many others dispute that number. They think it is vastly inflated. When asked whether you would stand and allow one of these troops to defend you, these Iraqi forces with their current equipment and training, most people honestly answered no.

We have had many failures in Iraq. The National Security Adviser to the President who was there as we devised this strategy and executed this strategy now comes before us for a substantial promotion to Secretary of State. It is troubling.

I am also worried about this whole issue of torture. We will revisit this on

the nomination of Alberto Gonzales to be Attorney General because his fingerprints are all over this administration's torture policy.

When members of the Foreign Relations Committee asked Dr. Rice about certain interrogation techniques, whether they constituted torture, she said it would not be appropriate for her to comment. Yet, I think she understands, and we understand, that if she is to be successful as the diplomat representing the United States of America, one of the first things she has to try to dispel are those ghastly, horrible images of Abu Ghraib. Do not believe for a moment that people across the world dismiss that as an aberration of renegade night shift soldiers. They believe that this is America at work. We know better. We know our troops are better. Our men and women are much better than what was demonstrated at Abu Ghraib, but it is, in fact, an image which haunts and will continue to haunt America for years to come.

Senator BOXER asked Dr. Rice why the administration opposed the language I have talked about earlier on prohibiting torture. As I have said before, I thought her answers were, at best, confusing and unresponsive. Frankly, this administration should not waste any time restating the obvious.

Every year, our Department of State issues a report card on the world. We stand in judgment of the world on issues of human rights. We call it the ''Country Reports on Human Rights Practices.'' These reports are pretty harsh on some countries. They say about these countries around the world that they are involved in torture and degrading treatment, including beatings, threats to detainees and their families, sleep deprivation, deprivation of food and water, suspension for long periods in contorted positions, prolonged isolation, forced prolonged standing, tying of the hands and feet for extended periods of time, public humiliation, sexual humiliation, and female detainees being forced to strip in front of male security officers.

These are the charges we level against other countries around the world, saying they are engaging in inhumane practices. Do any of these techniques sound familiar? If you pick up the morning paper you will see that our military and intelligence forces were engaged in similar techniques in Iraq and other places around the world. How can we stand in judgment of other countries? How can we hold ourselves up as a model when we are guilty of the same conduct? If there is ever a time when this administration should have embraced my amendments to both the Defense bill and the intelligence bill to say what we stand for in this country, it is now. Unfortunately, they have not.

Let me say a word about a recent editorial in the Wall Street Journal which took me to task because I am condemning torture techniques and demanding accountability for agencies of government that engage in them. I would say to the editors of the Wall Street Journal, it is time for you to make a choice. If you support torture, for goodness' sake, make that your editorial policy; if not, join us in condemning those who violate the standards of this Government, which have held up for decades.

Condoleezza Rice, as National Security Adviser, understands what has happened in Iraq and what her new job will require. It will require diplomacy, a diplomacy which failed before our invasion of Iraq. Many who opposed the invasion felt at the time we needed a broader coalition. But the President and his supporters argued about the coalition of the willing—150 nations, whatever the number happened to be. But let's be very honest about that. When you pick up the morning paper, whose soldiers are being killed? When you look at the message for supplemental appropriation, whose taxpayer dollars are being spent? It is the Americans. The British have stood by us. Other countries have provided help. But when it comes to carrying this burden, it is American soldiers and American taxpayers. Diplomacy had its place before the invasion of Iraq. It will have its place in the future.

I also talked to Dr. Rice about the situation in Sudan. I commended the administration for finally crossing that difficult line which the Clinton administration refused to cross when it came to Rwanda. The Clinton administration refused to use the word ''genocide,'' and that is what happened in Rwanda. Hundreds of thousands of innocent people died. I commended Dr. Rice because the Bush administration, Secretary Powell, has stepped forward and has said clearly this is genocide. But it is not enough to just say it when civilized nations who have signed the Genocide Convention step forward and say it is taking place, it requires positive action on our part. There has been very little. Calling in the African Union forces is too little, too late. It will take much more. I tried to make that point as clearly as I could.

We also discussed at length the AIDS epidemic that faces this world. If there is one thing that Secretary Powell said that I believe will be historic in its importance, it is his reference to HIV/AIDS and the global epidemic. Here is what he said. He referred to that epidemic as ''the greatest weapon of mass destruction in the world today.'' I know he believed it. I have spoken to him about it many times. Every 10 seconds another person dies of AIDS in this world. Every 6 seconds another person becomes infected.

The President pledged $15 billion for this cause. We have fallen short in the first 2 years of reaching a $3 billion target. I have asked Dr. Rice, if she is confirmed by the Senate, whether she is committed to our meeting that obligation. She said she was.

We also talked about the role of women in the world, particularly when it comes to the AIDS epidemic. It is important that we teach abstinence and teach moral values and spiritual belief. But it is also important that we empower women around the world to control their own fate and future. We can tell women to be faithful to their partners, but what if their partners are unfaithful to them? We can encourage condom use but must remember that women may not have the ability to negotiate when it comes to that issue, even with their husbands.

It is important that our global strategies against HIV/AIDS are realistic. In a speech at the International AIDS Conference in July 2004, Nelson Mandela reminded us that:

> In the course of human history, there has never been a greater threat than the HIV/AIDS epidemic.

We have a chance in America, under the President's initiative to continue to lead, both with our own bilateral aid to individual countries and through the Global Fund. I hope Ms. Rice in that capacity will assume that leadership position.

We have to also look to economic development. I said to Dr. Rice, if I went to a struggling country anywhere in the world and could only ask one question to decide the likelihood that they would be able to control their problems and their future, it would be this: How do you treat your women? And if women are treated like chattel, like property, like slaves, I can virtually guarantee you that country has little or no chance of conquering its problems. How many girls are in school? Are there forced child marriages? Do women enjoy economic opportunities? Is maternal health care a national priority? Give me the answers to those questions and I will give you a pretty good idea as to whether I think your country is moving forward. The President created the Millennium Challenge Account, and it has many important initiatives and goals in it. I said to her, and I repeat, I think elevating the role of women around the world should be one of those goals.

The President's new foreign assistance initiative, the Millennium Challenge Account embodies an innovative and important initiative.

It is a program of immense but as yet completely unrealized potential.

The Millennium Challenge Account seeks to provide assistance to those countries with a proven record of investing in their own people, as well as meeting other criteria.

I would like to apply the same standard to our own foreign assistance programs: Are we investing enough in people?

Are we helping build the infrastructure that will help eliminate poverty and not merely ease the latest crisis for a few months?

Are we making sure that our assistance reaches women in developing nations, women who are the key to successful development?

These same principles must guide us as we seek to help those devastated by the tsunami.

For instance, half the people of Aceh, Indonesia, the region hit hardest by the tidal wave, lacked clean water before the tsunami.

Disasters hit hardest where poverty is greatest, and they affect women and children most of all.

The tsunami swept away entire villages in a matter of minutes. We must commit to helping these regions recover over a period of years.

Secretary-designate Rice steps into her position at a critical juncture.

Well over 1,300 American soldiers, marines, sailors, and airmen have died in Iraq.

Nearly 150,000 are still over there.

Mr. President, 70,000 people have died in Darfur. Thousands more are still at risk every day. In South Africa, one in three adults are HIV positive. In Botswana the numbers are even higher.

Over a billion people live on less than a dollar a day. A billion people in the world cannot write their own names or read a single sentence.

We simply cannot afford to get this wrong. We cannot afford to repeat mistakes or to fall short in our commitments. These are matters of profound moral obligation and deepest national security and interest.

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

Mr. DURBIN. I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Indiana.

Mr. LUGAR. Mr. President, I ask unanimous consent that an editorial endorsing Dr. Rice for Secretary of State, published in the Evansville Courier & Press, on January 24, 2005, be printed in the RECORD.

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

[From the Evansville Courier & Press, Jan. 24, 2005]

COOL CONDI

Senate Democrats rather churlishly pushed Condoleezza Rice's certain approval as secretary of state over to this week. Perhaps they felt that the gracious gesture of confirming her on Inauguration Day would be interpreted as a sign of weakness by the Bush White House.

Democrats on the Senate Foreign Relations Committee seemed disappointed that Rice would not distance herself from, backtrack from or apologize for President Bush's foreign policy. In hearings last week, they failed to force any daylight between Rice and the president. And they tried; one session even ran into the night.

Rice's credentials to be secretary of state were not in question. She is a career student of foreign policy and spent the last four years as White House national security adviser. No one who has followed her career was surprised by her performance before the Foreign Relations Committee.

She was informed, poised and unflappable, her voice only taking on a slight edge when Sen. Barbara Boxer, D–Calif., all but accused her of being a liar—''your loyalty to the mission you were given, to sell this war, overwhelmed your respect for the truth.''

Rice's icy response: ''I never, ever lost my respect for the truth in the service of anything.'' In the end, only Boxer and Sen. John Kerry, D–Mass., of the 18 committee members, voted against Rice, for whatever significance that symbolic gesture had.

Rice defended and endorsed administration positions on Iraq—the war was right even if the intelligence was wrong—and on North Korea, Iran and the Mideast. The consistency is admirable, but it raises the worrisome prospect that there is no fresh thinking on these problems within the administration.

That said, she made several worthy commitments. She would work to rebuild relations with our traditional allies, refocus administration attention on neglected Latin America, take an active role in a Mideast settlement and reassert the State Department as ''the primary instrument of American diplomacy''—a clear if diplomatic shot at Donald Rumsfeld and the Pentagon.

The Senate should confirm Rice without delay. She needs to get to work.

Mr. LUGAR. I thank the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my distinguished colleague, the chairman, for his great leadership in handling this nomination. That leadership is consistent with what I have observed these many years, now being in my 27th year in the Senate, my colleague being a year or 2 senior to me. But on behalf of the Senate and on behalf of the country, we thank you, Mr. Chairman. And I must say, I think your ranking member, in large measure, has been supportive. I am anxious to see how this works out tomorrow. But well done to you, sir, from one old sailor to another.

I am privileged to join my colleagues today in this very important debate with regard to the nomination of perhaps the most important member of any President's Cabinet, that of Secretary of State.

Before referring to Dr. Rice, I would like to pause and express my heartfelt appreciation to Secretaries Powell and Armitage. I have been privileged to have known them and worked with them for many years.

When I was Secretary of the Navy, while I did not know him at that time, during the war in Vietnam, Secretary Powell was on the very front lines of that war. And to this day, in his heart and in other ways, he carries the heavy burdens of that conflict. I have always been so impressed with him. I have worked with him as he rose through the ranks.

I first met him as a colonel and followed his career all the way through being a four star general, particularly when I was actively working with him and he was the executive military assistant to Secretary of Defense Caspar Weinberger. And by his side he wisely chose to put Secretary Rich Armitage, another Vietnam veteran who bears the scars of that war. They were a magnificent team on behalf of the United States of America, and they both quietly have stepped down in the manner in which they have always conducted their lives. I want to be among the many to pay their respects to those two fine public servants on the eve of confirming the successor to Secretary Powell.

I have also known, through the years, the nominee to take Secretary Armitage's place, and he is an excellent choice. The President is to be commended.

I must refer to history. I love this institution I think as much as anyone; not more than anyone, but as much. I respect the heritage and traditions of this Chamber. It is quite interesting, if you go back, the Presidents of the United States—certainly I would yield to the chairman; I have the history of these here—Presidents have always had the Senate confirm their Secretary of State on the day of the inauguration. It goes quite a ways back in history.

I expressed at that time that I regret this Chamber could not act, and I continue to express that. I think this debate is an important one. I do not in any way suggest that this debate not take place, but I think it could have taken place in the ensuing days and weeks following that. But that is history. I did not want this tradition of the Senate to be overlooked in the context of these remarks.

It is clear from the exhaustive nomination hearings conducted by the Foreign Relations Committee over the course of 2 days that Dr. Rice is extraordinarily capable and qualified. She is as capable and qualified a candidate as has ever been appointed in my lifetime to this position. She stands with the finest because of her extraordinary record of achievements. I say to the chairman, she was reported out of your committee by a vote of 16 to 2. To me, that is a resounding affirmation by bipartisan members of that committee.

The personal attacks on her character and integrity, we have now witnessed them. I find them somewhat astonishing, the level of the attack, particularly as it relates to her lifetime dedication to what we call here in the Senate the standards for truthfulness.

And I was delayed, Mr. Chairman, because I had been trying through the day to reach former Secretary of State George Shultz, with whom you and I and many others have had so many years of warm and excellent relations—sometimes not so warm, maybe a little heated on occasion, I recall. But Secretary Shultz reminded me that Dr. Rice first met President Bush in his living room. And the relationship goes way back.

So I wrote down just a few of the remarks by that distinguished Secretary because it goes to the very heart of the critics who challenge her integrity. He said, without any reservation whatsoever, she was absolutely honest in her convictions and a woman of impeccable loyalty and integrity.

He said loyalty, of course. But truthfulness will always prevail over any degree of loyalty.

I found that important, and I wanted to share it with my colleagues. She, in

his judgment, will rise to the occasion and in due course, if not already, she will receive the trust and confidence of the people of this country, and that her record, as she works through her challenges, will be one that they, the United States of America and its citizens, can be proud of.

I thank Secretary Shultz for his remarks.

I also thought to myself, the chairman and I have paralleled our careers. One of my Commanders in Chief, actually two times—for a brief period at the end of World War II and then Korea—was Harry Truman. Harry Truman very often had directed at him some remarks which didn't exactly reflect with great resounding in his heart. He came out with that priceless statement: If you can't take the heat, get out of the kitchen.

Well, the most profound thing that I may say today is this Secretary of State can take the heat, and she will remain in that kitchen. In my judgment, in the vote by the Senate tomorrow, you will find by virtue of the size of that vote a statement by this Senate reflecting their trust and their confidence in this distinguished American's record of achievement over her lifetime, her entire lifetime, not just that in public office recently.

Going back to some of the comments that were leveled at her, the essence of the criticism was that she has been less than truthful. It turned in large measure on this issue of weapons of mass destruction. That is an issue that I take a back seat to no one on. I tried in every respect with others to be in the very forefront of that debate.

I remember one hearing of the Senate Armed Services Committee, and Director Tenet was before the committee. I asked him a question. This was before we had engaged in active military operations to liberate the people of Iraq. The President was there in the final moments of his decisionmaking. I was one of four who worked up a bipartisan resolution that the Senate worked up. Seventy-seven Senators voted for that resolution.

I said to Director Tenet, the issue of weapons that can bring about such destruction is important in this debate and this decision process. I used the phrase such as ''should we be compelled,'' as the President was, in my judgment, rightfully, to go in and use military power, and at such time as the battles have reached a position where the television cameras of the world can come in and photograph what is there, will those photographs, the television pictures, carry clearly evidence of the existence of weapons of mass destruction. And his acknowledgment was: Without a doubt.

Now that testimony reflects the best judgment within our Government of the situation with regard to weapons of mass destruction. Hussein had defied 17 or 18 United Nations resolutions. Literally because of his defiance and inaction, it propelled this Nation into this war. And because of his past history with the use of such weapons and the clear documentation following the 1991 conflict that they were there in some measure, there was every reason to attach considerable credibility to the prevailing thinking at that time, not only within our Government but many other governments of the world, that these weapons did exist in the hands of a despot and in one way or another they could be released either by him or by surrogates on free nations elsewhere in the world. That is a statement of fact. I question anybody who wants to take me up on that.

Against that background, this criticism is made of this distinguished public servant. But it is clear to me that the actions taken by the President were the correct ones in light of the facts that were known to the best of our judgment at that time. It was a strong case to utilize force to back up the diplomacy. I mention that ''force to back up diplomacy.'' Diplomacy, throughout the history of mankind, can be no stronger than the commitment to enforce it, to back it up in the event it fails. I think throughout this process we followed that time-honored tradition of world powers. We did everything we could to withhold the use of force and to allow diplomacy to work its will. The rest is history.

From the time of Iraq's defeat in the first Persian Gulf war in 1991, and following his brutal invasion of Kuwait, Hussein followed a pattern of deceit, manipulation, and defiance of the international community. He continued to brutally repress his own citizens. He continued to support terrorist organizations in Palestine and elsewhere. He made a mockery of the U.N. sanctions and the U.N. Security Council resolutions, as he pursued banned weapons and technologies of mass destruction. He systematically robbed the coffers of the humanitarian programs established to ensure that Iraqi citizens received sufficient medicines and food and other nourishment.

Over the course of the next 12 years, since 1991, the Hussein regime defied the will of the international community. Every conceivable diplomatic effort has been expended in an attempt to require him to destroy and account for the weapons of mass destruction he clearly possessed in 1991, to account for missing Kuwaiti nationals, and to comply with at least 17 U.N. Security Council resolutions.

Prior to 9/11, Saddam Hussein's conduct was of grave concern to the United States and, indeed, the larger international community. Based on his repressive treatment of his own citizens in defiance of U.N. weapons inspectors, it became the policy of the United States, as embodied in the Iraq Liberation Act in October of 1998, to actively seek regime change in Iraq.

In a statement to the Nation shortly after ordering United States armed forces to strike Iraq in December 1998, after Saddam Hussein had expelled U.N. weapons inspectors, President Clinton stated the following—I might add a personal note. I remember so well our former colleague and dear friend Bill Cohen was Secretary of Defense at that time. I was chairman of the committee.

He invited me over several hours before the order was executed to utilize force. We sat in that office of the Secretary of Defense which I had been in so many times over the years, and he went through very carefully the reason why President Clinton decided to use force. I remember saying to him: Well, Mr. Secretary—I obviously said Bill—it is on the eve of Christmas. Could not this matter be delayed for a brief period. Let's face it, the world is celebrating one of the great religious and historic precedents. He said: No. We are going to launch it.

Well, the President said the following as he launched that strike:

> Earlier today I ordered America's armed forces to strike military and security targets in Iraq. Their mission is to attack Iraq's nuclear, chemical, and biological weapons programs and its military capacity to threaten its neighbors. The international community had little doubt then, and I have no doubt today, that left unchecked, Saddam Hussein will use these terrible weapons again . . . The hard fact is that so long as Saddam Hussein remains in power, he threatens the well-being of his own people, the peace of the region, and the security of the world. And, mark my words; he will develop weapons of mass destruction. He did deploy them and he will use them.

I don't know what additional needs to be said. To me that is very clear. It is understandable. It is explicit. It was a proper use of Presidential power. Even though he made, I think, at that point a very courageous and proper decision, it did not deter Saddam Hussein.

In the post-9/11 world, the thought of a rogue tyrant—one who had used weapons of mass destruction in the past—joining forces with terrorists was even more unsettling. As the Congress debated the resolution to authorize the President to use force in Iraq in October 2002, our colleague Senator KERRY made the following statement:

> When I vote to give the President of the United States the authority to use force, if necessary, to disarm Saddam Hussein, [it is] because I believe that a deadly arsenal of weapons of mass destruction in his hands is a real and grave threat to our security. . . .''

In a speech 3 months later at Georgetown University, Senator KERRY stated:

> Without question, we need to disarm Saddam Hussein. He is a brutal, murderous dictator, leading an oppressive regime. He presents a particularly grievous threat because he is so consistently prone to miscalculation. And now he is miscalculating America's response to his continued deceit and his consistent grasp of weapons of mass destruction. So the threat of Saddam Hussein with weapons of mass destruction is real.

Is anyone taking the floor today to suggest that President Clinton and others who spoke out so forcibly at that time were untruthful? I hear a silence.

I believe that we should give consideration to this fine public servant who is stepping up to become Secretary of State and consider the environment, the state of the knowledge, the statements made by a former President, and statements made by colleagues in the context of the issue of weapons of mass destruction, and I suggest that I do not find any disloyalty or any lack of truthfulness in her remarks publicly and throughout this process as it related to the earlier base of knowledge on weapons of mass destruction.

As a member of the Intelligence Committee in the last Congress, I went through a very careful set of hearings with other members of that committee, and we issued a report that I think helped explain how the mistakes were made with regard to the judgments on weapons of mass destruction, on which I certainly do not find any basis to challenge Dr. Rice's truthfulness.

In retrospect, we were wrong as a Nation, together with other countries, in our assumptions about Saddam Hussein's stockpiles of weapons of mass destruction. This shortcoming in our intelligence estimates has been the subject of exhaustive investigations by the Congress and independent commissions, and it continues with other commissions that are looking at it. We were not alone in those assessments. The best estimates of most foreign intelligence agencies, including those of Britain, Italy, Germany, Russia, and those of the U.N., were that Saddam Hussein had weapons of mass destruction. How can the critics possibly say that Dr. Rice and others in the administration would intentionally deceive the American people and the world?

Hindsight has also revealed several other interesting facts. Saddam Hussein's strategy of ignoring sanctions and eroding support for them over time was clearly working. International will to continue sanctions was waning. What is clear in the findings of the Iraq Survey Group is that it was Saddam Hussein's intent to revive a weapons of mass destruction program, including a nuclear program, once sanctions were removed or sufficiently eroded and the attention of the world was diverted elsewhere. That comes out of that survey group. Our committee had a great deal of work with that group, and I have high respect for their findings.

It is true that we did not find stockpiles of weapons of mass destruction in Iraq. That is a fact. But, we did find clear evidence of Saddam Hussein's intent to reconstitute those programs in the future. Such a finding has to be viewed in the context of Saddam Hussein's Iraqi regime. Saddam Hussein, his repressive policies, his regional ambitions, and his weapons of mass destruction had killed hundreds of thousands of people over three decades. His relationship with terrorists—and his direct role as the head of a state that sponsors terrorism and engaged in terrorist operations—contributed to death and destruction in Israel and elsewhere. The ultimate intent of his terrorist ties was unclear, but very unsettling, in the post 9/11 world.

Considering the compelling factual case, assembled over many years, our President made the right decision. In a bipartisan vote, 77 Members of this body agreed.

Iraq was a grave and gathering threat, to its own citizens, to the region, and to the world. The issue of weapons of mass destruction was a factor, but by no means the only reason for considering the use of military force against Iraq—it was one among many concerns.

Courageously, our President did act, with the support of the Congress, the voice of the American people. It was the right decision. The world is a safer place today and Iraq and the entire Middle Eastern region is a better place without Saddam Hussein. We owe a timeless debt of gratitude to those of our military and to other nations whose uniformed personnel have borne the brunt of battle, together with their families.

Dr. Rice has often, in my visits and consultations with her, expressed her concern for those who bear the brunt of war and, indeed, also the tens of thousands of Iraqi citizens who regrettably at this very moment are suffering from the internal strife in that nation on the eve of these historic elections, which will go forward this weekend.

We have before us an extraordinarily well-qualified nominee to be Secretary of State—an educator, a manager, a public servant, a proven leader of international renown. Dr. Rice is enormously talented and we are fortunate, as a Nation, to have someone of her caliber so willing to serve.

I strongly support the nomination of Dr. Rice to be Secretary of State and urge my colleagues to confirm her appointment quickly and overwhelmingly.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. LUGAR. I thank the Senator, my friend and colleague from Virginia, for his generous remarks.

I ask unanimous consent at this point, to try to formulate the program for much of the rest of the evening, that following the remarks of Senator FEINSTEIN, this be the order of speakers: Senator STEVENS; REED of Rhode Island; VOINOVICH; KERRY; INHOFE; a Democratic Senator at this point, if one seeks recognition; Senator CORNYN; once again, at the next point a Democratic Senator, if one seeks recognition; and there may be as many as three additional speakers who have not determined whether they were prepared to speak.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LUGAR. At this point, in trying to formulate for the benefit of the Senators the rest of the program, how much time remains on both sides of the aisle at this juncture?

The PRESIDING OFFICER. The majority controls 2 hours 14 minutes; the minority controls 1 hour 52 minutes.

Mr. LUGAR. I thank the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the Chair and the chairman of the Foreign Relations Committee. I had the pleasure of introducing Dr. Rice to the Foreign Relations Committee. I thought I might just come to the floor of the Senate and share with the Senate as a whole some of my feelings and beliefs about this nominee.

I consider myself a friend of Dr. Rice's. She is a fellow Californian. I have known her. We have participated together in various think tank discussions. I know the bright, incisive mind that she has. I also know her background. This is a woman who was born 50 years ago in the segregated South, in Alabama. She has been able to reach the highest level of academia and public service. Can you imagine, she went to college at the age of 15 and graduated at the age of 19. Not many people know that. In January of 2001, she became the first African-American woman to serve as National Security Adviser. She has distinguished herself as a thoughtful, determined, and hardworking individual. Consequently, I believe she can be a strong and effective voice for America's interests abroad.

Now, looking at the foreign policy landscape, the United States faces several very complex challenges in many parts of the world. How we respond to these challenges will have a tremendous impact not only on our future, but on the future of the world. If you just take Iraq—and we are coming up to an election—what happens after that election? What will be done with the ''de-Baathification'' policy of Mr. Bremer, which I happen to think was a huge mistake? Yes, one of the mistakes the administration made was to effectively remove many managers and supervisors, of virtually all of the significant infrastructure of Iraq, including the military and the police department.

I am one who believes that was a mistake. I am one who believes that because of that, the Sunni population has become part of the problem rather than part of the solution. That needs to be dealt with. I do not know what Dr. Rice will do, but I do know I have had an opportunity to discuss it with her, and I do believe she knows that it is a significant problem that needs to be addressed.

In the Middle East, there is a real window of opportunity to advance the peace process with the election of Abu Mazen as the President of the Palestinian Authority and Prime Minister Ariel Sharon's plan to withdraw from Gaza. It has also been helped by the fact that the Labor Party has become part of the coalition government, thereby giving Ariel Sharon more flexibility.

I was very pleased to hear her statements before the Senate Foreign Relations Committee in which she said:

> I look forward to personally working with the Palestinian and Israeli leaders, and bringing American diplomacy to bear on this difficult but crucial issue. Peace can only come if all parties choose to do the difficult work and choose to meet their responsibilities. And the time for peace is now.

That is a quote from the next Secretary of State of the United States of America, who has said that she will make a solution to the Palestinian-Israeli struggle a major priority. That is a very important step and a very important statement.

Iran and North Korea's nuclear weapons programs pose serious risks for peace and stability in the Middle East, in Asia, and they have set back efforts to curb nuclear proliferation. Here, there is need for consistent and effective diplomacy, not to further isolate North Korea but rather to convince North Korean leadership that it is in their country's self-interest to cooperate in dismantling their nuclear programs.

I basically believe countries do what they perceive to be in their self-interest, not because we tell them to do something, and I look forward to an initiative to convince the North Korean leadership that it is indeed in their self-interest to rid themselves of a nuclear weapons program.

In Russia, President Vladimir Putin has consolidated power and taken several steps calling into question his commitment to democracy, human rights, and the rule of law. Dr. Rice has a very strong background in Soviet and Russian affairs, and I believe this is going to be a big help in charting future diplomatic efforts with President Putin.

Serious challenges deserve quality leadership. I believe Dr. Rice has the skill, the judgment, and the poise to take on these challenges and lead America's foreign policy in the coming years.

I understand that some of my colleagues, many of them on my own side, have serious concerns about Dr. Rice's nomination, stating that she was a key architect of U.S. foreign policy during President Bush's first term. Let me be clear, I believe the key architects were, in fact, the President, the Vice President, and the Secretary of Defense. Obviously, Dr. Rice offered advice and counsel as the President's National Security Adviser, but remember, 78 Members of this body voted to authorize use of force in Iraq based on the intelligence which we received, which at the time was compelling and chilling but which we now know was not credible and was both bad and wrong.

Should Dr. Rice be blamed for wrong and bad intelligence? I think not. That is what intelligence reform was all about. That is what improved oversight over the intelligence community by the Intelligence Committees of both the House and the Senate is really all about, and that is what a new national intelligence director, to coordinate the 14 or 15 different agencies is all about.

For my part, I will continue to fight for a principled foreign policy based not just on military strength but cooperation, understanding, humility, and a desire to seek multilateral solutions to problems that indeed touch on many different nations. I want to see the United States reclaim the respect and admiration of the world and once again be seen as a champion and a leader of democracy, justice, and human rights. I believe the best way to do this is by example, by listening and by understanding that America's great strength is not our military prowess but our sense of justice, freedom, and liberty.

Importantly, Dr. Rice has the trust and confidence of the President of the United States and the world knows that she will have direct access to him. I believe this makes her a very powerful Secretary of State. I believe she will assume this office with a new dimension. To see this brilliant, young African-American woman represent our country's national interests on the world stage can bring about a new dimension of American foreign policy. So clearly this is an asset.

I did not expect this President of the United States to appoint anyone who seriously disagreed with him. The question really is, Is this woman competent? Is she able? Can she handle and lead the enormous State Department? I believe the answer to those questions is clearly yes. I also believe that she will be able to advocate a course and make changes and adjustments when and where necessary, and enhance the ability of the United States to restore lost credibility among many nations and allies.

Indeed, barring serious questions about a nominee's integrity and ability to serve, a President deserves to have his selections confirmed. There is nothing in Dr. Rice's past performance to suggest she is not capable of performing the job as America's chief diplomat, having the responsibility to conduct America's foreign policy. There is every reason to believe that she is up for this challenge. No one can be sure if she will succeed.

I conclude by saying this: Only time and events will tell if Dr. Rice will indeed make a great Secretary of State. To be sure, her vision, thinking, and problem-solving skills will be tested. I believe she is a remarkable woman, and I look forward to working with her as the next Secretary of State.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I rise today in support of Dr. Condoleezza Rice's nomination for Secretary of State. I first met Dr. Rice when she served as the Soviet and East European Affairs adviser during the first Bush administration. Her reputation as an invaluable adviser was well established even then. She helped guide that administration through the reunification of Germany, rebellion in the Balkans, and the collapse of the Soviet Union. Her unshakable commitment to freedom, democracy, international peace and justice are unquestioned.

Philip Zelikow, who served with Dr. Rice on the National Security Council during this time, and is the Executive Director of the National Commission on Terrorist Attacks, stated this:

> She believes in empowering people. In international affairs, that means real commitment to liberty and freedom. She sees the message of her life as a message of how to realize a person's potential. No one should ever become the prisoner of other people's expectations.

Dr. Rice returned to Stanford at the close of the first Bush administration. In 1993, she became the first female and non-white provost in the university's history. She was also the youngest.

My daughter, Lily, graduated from Stanford in 2003, so I have a unique appreciation for Dr. Rice's accomplishments. During her 6 years as provost, Dr. Rice succeeded in restoring Stanford's financial position, and also engaged in one of her passions—sports.

A stalwart sports fan, Dr. Rice would regularly be seen cheering the Stanford Cardinals from the bleachers. I even saw her one day when Stanford beat UCLA—a terrible day. She was also seen working out with the Stanford football team. Dr. Rice is a role model, especially for young women. During her time at Stanford she was loved by undergraduates and appreciated by faculty members.

Dr. Rice has had a profound impact on students across our Nation. A political science major at nearby Howard University put it best, saying:

> She has opened the door for not only women but minorities in government and, hopefully, she [will] be a role model for women and minorities to achieve high, important positions in government.

Dr. Rice is also capable of making tough decisions. Up to this point she's had mostly advisory roles in government, and she has served in that capacity with honor, dignity and unwavering dedication. It is those qualities—and her unsurpassed intellectual abilities—that prompted Forbes magazine to name her the most powerful woman in the world last year. I believe she is entitled to that acclaim.

Dr. Rice is a balanced genius in her own right. And, when the Senate confirms her nomination to become Secretary of State—as I believe it will and should—she will be the boss. The Nation could not be in better hands. Dr. Rice has my complete support. I look forward to working with her in her new role.

I ask unanimous consent it be possible for me at this time to introduce S. 39.

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

(The remarks of Mr. STEVENS pertaining to the introduction of S. 39 are

located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. Under the previous order, the Senator from Rhode Island is recognized.

Mr. REED. Mr. President, may I inquire how much time I have been allotted?

The PRESIDING OFFICER. The Senator has 30 minutes.

Mr. REED. Mr. President, I rise today to join my colleagues in discussing the nomination of Dr. Condoleezza Rice for Secretary of State of the United States. I must confess, after careful deliberation I intend to oppose this nomination.

There is no doubt that Dr. Rice is an extraordinarily talented, capable individual. Her credentials as an academic are impeccable. She has a compelling life story. She has done remarkable things in her life. But I believe the best way to judge what would be her performance as Secretary of State is looking closely at what she has done as a National Security Adviser under this Bush administration. I think in that regard she leaves some very troubling questions unanswered as her nomination comes before us this day.

Most of what she did with the President, obviously, as his National Security Adviser, was confidential and necessarily is not subject to public view. But she has not, in my view, successfully responded to obvious questions about inconsistencies in her statements, about policies she advocated, apparently, and about her role in marshaling information for the President of the United States. In a very simplistic view, I think the National Security Adviser's chief role is to make sure the President has every bit of information he needs to make very difficult judgments—not just the information that favors one side or the other but all the information. Indeed, not just the bold strokes but the nuances. My sense is that this mission was not adequately performed by Dr. Rice.

She has been a key figure in the Bush foreign policy establishment going back years when Governor Bush decided to run for President. She is someone who is very close to the President. Again, I think she has to be judged on the result of that partnership.

One of the aspects that is troubling to me is the fact that Dr. Rice has maintained that Iraq is the central arena in the war on terror, when, in fact, this is a global, international threat to the United States and that, in fact, it appears that Iraq was not the global center, the central arena in this war on terror.

She applied a doctrine of preemption which is applicable to terrorist cells, but I believe she applied it incorrectly in the case of Iraq—at least the administration did, and she was the principal architect or one of the principal architects of that policy.

Many people expressed alternate views about the role of Iraq as a center of terror. Brent Scowcroft, a predecessor as National Security Adviser, pointed out in an editorial:

> An attack on Iraq, at this time, would seriously jeopardize, if not destroy, the global counterterrorist campaign we have undertaken.

To this date I think it certainly has not advanced the policy we are actively pursuing throughout the world.

She suggested on several occasions there are strong links between al-Qaida and Saddam Hussein. On March 9, 2003, on ''Face the Nation,'' Dr. Rice declared:

> Now the al-Qaeda is an organization that's quite disbursed, and quite widespread in its effects, but it clearly has had links to the Iraqis, not to mention Iraqi links to all kinds of other terrorists.

On ''Meet the Press'' on September 28, 2003, Dr. Rice said:

> No one has said that there is evidence that Saddam Hussein directed or controlled 9/11, but let's be very clear, he had ties to al Qaeda, he had al Qaeda operatives who had operated out of Baghdad.

That, in my view, is not accurately reflecting what many other sources subsequently confirmed, that, in fact, any ties Saddam Hussein had with al-Qaida were very tenuous if they existed at all.

On June 27, 2003, the New York Times reported:

> The chairman of the monitoring group appointed by the UN Security Council to track al Qaida told reporters that his team had found no evidence linking al Qaida to Saddam Hussein.

And 6 months later, the New York Times further reported:

> CIA interrogators have already elicited from the top al Qaida officials in custody that, before the American-led invasion, Osama bin Laden had rejected entreaties from some of his lieutenants to work jointly with Saddam.

As far back as November 2002, Europe's top investigator of terrorism told the LA Times:

> We have found no evidence of links between Iraq and al Qaeda. If there were such links, we would have found them. But we have found no serious connections whatsoever.

But what I think Dr. Rice did publicly, and perhaps even within the confines of the West Wing, is to make the case for these links when the case was at least highly questionable. None of that questioning, none of that nuance seemed to have been presented effectively to the President, certainly not effectively to the public.

During her confirmation hearings, Dr. Rice asserted her belief, reiterated her belief on the topic of troop strength, that she believed that the levels in Iraq were sufficient from the beginning of the war up to and including phase IV operations. Phase IV operations are those posthostility operations to stabilize the country. In her phrase she said that they were ''adequately resourced.''

What we have discovered in the months since the successful action leading to the fall of Saddam is instability, violence—demonstrating, I think, less than adequate forces there in country to deal with these problems.

It turns out that in March 2003 when a lieutenant colonel was briefing the issue of phase IV, the postoperation activities of our military forces, phase 4–C, the chart was very simple. It said, ''To Be Provided.'' Again, I think this is a glaring error. If you are the National Security Adviser, you have to be able to assure the President of at least a plan for every contingency, thorough, adequate, with sufficient resources and sufficient troops. Since the success of the military campaign, we have been, in my view, plagued by insufficient troops. Indeed, it was interesting to note that Ambassador Bremer, just last October, stated:

> We never had enough troops on the ground.

This, I think, is a glaring mistake. It might have been the decision of a principal to overrule their best advice, but that is not the case she is making today as she seeks this nomination for Secretary of State.

There is another troubling issue and that, of course, is the one that received quite a bit of notoriety—the appearance in the State of the Union speech of a reference to Iraq attempting to buy yellow cake from Africa even though weeks before that, many weeks before that, the CIA claimed that such an assertion was unsubstantiated.

In a July 2003 interview with Jim Lehrer, Dr. Rice stated she either did not see or could not remember reading this CIA clearance memo.

I would argue if a piece of information is going to be uttered by the President of the United States in a State of the Union speech dealing with the critical issues of peace and war, of weapons of mass destruction, of the attempt of one nation to obtain nuclear material from another, that is a point of information that has to be of concern to the National Security Adviser.

She claims she delegated it to her deputy, Stephen Hadley. But still it is her responsibility. That was a misstatement—a misstatement that had already been pointed out by the CIA before the President made such a statement before our colleagues in the State of the Union Address.

The interesting point to make also is that Mr. Hadley now apparently has been selected to be the National Security Adviser even though if there was a mistake he apparently is the one who is determined to be responsible—at least in Dr. Rice's recollection.

There is another issue, too. In October 2003, the White House announced the creation of an ''Iraq Stabilization Group,'' recognizing that something more had to be done to stabilize the situation. Dr. Rice was charged with leading this stabilization group. This group was designed to coordinate activities there. She was in charge. There were four coordinating committees on counterterrorism, economic development, political affairs, and creation of clearer messages to the media both in the United States and within Iraq.

There has been no product of this committee, no apparent impact on policy. It is a void in terms of what it has done. Yet this was one of her major responsibilities.

I think these are serious issues about her stewardship of the very critical role as National Security Adviser and raises serious questions in my mind of her capacity to do differently as Secretary of State.

She also indicated many times that prior to 9/11 the policy of the Bush administration—and her advice by inference—was a strong focus on counterterrorism. Yet I understand Dr. Rice was scheduled to deliver a speech on September 11 at Johns Hopkins in which she would indicate the cornerstone of the Bush foreign policy was missile defense.

Having served in this body during that period of time, I can tell you the emphasis was on missile defense. It was not on counterterrorism. It was not on the old-fashioned kind of boots on the ground, intelligence, striking brigades. It was a multibillion-dollar effort on developing a national missile system. I think her speech scheduled for that day was emblematic of what the focus was.

Also, before 9/11, the Bush administration was preparing significant cuts in the counterterrorism program. Those cuts were obviously obviated by the terrible attacks on New York on that dreadful day.

Richard Clarke, the counterterrorism expert in the Clinton administration, sent an urgent memo to Dr. Rice directly asking for a meeting of principals about the impending attack by al-Qaida. That was January 24, 2001—days after the President took office. There was no meeting with her on such topic until 1 week before 9/11.

Internal Government documents show that the Clinton administration officially prioritized counterterrorism as the ''tier I'' priority, but when the Bush administration took office, top officials downgraded counterterrorism. Even Dr. Rice admitted, ''We decided to take a different track.''

There again, was the President given the best advice? Was all the information marshaled so he could make good judgments? Were the people who had viewpoints that might be inconsistent with the group think of the time allowed in? That is a special role of the National Security Adviser, and a very difficult role.

These are a few of the issues which I think have to be considered with this nomination. There are other issues, too.

The President, in my view, is basically replicating his inner circle now in the broader context of the Cabinet. This raises an issue that was identified by John Prados, a senior fellow at the National Security Archive at George Washington University. What he said is:

> The administration is setting itself up for a very closed process of creating foreign policy. It's going to eliminate consideration of wider points of view.

In effect, we are in danger of creating an echo chamber of foreign policy in which one loud voice carries because it reverberates without check. That, I think, would be a very dangerous situation.

There are other areas of concern that I have with respect to Dr. Rice's nomination. She has excellent access to the President. There are friends of hers who say she and the President have a ''mind meld.''

I guess they think alike. But being Secretary of State or being any Cabinet Secretary is not just having access, rapport, and a sense of what the boss wants; it is also having the ability and the interest to tell hard truths which you know are not going to be accepted well. That is something that is important.

Again, I don't know. It is hard to predict these things—whether she possesses that kind of ability to tell someone whose mind is melded with hers that he is wrong, or she will even understand where policy requires a different perspective.

As the New York Times editorial characterized her first term as National Security Adviser, according to their words:

> She seemed to tell [President Bush] what he wanted to hear about the decisions he's already made, rather than what he needed to know to make sound judgments in the first place.

That type of approach will not serve a Secretary of State very well.

She has also broken a longstanding precedent recognized by preceding National Security Advisers who refrain from partisan politics. She gave speeches espousing the administration's policy in key battleground States of Ohio, Florida, and Pennsylvania beginning in May 2004. Her actions were sharply criticized by her predecessor, Zbigniew Brzezinski, National Security Adviser for President Carter. He stated that ''the national security adviser is the custodian of the nation's most sensitive national security secrets and should be seen as an objective adviser to the President'' and not just another member of the political team.

We have I think serious issues raised by this nomination. No one can deny her ability. But I think she has not successfully explained these inconsistencies of statements and these policy mistakes which I believe have seriously eroded our position in the world.

She has, along with the President, apparently espoused a unilateral policy that has isolated many of our traditional allies. It has us going it alone in Iraq at a huge cost. The President is sending up to us a supplemental budget of $80 billion. Today, the operations officer for the U.S. Army indicated they assume they will have over 100,000 troops in Iraq not just this year but next year. That means—just doing the arithmetic—that we can expect another $80 billion-plus bill next year, and still we are in a difficult and confusing situation.

I think Dr. Rice's nomination recognizes and represents a continuation of a policy which has us bogged down in Iraq while Iran and North Korea continue to advance their nuclear ambitions and while a diminished but still dangerous al-Qaida continues to plot against us.

These facts—this strategic situation—I believe requires if not a change in direction at least a realistic reassessment of where we are and how we got there.

Dr. Rice's nomination does not appear to give hope to this change in direction or realistic reassessment. Therefore, I will vote against this nomination.

I yield the remainder of time. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. LUGAR. Mr. President, I ask the distinguished Senator from Ohio be recognized.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise today to join Chairman LUGAR and other members of the Foreign Relations Committee to express my strong support for the nomination of Condoleezza Rice to serve as our next Secretary of State.

Dr. Rice has the qualifications, the educational background, and professional experience to serve as an outstanding Secretary of State. She is an academic expert of the former Soviet Union, earning her doctorate before the age of 30, and rising to serve as provost of Stanford University before turning 40. Her experience as provost at Stanford University allowed her to have substantial management experience.

In addition to her experience in academia, Dr. Rice is an experienced professional in the national security arena. She served as Director of Soviet and Eastern European Affairs at the National Security Council under the administration of President George H. W. Bush and most recently as the National Security Adviser to President George W. Bush.

Dr. Rice brings a great deal of talent, skill, and intellect to the table. As our country continues to confront global challenges in Iraq, Afghanistan, and other parts of the world, it is essential our Secretary of State have the stature, skill, and ability to help protect our national security interests and promote the President's vision of freedom and democracy abroad that he so eloquently communicated in his inaugural address.

This Senator from Ohio shares the President's vision. This vision must be successful so our children and grandchildren are able to live in a country free from the fear of terrorism.

During the last 4 years as National Security Adviser, Dr. Rice has played a major role in the formulation of our foreign policy, serving as a vital part of the administration's effort to promote peace and democracy throughout the world.

Dr. Rice has a close relationship and the confidence of the President which will serve her well as she assumes the position of Secretary of State at home and abroad. She is a good listener, an important trait for someone who is going to be this country's chief diplomat. I know this from contacts with her over the years. I had the pleasure of knowing Dr. Rice since joining then Governor Bush as adviser during the 2000 Presidential elections. I found her ready and willing to work together on important issues, including United States policy toward Southeast Europe, NATO enlargement, and efforts to combat global anti-Semitism.

While working with Governor Bush on the campaign trail—and I will not forget in 2000 Dr. Rice knew of my strong concerns with proposed legislation from two respected members of the Senate, Senator WARNER and Senator BYRD, that would have forced the new American President who was to be elected in 2000—at that stage of the game we were not sure who would be elected in 2000—they were going to force that new President by July of the first year of his term to decide whether to remove United States troops from Kosovo. She listened and became involved.

Ultimately, and I remember the debate quite vividly, the provision was defeated with the help of then Presidential candidate George W. Bush and with the help of then sitting President Clinton.

Now, nearly 5 years later I continue to believe it is essential we remain engaged in Southeast Europe, particularly as we look to ensure peace and security in Kosovo following the violence that erupted last March. I know Dr. Rice will continue to work on matters important to the stability of this part of the world and I am confident she understands how important it is for the United States to play a leadership role in the Balkans.

During her tenure as National Security Adviser, I have worked with Dr. Rice on other foreign policy priorities, including efforts to bring seven new nations into the NATO alliance, strengthening a Europe that is whole, free, and at peace. Among these seven countries were the Baltic nations of Lithuania, Latvia, and Estonia—all countries I strongly believe deserve membership in NATO despite strong objections from Russia. Again, Dr. Rice was willing to listen and to serve as an ear for the President.

I was pleased when the President made clear his support for NATO enlargement during a speech in Warsaw, Poland, in June of 2001. At that time there were many people in this country who were concerned that because the President wanted to move away from the ABM Treaty that he might negotiate with Russia in a quid pro quo for their backing off of the ABM if he would back off from pushing for expansion of NATO, particularly the three countries I mentioned.

President Bush made an outstanding speech in Warsaw, Poland, and he made clear his support for NATO enlargement. He remarked at that time:

> I believe the NATO membership for all of Europe's democracies that seek it.

President Bush went on to say:

> As we plan to enlarge NATO, no nation should be used as a pawn in the agenda of others. We will not create away the fate of free European peoples.

The seven countries that went in—Slovenia, Slovakia, Bulgaria, Romania, Estonia, Latvia, and Lithuania—all of those people who have relatives in the United States should know it was Condoleezza Rice who worked with the President to prepare that speech so we made it very clear he supports the expansion of NATO. And even though our relations have thawed with Russia today, the fact of the matter is, we have continued to have serious differences of opinion with Russia.

Again, her special expertise—Think about it. We are going to have a Secretary of State who can ponimat porusski. I think that is very important. We have not had a Secretary of State who is fluent in languages as is Dr. Rice. I think some people may not think that is important, but I will tell you, it is important that people know she thinks enough of other languages that she has become an expert in those languages.

Dr. Rice has also worked with me and other colleagues of the Senate and the House of Representatives to combat global anti-Semitism. We have made important strides in this effort during the last several years, but there is still more to be done, particularly to establish a new office at the State Department to monitor and combat anti-Semitism. Dr. Rice has expressed her support for such action, which is called for as part of the Global Anti-Semitism Review Act, which the President signed into law on October 16, 2004.

I am pleased that Dr. Rice appeared receptive to attending the third OSCE conference on anti-Semitism which is scheduled to take place in Cordoba, Spain this June. Her presence as Secretary of State of the United States at this conference is essential, as was the presence of Secretary Powell at the prior OSCE conference in Berlin, as an example of the concern of the United States about the growing menace of anti-Semitism. I am confident, under her leadership, this good work will continue, and I am hopeful we can take it to an even greater level.

I say that every one of us here, in one way or another, could be critical of decisions made in U.S. foreign policy. It is easy to be a Monday-morning quarterback. As we continue to move forward with efforts to promote stability and security in Iraq and the greater Middle East and other parts of the world, I think it is an advantage to have someone serving as Secretary of State who has experience and has seen the pluses and minuses, and had the opportunity to take away lessons learned.

She has been there for 4 years. Even though some people do not want to admit it, we have had some ups and downs, and she has experienced those. I would rather have somebody who has been there and experienced these things as Secretary of State than bring in some fresh face that has not had that experience. I am sure Dr. Rice has learned some important lessons during these last 4 years.

I agree with the Cleveland Plain Dealer, the largest newspaper in Ohio, which had an editorial titled, ''A little respect, please: Dems should remove petty obstacles to Rice's confirmation, but she owes senators much better answers as secretary of state.''

I ask unanimous consent it be printed in the RECORD.

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

A LITTLE RESPECT, PLEASE: DEMS SHOULD REMOVE PETTY OBSTACLES TO RICE'S CONFIRMATION, BUT SHE OWES SENATORS MUCH BETTER ANSWERS AS SECRETARY OF STATE

That said, [Condoleezza Rice]'s performance during nearly 11 hours of confirmation hearings before the Senate Foreign Relations Committee last week was more than just disappointing. It was alarming to see an official who played such a central role in crafting U.S. Iraq policy turn vague and uncommunicative when specific questions were asked. Congress deserves fuller responses on critical matters such as the U.S. exit strategy, how soon before adequate numbers of Iraqi security forces are trained and the overall rationale for U.S. engagement in Iraq.

Condoleezza Rice ought to make an accomplished secretary of state for reasons that go well beyond having the president's ear. She has the skills, interest and drive to reinvigorate U.S. diplomacy and repair severely frayed international relations. Her communication abilities, personal warmth, work ethic and knowledge, combined with the fervor of her beliefs, could make her a national treasure at a fateful moment when the Iraq war has tarnished American standing in the world. Her stated and obviously heartfelt commitment to foreign engagement, public diplomacy and more U.S. efforts to foster foreign-language study could inject needed fire and focus to the diplomatic arts, as practiced by America.

That's why no one seriously opposes Rice's nomination to be this country's chief diplomat, four heartbeats away from the presidency.

Democratic senators who are playing juvenile games by delaying her confirmation should lift their objections, forthwith.

It's one thing to mount principled opposition to policies or people who could injure American interests. It's quite another to throw monkey wrenches just to hear them clank in the cogs. The handful of Democrats, including Sen. Robert Byrd of West Virginia, who are obstructing Rice's moment must stop, and vote her in.

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last week was more than just disappointing. It was alarming to see an official who played such a central role in crafting U.S. Iraq policy turn vague and uncommunicative when specific questions were asked. Congress deserves fuller responses on critical matters such as the U.S. exit strategy, how soon before adequate numbers of Iraqi security forces are trained and the overall rationale for U.S. engagement in Iraq.

These are the seminal questions the second George W. Bush administration must answer today, not tomorrow.

Rice also must clear up the contradiction she herself put forth to the committee: She cannot be both a ''good soldier'' who molds every public statement to the president's message, and also a Cabinet member who speaks her mind and answers Congress candidly. Rice must choose to be the latter, committing herself to the role that her predecessor and friend Colin Powell performed at State—offering her own voice on U.S. diplomacy, not simply an echo of the Oval Office chorus.

If Rice can find her voice—and use it push blinkered State Department underlings to better understand both friends and rivals abroad—these next four years could do much to dispel the international ill will and suspicions aroused by the last four. If she cannot, she will be true neither to herself nor to the trust that is about to be placed in her to manage this nation's foreign relations.

Mr. VOINOVICH. The first quote is:

[Dr. Rice]'s performance during nearly 11 hours of confirmation hearings before the Senate Foreign Relations Committee last week was more than just disappointing. It was alarming to see an official who played such a central role in crafting U.S. Iraq policy turn vague and uncommunicative when specific questions were asked.

Congress deserves fuller responses on critical matters such as U.S. exit strategy, how soon before adequate numbers of Iraqi security forces are trained and the overall rationale for U.S. engagement in Iraq.

I share some of those concerns, and so do lots of other members of the Foreign Relations Committee. I think the administration has not been as candid and forthright with us during the last couple of years in regard to some of the questions I and other members of the Foreign Relations Committee have asked. I want to make it clear publicly that I expect more candor from this administration during the next 4 years, particularly with members on the Foreign Relations Committee, so we can maintain a bipartisan foreign policy. We have some good people on the Foreign Relations Committee. There are some Democrats who have been very supportive of the President during the last several years, and some of them, I think, are frustrated that they do not feel they are getting the kind of answers they should be getting. I think that is something Dr. Rice has to understand if we are going to have this bipartisan foreign policy that is so essential to us moving forward to do what the President would like to accomplish.

That being said, I agree with the Plain Dealer which also said in that editorial:

Condoleezza Rice ought to make an accomplished secretary of state for reasons that go well beyond having the president's ear.

She has the skills, interest and drive to reinvigorate U.S. Diplomacy and repair severely frayed international relations.

Her communication abilities, personal warmth—

Boy, she is a wonderful person. You feel good when you are around her.

[Her] work ethic and knowledge, combined with the fervor of her beliefs, could make her—

Listen to this—

a national treasure at a fateful moment when the Iraq war has tarnished American standing in the world.

I am continuing to read from the editorial:

Her stated and obviously heartfelt commitment to foreign engagement, public diplomacy and more U.S. efforts to foster foreign-language study could inject needed fire and focus to the diplomatic arts, as practiced by America.

I think that is one wonderful editorial in support of her nomination from Ohio's largest newspaper, the Cleveland Plain Dealer.

Dr. Rice has the experience, intellect, and ability to serve our country well as Secretary of State. She is absolutely qualified to have this job. I urge my colleagues to join me in supporting her nomination.

I would hope that many of our colleagues on the other side of the aisle who may have some questions will look beyond some of the things we have heard from the other side of the aisle and support her nomination so we send a signal to the rest of the world that we have a Secretary of State who has the overwhelming support of the Senate. It is so important, I think, to her success as our Secretary of State.

I yield the floor.

The PRESIDING OFFICER. Who seeks time?

The Senator from Oklahoma.

Mr. INHOFE. Mr. President, first let me say to the Senator from Ohio, Mr. VOINOVICH, I have always considered him to be the expert on the Balkans, and it is interesting that he would make the comments about Dr. Rice and her knowledge of that area. At the conclusion of my remarks, I am going to be talking a little bit about West Africa, an area in which I have had a lot of personal experience. There again, she is an expert.

We are presented with an extraordinary opportunity to confirm as Secretary of State a truly remarkable American. Dr. Condoleezza Rice is no stranger to the international scene. Her long record of accomplishments is well known to all of us, and her record of exemplary service to this country is without parallel.

As President Bush's National Security Adviser, Dr. Rice has played a vital role in protecting our Nation both here and abroad, while providing the President with everything he needed to know to defend the American people and advance the cause of freedom. Her experience, along with her prior knowledge, makes Condoleezza Rice the ideal Secretary of State for these difficult times.

Being the Secretary of State has to be one of the toughest jobs I can imagine. The person in that job has to be an expert on everything from Albania to Zimbabwe. Over the last 25 years, Dr. Rice has studied foreign policy in the academic world and lived foreign policy in the trenches, and she is a master of it in both theory and practice.

In addition to being an expert, the Secretary of State also has to be something of a salesman. It is not enough to understand every detail of America's foreign policy; you also have to be able to explain it to others who might be reluctant or even defiant; and then you have to convince them that joining in our work is the right thing to do. Again, Dr. Rice possesses this ability in abundance, and I cannot imagine anyone more qualified to be the face of America in the world of diplomacy.

As if these two jobs were not enough, the Secretary also has to manage an enormous Cabinet Department spread across the globe. Most of us have been in many parts of the world where you are dealing with people in each one of these countries. These people are experts, and you have to be more of an expert than they are. Staying on top of the day-to-day workings of the State Department would be enough for any three people, apart from the other jobs. But Dr. Rice has proven her ability in this area as well, managing a giant research university with great success.

Of course, Dr. Rice will face many challenges as Secretary of State: the ongoing military action in Iraq and Afghanistan, our efforts to rebuild those countries as we continue to share the joys of freedom, the relationships with our allies that have been strained in recent years, and of course the threat of ideological hatred that we know all too well.

Dr. Rice will also have to rally our allies and coordinate their support to carry out the global war on terrorism. But Dr. Rice has both the experience and the vision to chart America's course in the international community. The path ahead of us is clear. It is a path that Dr. Rice knows, believes in, and can articulate better than anyone else. I have no doubt she will continue the great tradition of American diplomacy with honor, confidence, and the utmost dedication.

Dr. Rice has faced some intense questioning during the nomination. I have been very proud of her. One of the characteristics of Dr. Rice is that she knows she can stand up against anyone. We have seen this. We have seen it over and over again on television. I said in one of the shows not too long ago one of her great characteristics is, she cannot be intimidated. Quite frankly, there are a lot of Senators who don't like someone they can't intimidate, but she cannot be intimidated. I was very proud of her during the process that I was able to watch mostly on television. I know Dr. Rice will acquit herself well, as she has thus far.

Last week President Bush laid out his vision. He said:

It is the policy of the United States to seek and support the growth of democratic movements and institutions in every nation and culture, with the ultimate goal of ending tyranny in our world.

Dr. Rice helped formulate this vision for our foreign policy, and she knows how to make it happen.

Senator VOINOVICH was talking about the Balkans. I have had the opportunity over the last 8 years to spend a great deal of time in West Africa. I have to say that 4 years ago last month, I was the first visitor Dr. Rice had in the White House. As she was unpacking her things, I told her about things we were dealing with in countries such as Benin, Cote d'Ivoire, Ghana, Nigeria, Congo Brazzaville, Congo Kinshasa, Gabon. Each country I brought up to her, she knew the history of that country, the individuals and problems that are there and how we must deal with the problems. I can't think of anyone who is even similarly equipped for this job unless we go back to Henry Kissinger.

There was an editorial in the Washington Post this morning by Henry Kissinger and George Shultz. People are struggling to try to find reasons that she should not be confirmed. Those reasons all seem to boil down to one of the argument on weapons of mass destruction. Why is it that she thought there were weapons of mass destruction? That was answered so articulately by Senator JOHN WARNER a few minutes ago on the floor when he read the quotations of former President Bill Clinton as well as Senator JOHN KERRY when they said: there are weapons of mass destruction. We have to go in and take out Saddam Hussein. And so everybody knows that was the prevailing wisdom and it was accurate. There were weapons of mass destruction. Anyway, that argument has been diffused.

They are going to say, we want to know a timetable as to when our troops are going to come out. That is what this article was about this morning. It was an editorial by Kissinger and George Shultz. And they talk about it. I will read part of one paragraph:

An exit strategy based on performance, not artificial time limits, will judge progress by the ability to produce positive answers to these questions. In the immediate future, a significant portion of the anti-insurrection effort will have to be carried out by the United States. A premature shift from combat operations to training missions might create a gap that permits the insurrection to rally its potential. But as Iraqi forces increase in number and capability, and as the political construction proceeds after the election, a realistic exit strategy will emerge.

This is two people thought to be as knowledgeable as anyone else, certainly, one of those being Henry Kissinger.

I ask unanimous consent to print this editorial at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. INHOFE. One of the great experiences I had in my career on the Hill was when I was in the other body. It was about a year before former President Nixon died. No matter what you think of former President Nixon, I don't think there is anyone who won't tell you that he was the most knowledgeable person on foreign affairs of anyone of his time. He came before the House of Representatives where I was serving at the time and gave a 2½ hour talk. He didn't use any notes. He stood up there, stood erect at his age and his health condition, and he took us for 2½ hours all the way around the world, every remote country there was, and talked about the history of that country, the history of our relationship to that country, what our relationship would be and should be with those countries. I don't think there is anyone who can do that today other than the nominee we are talking about today in Dr. Condoleezza Rice. I have seen her do the same thing. We are blessed to have her as our nominee for Secretary of State. I am certainly looking forward to serving with her.

I yield the floor.

EXHIBIT 1

[From the Washington Post, Jan. 25, 2005]

RESULTS, NOT TIMETABLES, MATTER IN IRAQ

(By Henry A. Kissinger and George P. Shultz)

The debate on Iraq is taking a new turn. The Iraqi elections scheduled for Jan. 30, only recently viewed as a culmination, are described as inaugurating a civil war. The timing and the voting arrangements have become controversial. All this is a way of foreshadowing a demand for an exit strategy, by which many critics mean some sort of explicit time limit on the U.S. effort.

We reject this counsel. The implications of the term ''exit strategy'' must be clearly understood; there can be no fudging of consequences. The essential prerequisite for an acceptable exit strategy is a sustainable outcome, not an arbitrary time limit. For the outcome in Iraq will shape the next decade of American foreign policy. A debacle would usher in a series of convulsions in the region as radicals and fundamentalists moved for dominance, with the wind seemingly at their backs. Wherever there are significant Muslim populations, radical elements would be emboldened. As the rest of the world related to this reality, its sense of direction would be impaired by the demonstration of American confusion in Iraq. A precipitate American withdrawal would be almost certain to cause a civil war that would dwarf Yugoslavia's, and it would be compounded as neighbors escalated their current involvement into fullscale intervention.

We owe it to ourselves to become clear about what post-election outcome is compatible with our values and global security. And we owe it to the Iraqis to strive for an outcome that can further their capacity to shape their future.

The mechanical part of success is relatively easy to define: establishment of a government considered sufficiently legitimate by the Iraqi people to permit recruitment of an army able and willing to defend its institutions. That goal cannot be expedited by an arbitrary deadline that would be, above all, likely to confuse both ally and adversary. The political and military efforts cannot be separated. Training an army in a political vacuum has proved insufficient. If we cannot carry out both the political and military tasks, we will not be able to accomplish either.

But what is such a government? Optimists and idealists posit that a full panoply of Western democratic institutions can be created in a time frame the American political process will sustain. Reality is likely to disappoint these expectations. Iraq is a society riven by centuries of religious and ethnic conflicts; it has little or no experience with representative institutions. The challenge is to define political objectives that, even when falling short of the maximum goal, nevertheless represent significant progress and enlist support across the various ethnic groups. The elections of Jan. 30 should therefore be interpreted as the indispensable first phase of a political evolution from military occupation to political legitimacy.

Optimists also argue that, since the Shiites make up about 60 percent of the population and the Kurds 15 to 20 percent, and since neither wants Sunni domination, a democratic majority exists almost automatically. In that view, the Iraqi Shiite leaders have come to appreciate the benefits of democratization and the secular state by witnessing the consequences of their absence under the Shiite theocracy in neighboring Iran.

A pluralistic, Shiite-led society would indeed be a happy outcome. But we must take care not to base policy on the wish becoming father to the thought. If a democratic process is to unify Iraq peacefully, a great deal depends on how the Shiite majority defines majority rule.

So far the subtle Shiite leaders, hardened by having survived decades of Saddam Hussein's tyranny, have been ambiguous about their goals. They have insisted on early elections—indeed, the date of Jan. 30 was established on the basis of a near-ultimatum by the most eminent Shiite leader, Grand Ayatollah Ali Sistani. The Shiites have also urged voting procedures based on national candidate lists, which work against federal and regional political institutions. Recent Shiite pronouncements have affirmed the goal of a secular state but have left open the interpretation of majority rule. An absolutist application of majority rule would make it difficult to achieve political legitimacy. The Kurdish minority and the Sunni portion of the country would be in permanent opposition.

Western democracy developed in homogeneous societies; minorities found majority rule acceptable because they had a prospect of becoming majorities, and majorities were restrained in the exercise of their power by their temporary status and by judicially enforced minority guarantees. Such an equation does not operate where minority status is permanently established by religious affiliation and compounded by ethnic differences and decades of brutal dictatorship. Majority rule in such circumstances is perceived as an alternative version of the oppression of the weak by the powerful. In multiethnic societies, minority rights must be protected by structural and constitutional safeguards. Federalism mitigates the scope for potential arbitrariness of the numerical majority and defines autonomy on a specific range of issues.

The reaction to intransigent Sunni brutality and the relative Shiite quiet must not tempt us into identifying Iraqi legitimacy with unchecked Shiite rule. The American experience with Shiite theocracy in Iran since 1979 does not inspire confidence in our ability to forecast Shiite evolution or the prospects of a Shiite-dominated bloc extending to the Mediterranean. A thoughtful American policy will not mortgage itself to

one side in a religious conflict fervently conducted for 1,000 years.

The Constituent Assembly emerging from the elections will be sovereign to some extent. But the United States' continuing leverage should be focused on four key objectives: (1) to prevent any group from using the political process to establish the kind of dominance previously enjoyed by the Sunnis; (2) to prevent any areas from slipping into Taliban conditions as havens and recruitment centers for terrorists; (3) to keep Shiite government from turning into a theocracy, Iranian or indigenous; (4) to leave scope for regional autonomy within the Iraqi democratic process.

The United States has every interest in conducting a dialogue with all parties to encourage the emergence of a secular leadership of nationalists and regional representatives. The outcome of constitution-building should be a federation, with an emphasis on regional autonomy. Any group pushing its claims beyond these limits should be brought to understand the consequences of a breakup of the Iraqi state into its constituent elements, including an Iranian-dominated south, an Islamist-Hussein Sunni center and invasion of the Kurdish region by its neighbors.

A calibrated American policy would seek to split that part of the Sunni community eager to conduct a normal life from the part that is fighting to reestablish Sunni control. The United States needs to continue building an Iraqi army, which, under conditions of Sunni insurrection, will be increasingly composed of Shiite recruits—producing an unwinnable situation for the Sunni rejectionists. But it should not cross the line into replacing Sunni dictatorship with Shiite theocracy. It is a fine line, but the success of Iraq policy may depend on the ability to walk it.

The legitimacy of the political institutions emerging in Iraq depends significantly on international acceptance of the new government. An international contact group should be formed to advise on the political and economic reconstruction of Iraq. Such a step would be a gesture of confident leadership, especially as America's security and financial contributions will remain pivotal. Our European allies must not shame themselves and the traditional alliance by continuing to stand aloof from even a political process that, whatever their view of recent history, will affect their future even more than ours. Nor should we treat countries such as India and Russia, with their large Muslim populations, as spectators to outcomes on which their domestic stability may well depend.

Desirable political objectives will remain theoretical until adequate security is established in Iraq. In an atmosphere of political assassination, wholesale murder and brigandage, when the road from Baghdad to its international airport is the scene of daily terrorist or criminal incidents, no government will long be able to sustain public confidence. Training, equipping and motivating effective Iraqi armed forces is a precondition to all the other efforts. Yet no matter how well trained and equipped, that army will not fight except for a government in which it has confidence. This vicious circle needs to be broken.

It is axiomatic that guerrillas win if they do not lose. And in Iraq the guerrillas are not losing, at least not in the Sunni region, at least not visibly. A successful strategy needs to answer these questions: Are we waging ''one war'' in which military and political efforts are mutually reinforcing? Are the institutions guiding and monitoring these tasks sufficiently coordinated? Is our strategic goal to achieve complete security in at least some key towns and major communication routes (defined as reducing violence to historical criminal levels)? This would be in accordance with the maxim that complete security in 70 percent of the country is better than 70 percent security in 100 percent of the country—because fully secure areas can be models and magnets for those who are suffering in insecure places. Do we have a policy for eliminating the sanctuaries in Syria and Iran from which the enemy can be instructed, supplied, and given refuge and time to regroup? Are we designing a policy that can produce results for the people and prevent civil strife for control of the State and its oil revenue? Are we maintaining American public support so that staged surges of extreme violence do not break domestic public confidence at a time when the enemy may, in fact, be on the verge of failure? And are we gaining international understanding and willingness to play a constructive role in what is a global threat to peace and security?

An exit strategy based on performance, not artificial time limits, will judge progress by the ability to produce positive answers to these questions. In the immediate future, a significant portion of the antiinsurrection effort will have to be carried out by the United States. A premature shift from combat operations to training missions might create a gap that permits the insurrection to rally its potential. But as Iraqi forces increase in number and capability, and as the political construction proceeds after the election, a realistic exit strategy will emerge.

There is no magic formula for a quick, non-catastrophic exit. But there is an obligation to do our utmost to bring about an outcome that will mark a major step forward in the war against terrorism, in the transformation of the Middle East and toward a more peaceful and democratic world order.

Mr. KYL. I rise today in strong support of the nomination of Dr. Condoleezza Rice to be the Secretary of State.

Dr. Rice has a distinguished, 25-year foreign policy career and has served three Presidents. Over the past 4 years, she has worked closely with the President, as his National Security Advisor, to develop and implement a broad range of foreign policy initiatives—among them, the Broader Middle East Initiative, the liberation of Afghanistan from the brutal Taliban regime, the liberation of the Iraqi people from decades of tyranny under Saddam Hussein, the signing of the Moscow Treaty with Russia, the six-party talks with North Korea, and the Millennium Challenge Account, just to name a few.

I must say that I was highly disappointed that this body did not vote on Dr. Rice's nomination last week because of the objections of a few Members. Policy disagreements are one thing; personal attacks are quite another. Our country is at war. We need a Secretary of State who will be able to speak on behalf of the President and who will be able to tend to America's fragile alliances. There is no better person for that job.

Unfortunately, Dr. Rice was unable to attend the swearing-in of Ukraine's new democratically elected President, Victor Yushchenko. This event, which took place over the weekend, is one of the shining examples of the unmistakable power of freedom and the importance of U.S. leadership in promoting it. Dr. Rice, like the President, understands this vital U.S. role. As she stated in her testimony to the Senate Foreign Relations Committee on January 18:

> We must use American diplomacy to help create a balance of power in the world that favors freedom. . . . One of history's clearest lessons is that America is safer, and the world is more secure, whenever and wherever freedom prevails.

Dr. Rice continued in her statement to discuss the ''three great tasks'' of American diplomacy, one of which is to spread freedom and democracy throughout the world. She noted that, ''No less than were the last decades of the 20th century, the first decades of this new century can be an era of liberty. And we in America must do everything we can to make it so.''

The administration's actions in its first term—including the removal of Saddam's regime in Iraq—adhered closely to the principles articulated by Dr. Rice in her testimony, stated by the President in his inaugural address, and those on which our great Nation was founded. Life, liberty, and the pursuit of happiness are the inalienable rights of every person, not a select few. And when we are able to transform what Natan Sharansky calls ''fear societies'' into free ones, we will not only do a service to those who are the direct beneficiaries of our actions, we will also cultivate an environment in which a lasting peace is attainable.

President Bush wants Dr. Rice to serve in his Cabinet as the Secretary of State. Dr. Rice has served this country ably and honorably for many years. This body should act quickly to confirm her to this new position.

Mr. BURNS. Mr. President, I support the nomination of Condoleezza Rice to be our next Secretary of State. She will replace a great patriot and a man I call my friend, Secretary of State Colin Powell, who has served over the past 4 years with decency, strength and selflessness. While I am sad to see him go, I look forward to working with Condoleezza Rice in her new capacity and know she will serve tirelessly and thoughtfully in the challenges ahead.

As President Bush's national security adviser, Condoleezza Rice was instrumental in developing the nation's response to September 11th. Ms. Rice understands as good as, or better than anyone, the global political forces at work. Her great intellect and sound judgment will lend themselves well to the office—one which is America's face to the world.

She has served our country well in the past, and I have full confidence in Condoleezza Rice's abilities as Secretary of State. I urge my colleagues to quickly move to a vote on her nomination and approve Ms. Rice as our next Secretary of State.

Mr. HATCH. Mr. President, I stand today to give my strong support for President Bush's choice to be our next Secretary of State, Dr. Condoleeza

Rice. I believe that Dr. Rice will be a superb diplomat to lead the State Department, while remaining one of the President's principal confidantes and advisers on the challenges to our national security that we will face in the difficult years before us. Indeed, not since President Nixon nominated his National Security Advisor, Dr. Henry Kissinger, to the same post, has an administration seen the same continuity in assigning a key foreign policy advisor to the more public role of principal diplomat.

I was pleased that Chairman LUGAR and Ranking Minority Member BIDEN expeditiously moved Dr. Rice's nomination out of their committee last week. I am disappointed that we could not hold this vote last week. At a time when this Nation is at war, procedural delays on a position as important as the Secretary of State would appear to inhibit the conduct of our foreign policy and would have been of great concern to me and my constituents in Utah, where the sense of fair play is strong, but the duty to a Nation at war is even stronger.

Yes, I certainly recognize the prerogatives of the Senate for thorough and critical debate. I will listen carefully to the debate today and tomorrow and see if I hear anything that is worthy of delaying this important nomination so critical to the national security efforts of the administration. I will listen for arguments I have not heard before, on the Senate floor or the campaign trail, and I will be open to all the insights that come from arguments never made before, and relevant to this nomination. But I know that I represent the vast majority of all Utahns when I say that confirming a President's Secretary of State while we are at war, while the President is preparing an aggressive diplomacy that will begin with a trip to Europe to meet with key allies next month, is a matter the Senate should take expeditiously.

We are at war, in Iraq and around the world. Utah's sons and daughters are paying the price, nobly and selflessly sacrificing for their duty, and in too many cases, with their lives.

For those who wish to debate Iraq policy—and I am the first to recognize that spirited and substantive debate is essential for these grave matters—we have all the opportunities to do so before us, and we should avail ourselves of these opportunities. Many today may use the confirmation process of Dr. Rice to criticize or review Iraq policy. We should confirm Dr. Rice and then continue to debate this subject, as we have done so over the past years.

Because I wish a speedy confirmation for Dr. Rice, I will keep my comments about Iraq to a minimum. My statements of support for the President's policies and my arguments for that support are a matter of record. I will add to that record in the coming weeks, months and years.

For now, I will leave it to this observation. This Sunday the Iraqi people, amidst great insecurity but with even greater resolve, will go to vote to choose their National Assembly, one that will write a constitution and set the next elections. Depending on which polls you see, between 67 percent and 84 percent of the Iraqi people want this opportunity to vote this coming Sunday, despite the perils many face every day. To see the ideology they are so resoundingly rejecting, I direct my colleagues to the long statement by Abu al-Zarqawi released 4 days ago. It is a statement of extremist, Islamic fascism: In the most explicit manner possible, for 9 pages, it lists all the reasons why the Islamic fascists reject democracy, declaring ''fierce war on this malicious ideology'' democracy. That is what we are against. And that is what the majority of the Iraqi people utterly reject. And I believe that America's interest—once again—is to stand against the fascists who have declared war on democracy.

We are well aware of Dr. Rice's resume and experience. Her academic credentials are remarkable, and her professional experience extensive. She was a senior professional at the National Security Council under the first President Bush, where she worked on Soviet affairs and was directly involved in our policy of supporting a peaceful reunification of Germany at the end of the Cold War. I believe that the successful reunification of Germany was the most successful aspect of the first President Bush's foreign policy, often overlooked because of all of the tumult during those crucial years when Soviet communism collapsed. Dr. Rice's involvement in that policy at that crucial time in Europe's history demonstrates her experience at shepherding a critical transition between an authoritarian model and a democratic one. While one should not analogize between German reunification and Iraq's transition today, one can look at Dr. Rice's experience and understand why the current President Bush chose her first to be his National Security Adviser during her first term and now has the confidence to make her America's top diplomat.

In the last 4 years Dr. Rice has been at the center of this administration's foreign policy. That that policy was a target of legitimate criticism during the past presidential campaign, as well as during the last 2 days of hearings before the Senate Foreign Relations Committee, is to be expected. The candidates presented their distinctively different worldviews throughout last year's campaign, during a difficult war that rages still, and the public made its choice.

In the United States Senate, it is our responsibility to debate, honestly, candidly and critically, all aspects of our Nation's foreign policy. My only admonition to my colleagues is that this debate be constructive, that it illuminate rather calumniate, and that, when in disagreement, it provide alternatives. Yes, it is legitimate to review the rationales for war, the flaws in intelligence and the faults in rhetoric. I believe Republicans have been quite candid and forthright about doing so. The chairmen and chairwoman of the Senate Armed Services, Foreign Relations, Intelligence and Government Affairs and Homeland Security Committees have all had hearings, conducted investigations and released reports critical in various degrees of the conduct and implementation of various administration policies. That is as it should be, and, for most of us, and certainly for me, it does not detract from our support for the administration's foreign policy at a critical time in this Nation's history.

Partisan critics of this administration have perpetuated about its foreign policy a myth that has morphed into a meme: And that is that this administration has failed at diplomacy. This specious belief that diplomacy can neutralize the dangers and the threats to the international community is puzzling to me. It is a variant of a theme in American foreign policy, deriving from the Wilsonian belief that a League of Nations to which we submit our sovereign responsibilities can prevent conflict. I, and Dr. Rice, do not subscribe to this view, so overwhelmingly proved wanting into the historical laboratory that was the 20th century.

And yet this meme parroted so often by many in the Democratic party—that this administration has not conducted a robust diplomacy—is false, simply false. No President more regularly addressed the General Assembly in the history of the United Nations than did the current President Bush. He spoke honestly and, to me, compellingly about that body's many trounced-upon resolutions. He cajoled and he listened and he waited, but at no time did this President suggest that the United Nations or any ally would be in a position to veto the actions we deemed necessary to protect our national security. No President would ever do so.

And while we failed to get Security Council support for our invasion of Iraq as President Clinton failed before he belatedly led the attack on Serbia over Kosovo—this President leads a global war on terrorism where most of the nations of the world are cooperating with us, in one form or another, through intelligence sharing, law enforcement cooperation, or any of a number of multilateral initiatives. Disagree with the President's foreign policy if you wish, criticize, if you must, but do not suggest that such a global effort can occur without sustained and successful diplomacy.

Credit for the diplomacy for the first term of this administration must go to those who formulated the policy, the President and Dr. Rice and the rest of the national security team, and to the man who led the State Department, Secretary Colin Powell. To this day, the standard for dignity and graciousness has been set by Secretary Powell,

who once again took the call from his country and served it with honor, diligence and character. Secretary Powell assembled a strong team at the Department, and he represented this Nation in a way that made every one of us proud. Dr. Rice knows that, as she assumes this important position, she follows a decent and serious diplomat and a dedicated servant. I have no doubt that she will meet the standard.

Dr. Rice will assume the responsibility of Secretary of State while we are at war, with global terrorism and with an insurgency in Iraq that every day puts in stark contrast the darkness of the past dictatorship against the light of a hopeful democracy. These next 2 years, I expect, will be some of the most difficult years in this Nation's foreign policy. We will continue to need the experience and wisdom of Dr. Rice as she serves this administration in a new role.

That role, as the Secretary of State, will have outstanding challenges. Dr. Rice will need to advance further cooperation of a multinational coalition in the war on terrorism; she will have to renew a push for more international support for a more effective political and economic reconstruction of Iraq; she will need to strengthen U.S. support for counterproliferation initiatives in Europe and Asia; and she will need to maintain U.S. leadership in the fight against poverty and disease. She can count on me for support as she assumes these huge and historic responsibilities.

In her testimony, Dr. Rice has conceded that our public diplomacy needs serious reconsideration. Many cite ongoing and growing dissatisfaction among international audiences regarding the United States. I would caution Dr. Rice against overemphasizing this reality as she redesigns our public diplomacy. The U.S. is a source of resentment and disparagement among many audiences throughout the world, but many of those audiences are contaminated by the propaganda of their own autocratic regimes. Today, more people still want to immigrate to this country than any other nation in the world, and more people take inspiration in the institutions that protect and promote our freedoms, be it our Constitution or our free press or our culture of openness. I have long been a strong supporter of public diplomacy. Today's challenges are not only to rebut the ever-growing sophistication of the biases and distortions that compete in global media, but to continue to find new ways to promote the American message and the American story. The days of United States Information Service libraries are over, but cultural exchange programs, in particular visitor programs to this country, must continue and, in my opinion, should grow. I will help Dr. Rice in any way that I can to reinvigorate our public diplomacy.

In the last few years, I believe the State Department has failed to grasp the value of culture of lawfulness programs. These programs use education ministries to advance core primary and secondary curricula on anticorruption lessons. It is impossible to advance the rule of law, which is a fundamental goal of bringing stability in regions we cannot afford to lose to anarchy or criminality, without the local population learning the value of clean government. We have seen success with such programs in Italy, Mexico, Colombia and other countries, and yet I have seen no enthusiasm from the State Department in making these programs an essential aspect of all our foreign assistance planning. Perhaps that is because these programs are so inexpensive, and there is still the bias against programs that don't require billions of taxpayer funds; perhaps the Department does not yet understand the potential for these programs, despite the clear affirmation of the Undersecretary of State for Global Affairs, who has spoken eloquently in favor of such programs. I am heartened by Dr. Rice's testimony before the Senate Foreign Relations Committee last week, she asserted that ''we are joining with developing nations to fight corruption, instill the rule of law, and create a culture of transparency.'' She has my support, and I am going to ask Dr. Rice to study the experience and potential of these culture of lawfulness programs and work with me and other Members of Congress to integrate them into our foreign assistance plans.

I will work with Dr. Rice in every way that I can to make her mission a success. Because the mission of the Department of State is to work to manage conflicts so that they do not erupt into violence and war. In a world where we can not control so many factors beyond our shores, we need the very best diplomacy to be constantly working our alliances, presenting our policies and engaging those who would challenge our security. Dr. Condoleeza Rice has 25 years of experience in advancing the national security of this nation. She has 4 years as the principal advisor to President Bush, as he has charted a foreign policy that has responded to global terror and taken on the most destabilizing regime in the Middle East. She has the knowledge and character and experience of one who can lead this country in our diplomacy around the world. Dr. Rice has my strong support.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I appreciate the remarks of the Senator from Oklahoma. I, too, want to speak on the confirmation of Condoleezza Rice to serve as Secretary of State. We are all aware, because it has been the subject of quite a bit of discussion and we have seen her in action for the last 4 years at the White House and even before that, of Dr. Rice's accomplishments. She is a woman of fantastic achievement, a profoundly talented individual who has excelled at virtually everything to which she has set her mind. I dare say there are few people in this Nation's history who would make both an excellent Secretary of State and an excellent commissioner of the National Football League. I am sure Dr. Rice, in keeping with her stated aspirations, will fill both roles with dedication, intellect, and passion in due time.

Yet the reaction to this nomination, which you would think would be a cause for great celebration, given the historic nature of this particular appointment, is also sadly predictable. For example, it is a shame to think that with the overwhelming voice of the people so recently expressed in the recent national elections and with the 109th Congress just having begun, with the President having been sworn in last week, with early pledges of bipartisanship and working together in the best interest of the American people, we are yet again already seeing the specter of partisan politics being brought to bear on this nomination.

Of course, the Senate does have a very important role in the confirmation process known as advice and consent. No one is questioning the right of any Senator, indeed the duty of every Senator, to ask hard questions and to determine to the best of their ability the qualifications of a nominee to serve in the office to which the President has chosen to appoint them. But there is a difference between exercising the role of advice and consent and the line that seems to have been crossed with impunity when it comes to the attacks we have seen on some of the President's nominees. Condoleezza Rice just happens to be the one we are focusing on today. We have seen much of the same vitriol and poison used to assassinate the character of people like Alberto Gonzales, another American success story, a personification of the American dream.

I would hope that no one in this body would feel it necessary to bring all the left-over angst of the campaign season to bear against a bright and honorable nominee such as the one who is presently before us. You may disagree with Dr. Rice's view of the world. You may take issue with some of her policy preferences. But to impugn her motives or the integrity of a woman held in such high esteem is a tactic that I believe is simply unacceptable and beneath the dignity of this body. Yet we see this tactic clearly, again, in the attempt to—first in the committee hearings, the Foreign Relations Committee, and even on the floor of the Senate—try to tie her actions to the tragic events at Abu Ghraib prison, the crimes that occurred by a handful of individuals that simply crossed the line between human decency and criminality. They were acts that violated U.S. policy and basic human rights. They were disgusting actions undertaken by sick individuals who are being investigated and being brought to justice—the most recent of which, of course, was the conviction and sentencing of Mr. Graner to 10 years in prison.

Now, my colleagues know well that at no point has Dr. Rice ever supported, condoned, or advocated such acts of torture or humiliation. I believe to try to link her, through some vague references, to these crimes is nothing more than a blatant attempt to score political points, to somehow demean her in her service, and to taint her nomination. It should not be necessary to raise these points, but I realize that in politics, particularly in Washington, a charge unanswered is too often a charge believed.

Let me just refer to a brief reference in the Schlesinger report—of course, referring to the former Secretary of Defense, who served on an independent commission with former Defense Secretary Harold Brown, who served in the Carter administration, as well as a former distinguished Member of the House of Representatives. They concluded after their investigation—and this was just one of, I believe, eight investigations. There are three more that are not yet completed. But this was the conclusion of the independent Schlesinger commission:

> No approved procedures called for or allowed the kinds of abuse that in fact occurred. There is no evidence of a policy of abuse promulgated by senior officials or military authorities.

So to suggest, to hint, to imply that this nominee, or any senior officials in the Bush administration has condoned or adopted a policy that resulted in the criminal abuses that occurred at Abu Ghraib is simply without foundation and any fact. Indeed, it is a scurrilous allegation, and the American people need to understand that. They also need to understand the motives why such allegations are made.

In addition to these inappropriate partisan attacks against a nominee who deserves our respect, there are a handful of my colleagues who have used this opportunity to roll out the same tired, old arguments concerning the war on terror, and particularly Operation Iraqi Freedom. We know that we are in the midst of a global war on terrorism. This is not just about Afghanistan and Iraq. This is not just about isolated incidents of terrorism. This is about a conflict that has been building for more than a decade and, indeed, will likely last a generation.

Since America suffered an attack on our own soil in New York in 1993, we have been hit at our embassies in Kenya and Tanzania; we have been hit at the Khobar Towers in Saudi Arabia; our Navy was hit at the USS Cole in Yemen; of course, we had the attacks of 9/11; and Bali, Madrid, and in Beslan. The list goes on and on.

In the aftermath of the attacks of September 11, President Bush decided, with the authorization of Congress at every turn, that if diplomacy would not yield a pacified Saddam, that if the U.N. declined to enforce its own resolutions requiring inspections and disarmament, we would, when necessary, use preemptive action against those who seek to harm America and those who threaten world peace and supply sanctuary to terrorists.

We also decided that it was in America's self-interest to take the battle to the terrorists where they live, where they plot, where they plan, and where they train and build weapons—not to wait until we are attacked again and where innocent civilians' lives are lost and innocent blood is shed. The post-9/11 reality is that America must choose to fight this terrorist threat on their ground, or they will fight us on ours.

This is not some grand conspiracy of this current administration or any policy which is really strange to history or unknown to history. It was in 1941, after Pearl Harbor, when President Franklin Delano Roosevelt said:

> If you hold your fire until you see the whites of their eyes, you will never know what hit you.

That was Israel's policy in 1981 when it knocked out Saddam's Osirak nuclear reactor. The fact that Israel continues to exist today was in part because its leaders had the wisdom and courage to take on a growing threat by the use of preemptive action—sometimes called preventive self-defense—whenever it was necessary.

No one wants to imagine what could have happened if Iraq's nuclear program, which was well documented after Saddam invaded Kuwait in 1991, when we were surprised to learn after we repulsed that attack that Saddam's nuclear program was much further along than our intelligence authorities had previously thought. But no one wants to imagine what would have happened if Iraq had continued to develop its nuclear capability, or if they had been able to reconstitute their nuclear program after we left Iraq in 1991. It was a horrific possibility for America and the rest of the world, and indeed a responsibility of the leaders of this country and the free world to eliminate this gathering threat.

Ms. Rice has also been criticized for the belief that Saddam had stockpiles of weapons of mass destruction. But you know what? And the critics know this. The truth is, virtually every intelligence service in the world believed that Saddam had these weapons of mass destruction. Indeed, this was one of the premises for the Iraq Liberation Act in 1998. It was for the authorization given to then-President Clinton to use necessary force to remove this threat. Our intelligence, though, as we all now know with the benefit of 20/20 hindsight, proved to be incorrect—at least at the time that we entered Iraq—that Saddam had stockpiles of weapons of mass destruction. Of course, we have been undertaking the necessary reforms both in this body and in the intelligence community to stop that kind of intelligence failure from ever occurring again.

The critics should not be allowed to rewrite history. The fact is that no one party or person misled the rest of us—Democrat, Republican, or Independent. The truth is, we were all misled by this erroneous intelligence, and rather than point the finger of blame where no blame is due, what we ought to be about—and, indeed, what we have been doing—is correcting the reasons for that failure and making sure that it never happens again.

Yet even though we did not find stockpiles of WMD, the bottom line is this: This was not the only reason that Congress voted overwhelmingly to authorize the use of force against Saddam Hussein. Indeed, there are numerous other reasons set out in the resolution that passed this Senate by overwhelming margins. It is beyond debate that Saddam continued to have the intent to acquire WMD and there is little doubt that but for our intervention and the fact that he was pulled from a spider hole and put in prison awaiting future accountability at the hands of the Iraqi people that he would have fully reconstituted his program just as soon as he was able.

One does not have to take my word for it. Mr. Duelfer, who succeeded Mr. Kay, and was in charge of looking into the possibility that Saddam had WMD, concluded in September 2004:

> Saddam wanted to recreate Iraq's WMD capability—which was essentially destroyed in 1991—after sanctions were removed and Iraq's economy stabilized. . . .

Indeed, that has been the evidence we learned in the oil-for-food scandal in the United Nations, that Iraq would siphon off money to stabilize and support his failing economy, but his job, he thought, was to wait out the sanctions in such a way that once the sanctions were removed he would reconstitute Iraq's WMD capability. To somehow point the finger of blame at this distinguished nominee, where she, like all of us, was given the erroneous reports from the intelligence community, is simply unjustified and unfounded and indeed, in the end, it is revisionist history.

Lest this point be lost in the debate and the fingerpointing, we are in Iraq for our own good and for the good of the world, and I might add for the good of the Iraqi people. September 11 taught us all a very important lesson, that security in the modern world depends on taking aggressive and focused action to prevent terrorist acts before they occur, not just opening a criminal investigation after innocent blood is shed.

We have marshaled the force of freedom in this fight, one of the most powerful weapons that we have in our arsenal, and indeed on this Sunday, as has been recounted over and over again, the Iraqi people will make their first major step toward self-government as a free Iraq.

There are some who continue to argue that we did not have the right plan to deal with postwar Iraq. We have hashed that argument out a hundred times. Yes, hindsight is always 20/20, and we did not know then what we

know now, but that is no real revelation. That really suggests, again, another failure of our intelligence-gathering capability and particularly our HUMINT, our human intelligence capability, which we are fixing.

I point out that it serves no one's interests, and certainly not the national interest of this country or the interests of the Iraqi people, to continue to try to point the finger of blame at past errors, particularly in connection with our intelligence-gathering capability. Indeed, even those who did not support the resolution authorizing the use of force must now concede that it is in our best interest not to have Iraq fail and become perhaps a sanctuary for terrorists. Even those who oppose this war should acknowledge at this point that it is in our best interest for Iraq to become a working democracy and to avoid strife and become a free and peaceful nation.

It is counterproductive, unless of course one's purpose is merely partisan politics, to dwell on the past at the expense of our present duty and our plans for the future. It is time to focus on what is our duty in Iraq, along with other nations, the coalition and the Iraqi people, and that is to secure Iraq, to help this new democracy take root, and to further the cause of freedom around the globe.

There is no question that Iraq continues to be a very fragile place, but in truth, Iraq is making solid progress on a difficult road when one takes into consideration the fact that Saddam had an iron grip on power in this nation a mere 2 years ago. Consider what has been accomplished. A valid voter registration list of 14.3 million names has been completed. More than 500 voter registration centers have been established to help Iraqis verify their registration status. Iraqis will vote on election day in the thousands of voting centers across that country and in 14 other countries, including the United States of America. Candidate lists for 111 political entities have been submitted for the national elections and, in total, 256 political entities, composed of 18,900 candidates, have registered to compete in 20 different elections: The national election, 18 provincial elections, and the Kurdistan regional government election.

These 254 entities include 27 individuals, 33 coalitions, and 196 parties, all demonstrating widespread enthusiasm for this opportunity they have for free and fair elections.

I believe we will see the true ramifications of freedom in Iraq over the next generation, and I believe this first election is a watershed at the beginning of this new generation of a free Iraq.

As responsible leaders rise to the forefront and the vestiges of tyranny are replaced by a fledgling republic, we will see that the victories won, the hardship that has been endured, and the lives risked and indeed tragically lost have not been in vain.

Before this election season that just concluded, or I thought concluded on November 2 but which seems to have continued now with attacks against the President's nominees—those who were unsuccessful in persuading the American public of the correctness of their opinions on November 2—I never thought I would hear anyone utter what I think is one of the most foolish notions yet. And yet I have heard the suggestion made again and again in the context of Dr. Rice's hearing. And it is the suggestion that Iraq today and the world as a whole is worse off than it was with Saddam Hussein in power.

Have these people somehow missed the fact that we found unspeakable horrors in Saddam's Iraq, torture cells, rape rooms, execution chambers, children's prisons. We found a legacy of terror and fear and vestiges of unimaginable cruelty. We have found that more than 1 million people are simply missing; 300,000 are dead, lying in mass graves throughout Iraq in nearly 100 reported sites, including one that I personally viewed a year ago last August. These mass graves are silent monuments to Saddam's ruthlessness left behind for all to see.

With due respect for my colleagues who advanced the idea that Iraq or America was better off with Saddam Hussein in power, to suggest that the world is safer when despots rule in palaces instead of serving time, being held accountable in jails, is to ignore the bulk, if not the entirety, of human history.

It was Senator Daniel Patrick Moynihan who enjoined against similar foreign policy foolishness in an earlier era when he said:

> Unable to distinguish between our friends and our enemies [you adopt] our enemies' view of the world.

I think we must also be sobered and cautioned by that injunction, and we should all be responsible enough to not let our desire to score partisan political points lapse into adopting our enemy's view of the world.

As President Bush urged just last week, America has the moral responsibility to take a stand for liberty as the guiding force in the world and the defining principle of this age. We have the strength and the will to see this purpose through.

I urge my colleagues to support a Secretary of State who understands the stakes, who sees the right course, and has the will to follow it.

In conclusion, I have talked about the attacks that have been directed on this honorable nominee and why I believe that they are unfounded and how I believe those who are disappointed, perhaps, in the way the election turned out on November 2 have continued their sort of political insurgency directed at the President but through his nominees for his Cabinet, and particularly Condoleezza Rice and Alberto Gonzales. I have said that while it is our responsibility as Senators to exercise with diligence our advice and consent function and to ask hard questions in good faith, there is a line that should not be crossed, which I believe has been crossed in the attacks made against these nominees, including Condoleezza Rice.

One reason I believe that is true is because of the evidence that I have in my hand. This is a solicitation, a fundraising solicitation sent out by the Democratic Senatorial Campaign Committee.

I ask unanimous consent this be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. CORNYN. This is over the signature of Senator BARBARA BOXER, who has been one of the most acerbic critics of this nominee. But at the same time she argues why this nominee should not be confirmed, she ties this to fundraising efforts by the Democratic Senatorial Committee.

She said in part:

> The Republicans were expecting the Senate to confirm Dr. Rice with little debate and questioning from the Foreign Relations Committee.

I think we found that already not to be true. The distinguished chairman, who is in the Chamber now, held lengthy hearings and allowed all Senators a chance to ask numerous questions of this nominee, and we know now, from the 9 hours that have been agreed to as part of this debate, that, indeed, there is substantial debate about this nominee. But she goes on, from Senator BOXER's pen:

> They didn't count on me to ask the tough questions. What the Republicans don't realize is, no matter who is in charge in the White House, the role of Congress will always be to act as a check on the Executive branch of government. And when it comes to the President's nominees, the Senate must take its ''advise and consent'' role during the confirmation process seriously.

I agree with that. I have said as much in my comments today. But what I do not agree with, and I think where this fundraising solicitation crosses the line and where it finds itself in company with some of the partisan attacks that have been made without substance against this nominee, is when it goes on to say to contribute to the Democratic Senatorial Campaign Committee, making this part of not only a political attack but a fundraising effort by the Democrats in the Senate. That, I believe, crosses a line that should not have been crossed, and one for which I believe Dr. Rice is entitled to an apology. To tie the confirmation of the Secretary of State to a fundraising campaign and to propagate misinformation or disinformation about this distinguished nominee, who is an American success story, in an effort to raise money for the Democratic Senatorial Committee is inappropriate and I think would offend and does offend the American people.

I believe this offense deserves a quick repudiation by our colleagues on the

other side of the aisle who maybe were not involved in this and, indeed, an apology to Dr. Rice for the way she has been treated.

In conclusion, let me say that I have seen, in my relatively short time in the Senate, some pretty rough treatment of the President's nominees. We have seen filibusters of judicial nominees when there is a bipartisan majority of the Senate to confirm those nominees. Indeed, this has been a part of an unconstitutional burden that neither this President nor those nominees should have to bear.

But we have also seen sort of a character attack on nominees that I think is not only unfair to those nominees but completely unbecoming to the dignity of the Senate and the kind of respect with which they should be treated. It is one thing to disagree about policy; it is one thing to ask hard questions. No one is asking anyone to vote against their conscience on a nominee. But to abuse these nominees in a way that is unfair, not only to them and their family but one that mischaracterizes the facts and is part of a disinformation campaign which is clearly tied to politics, is something we ought to call an end to.

I had held out some hope, and increasingly it appears to be a vain hope, that somehow with the reconvening of this 109th Congress we would see a change in attitude, we would see a willingness to work together.

We have seen some comments, some speeches, some promises to that end. But when it comes to this sort of inappropriate political activity and politicizing the confirmation process for America's diplomat in chief and the President's other judicial nominees, all I can say is it is a crying shame.

I yield the floor.

EXHIBIT 1

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE

DEAR DSCC FRIEND, The Republicans were expecting the Senate to confirm Dr. Rice with little debate and questioning from the Foreign Relations Committee.

They didn't count on me to ask the tough questions. What the Republicans don't realize is, no matter who is in charge in the White House, the role of Congress will always be to act as a check on the Executive branch of government. And when it comes to presidential nominees, the Senate must take its ''advise and consent'' role during the confirmation process seriously.

That's why I took a stand last week and voiced my concerns about Dr. Rice's misleading statements leading up to the war in Iraq and beyond. I will continue to make my voice heard on the Senate Foreign Relations committee, but in order to put the brakes on four more years of misdirection in Iraq and reckless policies at home, we need to elect more Democrats to the Senate during the 2006 midterm elections.

Because after Dr. Rice is confirmed, the Senate will face many more crucial decisions in the coming months: confirmation of President Bush's choice for Attorney General Alberto Gonzales, social security, Iraq and possibly a Supreme Court nomination. My Democratic colleagues and I will hold the Bush Administration accountable for its decisions. But we will need your help to hold them accountable in the ultimate public hearing: the next midterm elections in 2006.

The Republicans want us Democrats to step back and pave the way not only for this one nominee, but for their entire social, economic and international agenda. We have a chance during the midterm elections to make sure the Republicans don't have four years to do so. The DSCC is working every day to recruit the strongest candidates in every Senate race across the country. They are fighting early and fighting hard, but they need your ongoing support today.

So while I raise my voice on the Senate floor, I hope you will join us on the campaign trail and send the loudest message of all—one that the Republicans will not be able to ignore—unseating them in the midterm elections and sending more Democrats to the Senate.

Yours sincerely,

Senator BARBARA BOXER.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I rise to speak in behalf of Condoleezza Rice for Secretary of State. I hope the chairman would yield to me such time as I might consume.

Mr. LUGAR. How much time does the Senator plan to speak?

Mr. BROWNBACK. About 10 minutes.

Mr. LUGAR. I yield the Senator the time he may need.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BROWNBACK. Mr. President, I thank the distinguished chairman of the Foreign Relations Committee, Senator LUGAR. I have had an opportunity to work with him in the years I have been in the Senate on the Foreign Relations Committee. He is an outstanding Member and such a good colleague and so knowledgeable on so many issues. It is quite wonderful to have his work and the things he has done, particularly the incredibly important Nunn-Lugar, or I call it the Lugar-Nunn Act on Nuclear Proliferation, getting rid of some material in the Soviet Union. I have seen that bill in action and that has been a powerful good to possibly reduce the spread of nuclear weapons around the world. I thank my colleague.

I rise to express my strong support for the nomination of Dr. Condoleezza Rice for the position of Secretary of State. While it is regrettable that we are continuing to debate this nomination after 2 days of hearings, I believe it will only confirm what the President has done in making such a great choice. As the first woman to hold the key post as the President's National Security Adviser, she has had a distinguished career already in Government, as well as in academics. I still recall her wise and learned comments made nearly a decade ago about how systems failures were occurring at that time in the Soviet Union that led to the fall of the Soviet Union.

It wasn't seen at the time. Yet she was able to look at the disparate situations that were happening, saying how systems failures in the Soviet Union presaged a place none of us thought possible to fall. And she was seeing that—observing that as an astute observer years ahead of her time. That kind of judgment and foresight will be critical in the months and years ahead for the United States.

It is a complex job, Secretary of State. I believe she has the necessary talent and experience and is, without doubt, one of the most qualified people in the world for this job.

Like Secretary Powell, who has done an outstanding job and whose humanity and professionalism and dedication will be sorely missed, she recognizes the deep personal commitment necessary, and this Nation is grateful for someone of her stature who is willing to serve in this position.

The Secretary of State serves as the President's top foreign policy adviser and in that capacity is this Nation's most visible diplomat here and around the world. It is a position that demands the full confidence of the President, and in Dr. Rice, we know the President trusts her judgment.

That relationship is critical when one considers the state of the world in which Dr. Rice will work. According to a recent National Intelligence Council report: Not since the end of World War II has the international order been in such a state of flux. During the past 3 years, we have seen terrorists kill thousands of people in this country and around the world. While terrorism will continue to be a serious threat to the Nation's security as well as many countries around the world, genocide—even after Bosnia and Rwanda and even Auschwitz—continues to this day in Darfur. This proliferation of weapons of mass destruction among rogue regimes continues apace. Meanwhile, in the East, the rise of China and India promises to reshape familiar patterns of geopolitics and economics.

Still, there is great reason to be encouraged by the world that Dr. Rice will face. Freedom is on the march in places some had written off as potentially unsuitable for democracy. Ukraine's Orange Revolution, Georgia's Rose Revolution, Serbia's Democratic Revolution, and successful elections in Indonesia, Malaysia, Afghanistan, and the Palestinian Authority demonstrate the longing for democracy that embraces the most diverse cultures. Iraq will continue to pose challenges even after the elections at the end of this month.

The new Secretary of State will have to engage the United States and our allies in working closely with the Iraqis to seize the opportunities that lie before them to forge a nation that is free of the past and that is ultimately and uniquely Iraqi. The only exit strategy for the United States and the coalition forces is to ensure that Iraqis are in control of their own destiny.

The new Secretary of State must devote her time and resources to achieving a settlement in the Arab-Israeli conflict by clearly articulating the robust vision of peace in the Middle East. We must not only come to grips with

nuclear proliferation issues in Iran and North Korea, but we must have the moral courage to bring attention to the human rights abuses in both of these countries that sustain these nuclear ambitions.

Similarly, we must confront the regime in Khartoum where crimes against humanity must be brought to justice so that urgent humanitarian assistance can continue in Darfur and elsewhere in Sudan. There are many actions we can take and must take, especially after we have had the bold initiative to clearly call Darfur for what it is—it is genocide that is happening there. If we are to maintain our credibility in this area, we must act decisively.

In addition to the humanitarian efforts in the Indian Ocean region and elsewhere as a result of the tsunami, I am certain that the new Secretary will maintain our commitment to the global fight against AIDS and other infectious diseases. But to do so with the kind of prudent and result-based efforts that have been so successful in past efforts, we have to maintain a focus and an effort to be able to get things done.

Last week, President Bush laid down a marker by which we would define what it means not to just be an American but a citizen of the world. Declaring in his inaugural address that our liberty is increasingly tied to the fate of liberty abroad, he placed the United States on the side of democratic reformers and vowed to judge governments by their treatment of their own people.

President Bush's vision draws on the wellsprings of our Nation's spirit and value. I believe Secretary-designate Rice possesses the skills and talents necessary to turn the President's visionary goals into a reality.

In her statement before the Foreign Relations Committee, she said, ''The time for diplomacy is now.'' Her qualifications to carry that prescription into practice will be indispensable. She combines a big-picture mindset born of academic training with a wealth of hands-on experience at the highest level. Perhaps most importantly, she can always be sure of having the President's confidence and ear.

Finally, Dr. Rice's own biography testifies to the promise of America. Born and raised in the segregated South, her talent, determination, and intellect will place her fourth in line to the Presidency. She has often said to get ahead she had to be ''twice as good''—and she is that and more.

Her childhood shaped her strong determination of self-respect, but it was her parents' commitment to education and her brilliant success at it that defined her style.

She managed to work her way to college by the age of 15 and graduate at 19 from the University of Denver with a degree in political science. It was at Denver that Dr. Rice became interested in international relations and the study of the Soviet Union. Her inspiration came from a course taught by a Czech refugee. That background will become increasingly important as we deal with the changing dynamics and challenges posed around the world.

In short, I am moved to think that she will soon be confirmed as our 66th Secretary of State, and it will be time for us to move forward. She is already well known to the world. Dr. Rice will now become the face of America's diplomacy.

We need to support her in every way we can. She can be assured of my support. As the newly appointed chairman of the Commission on Security and Cooperation in Europe, I look forward to working with her and other officials at the State Department to further promote democracy, human rights, and the rule of law in Europe and Eurasia. Charged with the responsibility for monitoring and promoting implementation of the Helsinki Final Act in all 55 signatory countries, the Commission has been and will continue to be a force for human freedom, seeking to encourage change, consistent with the commitment these countries have voluntarily accepted. As President Ford remarked when signing the Helsinki Final Act on behalf of the United States:

> History will judge this Conference . . . not only by the promises we make, but the promises we keep.

As we approach the 30th anniversary of the historic occasion this year, a number of Helsinki signatories seem determined to undermine the shared values enshrined in the Final Act and diminish the commitment they accepted when they joined the Organization for Security and Cooperation in Europe. It is imperative that the United States hold firm to the values that have inspired democratic change in much of the OSCE region. Dr. Rice in her confirmation testimony referred to the potential role that multilateral institutions can play in multiplying the strength of freedom-loving nations. Indeed, the OSCE has tremendous potential to play even a greater role in promoting democracy, human rights, and rule of law in a region of strategic importance to the United States.

I look forward to building upon the partnership forged between the Helsinki Commission and the State Department as we stand with oppressed and downtrodden people wherever they are in the world.

I urge my colleagues to support Dr. Rice for the position of Secretary of State. I wish her good luck and Godspeed.

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

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I rise and express my strong support for Condoleezza Rice for confirmation as Secretary of State of the United States of America. She is a native of my home state of Alabama and grew up in a very difficult time in our State. I remember vividly and was touched by the 16th Street Baptist Church bombing in Birmingham that occurred during her youth. Her family later moved to Colorado, I believe, where she grew up.

She is a pianist and a talented person in so many ways. I think few would dispute her talent, her incredible background and personal history, and the many accomplishments that she has achieved through the years.

In the course of doing so, she has won the confidence of the President of the United States, George W. Bush. He has relied on her foreign policy expertise for quite a number of years. He believes she is the right person to serve this country today as Secretary of State. She is a perfect fit in this role and I strongly support her confirmation.

Condoleezza Rice served as provost at Stanford University. She worked in the National Security Council of former President Bush. She has served our current President Bush as National Security Advisor for 4 years. That is an excellent background for the job; that, along with her studies in international relations and history, particularly the Soviet Union.

I remember early on we had a problem with national missile defense and the test ban treaty that would have required us to either not implement a national missile defense system or would have required us to manipulate it as some sort of test program in a way that was not very practical.

She suggested we ought to avail ourselves of the privileges the treaty gave us to give notice and step out of the agreement with Russia. It had been signed with the Soviet Union in an entirely different global setting. At this point, we were dealing with Russia, which was friendly in many ways. Many on the other side of the aisle—very much the same ones criticizing her today—were saying that this was just awful. They claimed that it would destabilize relations between Russia and the United States.

I remember seeing Dr. Rice being questioned about that, meeting with Senators and discussing it. She listened carefully to the comments others had and then articulated her own considered thoughts with crystal clarity. She was inclined to believe we ought to get out of that treaty. She and the President eventually made the decision to do so. They did so in a way of which Russia was accepting. It caused no problems.

I remember vividly the warnings from the liberal Members of this body that withdrawing from that treaty, and thus allowing us to build a legitimate national missile defense, was somehow going to cause permanent damage to the relationship between Russia and the United States. She concluded that this was not true. In fact, it was not true. She helped execute that action that allows us now to have missiles in place that are capable of knocking down incoming weapons that could wreak havoc, nuclear or otherwise, on

the people of the United States. It is one of many memories I have that demonstrate her capabilities and skill.

Partly, I suspect, as a result of her growing up in an area where, sadly, everyone was not treated equally, when people were discriminated against quite significantly and were treated as second-class citizens, she has a deep and abiding respect for liberty. She has a deep and abiding respect for the legal system of this country. She believes we ought to promote liberty, promote equality and promote progress in the world. It is a responsibility this Nation has and that she must champion as she serves as Secretary of State. I have no doubt that she is equal to the task.

Absolutely we have to be careful. Absolutely there are limits to what we can do as a nation to help other nations. We simply are not able, and it would not be wise, even, to attempt to fix all of the problems of every nation around the world.

I want a Secretary of State who understands America, who understands the values and ideals of this country, and who has values and ideals herself, to serve as Secretary of State. I want a Secretary of State who looks forward to seizing opportunities whenever they may appear—and we do not know when they will during the course of her service—where she can promote liberty, freedom, progress and peace throughout the world.

When you find liberty and freedom in countries, they usually don't fight. It is my impression we have few, if any, examples of war—certainly not in recent memory—that have occurred between two democratic states. Democratic states somehow are used to working out difficulties within their own country and somehow they are normally able to work out difficulties between an opposing state if they are a democracy.

It is only when you come up against dictators, these people who are used to always doing it their way, who have an obsession with expansionism and oppression of their own people and their own self-interest, those are the ones who are difficult to deal with.

Condoleezza Rice understands that. She is a student of history and international relations. She can help our President make those tough choices. When do we step up to the plate? When do we not step up to the plate? How can we be most effective? When should we negotiate? When should we seek the assistance of other nations to negotiate? When should we involve ourselves directly? When, Heaven forbid, should we have go to war?

This is the kind of expertise she brings to the table. Her personal history and her experience as the National Security Advisor to the President is just the kind of background we need.

The State Department is composed of some of the finest people I have had the privilege of knowing. They work extremely hard. They are extraordinarily educated and steeped in the countries they have as their responsibility. They provide a tremendous resource to our Nation. People forget as they serve around the world—and I have visited them as I have traveled—that they are at risk just for bearing the American flag and being a representative of this Nation, because they are in dangerous places in our world. They do a great job every day. Sometimes a great organization such as that, that creates and forms itself over many years, develops an inertia, an inability to change, to see new ideas and new ways of proceeding.

Having someone at the helm such as Condoleezza Rice who has been involved in the National Security Council, she will be perfectly respectful of those fine people who serve in the State Department. She will also have the ability to lift that agency, to transform it into a more nimble and more responsive agency that can help promote American ideals aggressively throughout the world.

I am very proud of her. I am proud that she is from Alabama. I am proud that President Bush has chosen to nominate her. I am confident she will be a terrific Secretary of State and very confident she will be confirmed.

I am sorry that some of my colleagues on the other side of the aisle—I guess in response to complaints from those among the hard left who are never happy when America commits itself around the world and stands up for its values—have chosen to hold up this nominee. I thought she was moving along rather quickly and that we would have already confirmed her by now. But there are those who want to use this opportunity to express their views, many of which are not helpful to our soldiers who are out in the field executing the policies we voted on in this body by an overwhelming vote—more than three-fourths. We sent them there. Members of this Senate voted overwhelmingly to do so. It is not appropriate to delay Dr. Rice's nomination in order to reopen the debate on our nation's actions in Iraq, particularly when there is no likelihood she will be voted down.

Some of the comments made to her have not been of the most respectful and appropriate kind. Her integrity—perhaps inadvertently, but in reality—was questioned. I certainly believe she should have every right to push back and defend herself under those circumstances.

I am always happy to allow my colleagues to have their say, but it has taken longer than it should. We need to move this nomination forward. We need a Secretary of State in place. She will be an outstanding Secretary of State. I look forward to seeing her confirmed, hopefully no later than tomorrow.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. May I inquire of the Chair, how much time remains on both sides of the aisle in this debate?

The PRESIDING OFFICER. There is 53 minutes to the majority, and 1 hour 22 minutes to the minority.

Mr. LUGAR. I thank the Chair.

Mr. President, let me comment that we have been privileged to hear from 22 colleagues today. Thirteen Republicans and nine Democrats have spoken on the confirmation. I would comment, it has been my privilege to hear more of the testimony while I chaired the hearings and likewise the debate today. On both occasions, we have made clear to colleagues on both sides of the aisle that there would be ample opportunity, first of all, to question Dr. Rice during the confirmation hearings. And, as I pointed out earlier in the day, well over 300 questions were raised, some before the hearings, to which she gave response in written answers, and over half of the 300 actually during the hearings in face-to-face dialog with Dr. Rice. Let me point that out because I think the record for this nominee is as full as any confirmation procedure I have witnessed.

Today, we have had 22 contributions that were substantial and thoughtful. Tomorrow, we will have another hour of debate prior to a vote and will come to a conclusion which I pray will bring about the confirmation of Dr. Rice to be our next Secretary of State, and a move forward as she assists our President and all of us in the statecraft of our country.

In any event, I simply point out for the record that as we conclude the debate this evening—and we will do so shortly because no further Senators have sought to speak—there was at least on our side of the aisle 53 minutes available and on the other side 1 hour 22 minutes. Therefore, the time that was requested turned out to be more than ample.

I am hopeful our debate will conclude constructively and affirmatively tomorrow. We certainly will attempt to work with that. I am advised that the distinguished ranking member of the committee, Senator BIDEN, will be present, and he will make a statement tomorrow, and that will be important as we conclude our debate.

Mr. President, seeing no other Senators who seek recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. LUGAR. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

THE LIFE OF MURRAY BARR

Mr. REID. Mr. President, Reno, NV, is a wonderful city and a great place to live.

The sparkling Truckee River flows through the heart of town. The campus of the University of Nevada sits on a hillside overlooking the city. The Nevada Museum of Art is nearby.

And standing on the streets of downtown Reno, one can see majestic mountains in every direction, including the peaks of the Sierra Nevada around Lake Tahoe. A beautiful city and a fine place to raise a family.

But like any other city, Reno has its rough side. In ''Folsom Prison Blues,'' Johnny Cash sang, ''I shot a man in Reno, just to watch him die.'' Reno has its share of rundown bars and alleys, where men and women chase the remnants of broken dreams. This is a world most people rarely notice, but where some spend their lives.

One who lived in that world was a man named Murray Barr.

Murray drank a lot. He was, in fact, an alcoholic, and he was homeless. He slept in the streets and alleys. When he did sleep indoors, it was usually in jail or the hospital.

But Murray was also a proud Native American, an ex-Marine, and a friend to many who came in contact with him.

Murray Barr was a big bear of a man. He barely had a tooth in his head, but when he smiled, he brought joy to the people who cared about him.

And many people did care about Murray.

Reno Police Officer Patrick O'Bryan crossed paths with Murray many times—sometimes when he was arresting him or taking him to the hospital.

O'Bryan—who is known as ''Paddy O'' on the streets of Reno—tried everything he could think of to help Murray quit drinking.

He told Murray to ''get a life'', ''get a grip'', he threatened him, he pleaded, and he warned Murray that he was killing himself.

Sometimes Murray would stop drinking. Once he was on house arrest for 6 months. He got a job as a cook and showed up on time every day. He saved money. And he stayed sober for 6 months.

As long as the system was monitoring him, Murray was okay. He was a proud man, and he was not going to let down the people who were responsible for him.

But when he had finished serving his sentence, Murray let himself down, and picked up the bottle again.

Marla Johns works as a social worker at St. Johns Medical Center in Reno. Her husband Steve is a Reno cop. They both had a soft spot for Murray. They gave him gifts at Christmas—and the gift of their friendship year round.

Murray called Marla ''my angel.'' He was protective toward her. Once when an intoxicated patient started to threaten Marla, Murray stepped in front of the man.

Marla tried to protect Murray, too. But she felt him slipping away. ''I always knew Murray's life would be cut short by the choices he was making,'' she said.

Early one morning last spring, Steve called Marla at home. There had been an announcement at the morning police briefing. Murray had died the night before.

Marla and Steve cried. She said, ''There will never be another Murray.''

But there are many others like him. I have known some of them. We have all known them.

Despite the pleas of loved ones and friends, despite their own best intentions, they are pulled down, time and again, by their addiction to alcohol.

We try to help them, just as Murray's friends tried to help him. We try to get them into rehab programs, and we encourage them to try AA. We give them warm clothes and buy them a hot meal. We help them find a job or a place to stay.

Some manage to escape their addiction. I have to believe that escape is a form of grace, a gift from above.

Others never find that grace, no matter how badly they might want it. And no matter how much we try to help, we cannot give them that gift.

Maybe the greatest gift we can give them is to see them as individuals—''there will never be another Murray.'' Not just another homeless face on the street, not just another cot in the drunk tank, but a man who was proud of his heritage, who served his country, who refused to let down his friends, some mother's son, maybe somebody's brother or husband.

Back in December there was a memorial gathering at First Methodist Church in Reno to mourn the homeless citizens who had died during the year and highlight the need for programs to help them.

Officers Johns and O'Bryan told a few stories about their friend Murray Barr.

I never knew Murray, but I think he would have liked that. He would have been proud to have such good friends.

I tell this story as a reminder that we should never assume we know a person's story just because of what is on one fleeting page. And we should never forget that every person is unique.

''There will never be another Murray.''

RULES OF PROCEDURE, COMMITTEE ON FINANCE

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Rules for the Committee on Finance, for the 109th Congress, be printed in the CONGRESSIONAL RECORD.

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

COMMITTEE ON FINANCE

I. RULES OF PROCEDURE

(Adopted January 25, 2005)

Rule 1. *Regular Meeting Days.*—The regular meeting day of the committee shall be the second and fourth Tuesday of each month, except that if there be no business before the committee the regular meeting shall be omitted.

Rule 2. *Committee Meetings.*—(a) Except as provided by paragraph 3 of Rule XXVI of the Standing Rules of the Senate (relating to special meetings called by a majority of the committee) and subsection (b) of this rule, committee meetings, for the conduct of business, for the purpose of holding hearings, or for any other purpose, shall be called by the chairman after consultation with the ranking minority member. Members will be notified of committee meetings at least 48 hours in advance, unless the chairman determines that an emergency situation requires a meeting on shorter notice. The notification will include a written agenda together with materials prepared by the staff relating to that agenda. After the agenda for a committee meeting is published and distributed, no nongermane items may be brought up during that meeting unless at least two-thirds of the members present agree to consider those items.

(b) In the absence of the chairman, meetings of the committee may be called by the ranking majority member of the committee who is present, provided authority to call meetings has been delegated to such member by the chairman.

Rule 3. *Presiding Officer.*—(a) The chairman shall preside at all meetings and hearings of the committee except that in his absence the ranking majority member who is present at the meeting shall preside.

(b) Notwithstanding the rule prescribed by subsection (a) any member of the committee may preside over the conduct of a hearing.

Rule 4. *Quorums.*—(a) Except as provided in subsection (b) one-third of the membership of the committee, including not less than one member of the majority party and one member of the minority party, shall constitute a quorum for the conduct of business.

(b) Notwithstanding the rule prescribed by subsection (a), one member shall constitute a quorum for the purpose of conducting a hearing.

Rule 5. *Reporting of Measures or Recommendations.*—No measure or recommendation shall be reported from the committee unless a majority of the committee is actually present and a majority of those present concur.

Rule 6. *Proxy Voting; Polling.*—(a) Except as provided by paragraph 7(a)(3) of Rule XXVI of the Standing Rules of the Senate (relating to limitation on use of proxy voting to report a measure or matter), members who are unable to be present may have their vote recorded by proxy.

(b) At the discretion of the committee, members who are unable to be present and whose vote has not been cast by proxy may be polled for the purpose of recording their vote on any rollcall taken by the committee.

Rule 7. *Order of Motions.*—When several motions are before the committee dealing with related or overlapping matters, the chairman may specify the order in which the motions shall be voted upon.

Rule 8. *Bringing a Matter to a Vote.*—If the chairman determines that a motion or amendment has been adequately debated, he may call for a vote on such motion or amendment, and the vote shall then be

taken, unless the committee votes to continue debate on such motion or amendment, as the case may be. The vote on a motion to continue debate on any motion or amendment shall be taken without debate.

Rule 9. *Public Announcement of Committee Votes.*—Pursuant to paragraph 7(b) of Rule XXVI of the Standing Rules of the Senate (relating to public announcement of votes), the results of rollcall votes taken by the committee on any measure (or amendment thereto) or matter shall be announced publicly not later than the day on which such measure or matter is ordered reported from the committee.

Rule 10. *Subpoenas.*—Witnesses and memoranda, documents, and records may be subpoenaed by the chairman of the committee with the agreement of the ranking minority member or by a majority vote of the committee. Subpoenas for attendance of witnesses and the production of memoranda, documents, and records shall be issued by the chairman, or by any other member of the committee designated by him.

Rule 11. *Nominations.*—In considering a nomination, the Committee may conduct an investigation or review of the nominee's experience, qualifications, and suitability, to serve in the position to which he or she has been nominated. To aid in such investigation or review, each nominee may be required to submit a sworn detailed statement including biographical, financial, policy, and other information which the Committee may request. The Committee may specify which items in such statement are to be received on a confidential basis. Witnesses called to testify on the nomination may be required to testify under oath.

Rule 12. *Open Committee Hearings.*—To the extent required by paragraph 5 of Rule XXVI of the Standing Rules of the Senate (relating to limitations on open hearings), each hearing conducted by the committee shall be open to the public.

Rule 13. *Announcement of Hearings.*—The committee shall undertake consistent with the provisions of paragraph 4(a) of Rule XXVI of the Standing Rules of the Senate (relating to public notice of committee hearings) to issue public announcements of hearings it intends to hold at least one week prior to the commencement of such hearings.

Rule 14. *Witnesses at Hearings.*—(a) Each witness who is scheduled to testify at any hearing must submit his written testimony to the staff director not later than noon of the business day immediately before the last business day preceding the day on which he is scheduled to appear. Such written testimony shall be accompanied by a brief summary of the principal points covered in the written testimony. Having submitted his written testimony, the witness shall be allowed not more than ten minutes for oral presentation of his statement.

(b) Witnesses may not read their entire written testimony, but must confine their oral presentation to a summarization of their arguments.

(c) Witnesses shall observe proper standards of dignity, decorum and propriety while presenting their views to the committee. Any witness who violates this rule shall be dismissed, and his testimony (both oral and written) shall not appear in the record of the hearing.

(d) In scheduling witnesses for hearings, the staff shall attempt to schedule witnesses so as to attain a balance of views early in the hearings. Every member of the committee may designate witnesses who will appear before the committee to testify. To the extent that a witness designated by a member cannot be scheduled to testify during the time set aside for the hearing, a special time will be set aside for the witness to testify if the member designating that witness is available at that time to chair the hearing.

Rule 15. *Audiences.*—Persons admitted into the audience for open hearings of the committee shall conduct themselves with the dignity, decorum, courtesy and propriety traditionally observed by the Senate. Demonstrations of approval or disapproval of any statement or act by any member or witness are not allowed. Persons creating confusion or distractions or otherwise disrupting the orderly proceeding of the hearing shall be expelled from the hearing.

Rule 16. *Broadcasting of Hearings.*—(a) Broadcasting of open hearings by television or radio coverage shall be allowed upon approval by the chairman of a request filed with the staff director not later than noon of the day before the day on which such coverage is desired.

(b) If such approval is granted, broadcasting coverage of the hearing shall be conducted unobtrusively and in accordance with the standards of dignity, propriety, courtesy and decorum traditionally observed by the Senate.

(c) Equipment necessary for coverage by television and radio media shall not be installed in, or removed from, the hearing room while the committee is in session.

(d) Additional lighting may be installed in the hearing room by the media in order to raise the ambient lighting level to the lowest level necessary to provide adequate television coverage of the hearing at the then current state of the art of television coverage.

(e) The additional lighting authorized by subsection (d) of this rule shall not be directed into the eyes of any members of the committee or of any witness, and at the request of any such member or witness, offending lighting shall be extinguished.

(f) No witness shall be required to be photographed at any hearing or to give testimony while the broadcasting (or coverage) of that hearing is being conducted. At the request of any such witness who does not wish to be subjected to radio or television coverage, all equipment used for coverage shall be turned off.

Rule 17. *Subcommittees.*—(a) The chairman, subject to the approval of the committee, shall appoint legislative subcommittees. The ranking minority member shall recommend to the chairman appointment of minority members to the subcommittees. All legislation shall be kept on the full committee calendar unless a majority of the members present and voting agree to refer specific legislation to an appropriate subcommittee.

(b) The chairman may limit the period during which House-passed legislation referred to a subcommittee under paragraph (a) will remain in that subcommittee. At the end of that period, the legislation will be restored to the full committee calendar. The period referred to in the preceding sentences should be 6 weeks, but may be extended in the event that adjournment or a long recess is imminent.

(c) All decisions of the chairman are subject to approval or modification by a majority vote of the committee.

(d) The full committee may at any time by majority vote of those members present discharge a subcommittee from further consideration of a specific piece of legislation.

(e) Because the Senate is constitutionally prohibited from passing revenue legislation originating in the Senate, subcommittees may mark up legislation originating in the Senate and referred to them under Rule 16(a) to develop specific proposals for full committee consideration but may not report such legislation to the full committee. The preceding sentence does not apply to nonrevenue legislation originating in the Senate.

(f) The chairman and ranking minority members shall serve as nonvoting *ex officio* members of the subcommittees on which they do not serve as voting members.

(g) Any member of the committee may attend hearings held by any subcommittee and question witnesses testifying before that subcommittee.

(h) Subcommittee meeting times shall be coordinated by the staff director to insure that—

(1) no subcommittee meeting will be held when the committee is in executive session, except by unanimous consent;

(2) no more than one subcommittee will meet when the full committee is holding hearings; and

(3) not more than two subcommittees will meet at the same time.

Notwithstanding paragraphs (2) and (3), a subcommittee may meet when the full committee is holding hearings and two subcommittees may meet at the same time only upon the approval of the chairman and the ranking minority member of the committee and subcommittees involved.

(i) All nominations shall be considered by the full committee.

(j) The chairman will attempt to schedule reasonably frequent meetings of the full committee to permit consideration of legislation reported favorably to the committee by the subcommittees.

Rule 18. *Transcripts of Committee Meetings.*—An accurate record shall be kept of all markups of the committee, whether they be open or closed to the public. This record, marked as ''uncorrected,'' shall be available for inspection by Members of the Senate, or members of the committee together with their staffs, at any time. This record shall not be published or made public in any way except:

(a) By majority vote of the committee after all members of the committee have had a reasonable opportunity to correct their remarks for grammatical errors or to accurately reflect statements made.

(b) Any member may release his own remarks made in any markup of the committee provided that every member or witness whose remarks are contained in the released portion is given a reasonable opportunity before release to correct their remarks.

Notwithstanding the above, in the case of the record of an executive session of the committee that is closed to the public pursuant to Rule XXVI of the Standing Rules of the Senate, the record shall not be published or made public in any way except by majority vote of the committee after all members of the committee have had a reasonable opportunity to correct their remarks for grammatical errors or to accurately reflect statements made.

Rule 19. *Amendment of Rules.*—The foregoing rules may be added to, modified, amended or suspended at any time.

60TH ANNIVERSARY OF THE LIBERATION OF AUSCHWITZ

Mr. SMITH. Mr. President, I rise today to observe a solemn anniversary. On January 27, 2005, the world will pause and remember as we mark the sixtieth anniversary of the liberation of Auschwitz, the most notorious of Nazi Germany's concentration and death camps.

In 1940, Germany established the Auschwitz concentration camp 37 miles west of Krakow in Poland. Formerly a Polish Army barracks, Auschwitz was first used as a prison for captured Polish soldiers and those who were considered by the Nazis to be dangerous. The

prison held captive the elite of Poland—their civic and spiritual leaders, educated classes, cultural and scientific figures, army officers, and members of the resistance movement. Throughout World War II, Auschwitz continued to be used to house prisoners-of-war, gypsies, and others who opposed the Nazi regime.

In 1942, Germany began to use Auschwitz as one of its principle camps to carry out the systematic extermination of Jews across the European continent. As the Nazis pursued their horrific ''final solution,'' over one million Jews and tens of thousands of others perished at Auschwitz, the majority of whom were executed in the infamous gas chambers.

As the Soviet Army approached at the end of 1944, the Nazis attempted to destroy evidence of their atrocities. In late January 1945, the Germans evacuated Auschwitz with the SS leading over 50,000 prisoners on a death march that eventually claimed the lives of thousands more. When the Soviets finally reached the camp, only a few thousand prisoners remained alive to see their liberation.

It was some time before the world knew the extent of the atrocities committed at Auschwitz. But as the truth became known, we made the promise to never forget what happened there and at other Nazi extermination camps. Today, by marking this somber anniversary, we keep that promise.

Yet, it is not enough to simply pause and remember.

I have walked that ground in Auschwitz. I have felt the weight of the air and seen the ruins of the crematoria. It is an unquestionably chilling experience that I have trouble expressing in words.

But I do know and understand the words of Auschwitz survivor and Nobel laureate Elie Weisel, who said, ''to remain silent and indifferent is the greatest sin of all.'' It is in that spirit that we not only recall the horrors perpetrated at Auschwitz, but we work to ensure that such unbridled hatred and evil never again goes unchecked.

So, too, we must recognize that hatred does still exist in the world and we see signs of it every day. It is our duty as a free people to work against its growth and fight evil wherever it is found. As a beacon of liberty for the entire world, I am inspired by the words spoken by President Bush in his Inaugural address last week, ''we cannot carry the message of freedom and the baggage of bigotry at the same time.''

So, as we mark 60th anniversary of the liberation of Auschwitz, it is not enough to simply remember, we must be ever vigilant in our fight against bigotry and hatred both at home and abroad.

Mr. DODD. Mr. President, I rise today to reflect on an important and meaningful anniversary that is being commemorated worldwide this week. Two days from now, January 27, 2005, will mark 60 years since the liberation of Auschwitz, the concentration and death camp at which over 1.1 million innocent men, women, and children were murdered at the hands of the Nazis.

As many of my colleagues know, I have long felt a very deep and personal connection to the tragedy of the Holocaust. My father, who would later serve two terms in this body, was the Executive Trial Counsel at the Nuremberg trials of Nazi war criminals.

He left this country for Nuremberg when I was only 1½ years old, and he spent the next two years poring over documents and conducting interviews that revealed to him the shocking, staggering process by which over 6 million people were systematically killed. He found himself face to face with many of the men who had planned and carried out Hitler's ''Final Solution.'' He found himself asking, wondering how so many human beings many of whom had loving families of their own, had been educated in universities, had enjoyed the fine arts how could they possibly conceive and execute a mass murder on an unimaginable scale? How was it that only a tiny sliver of a minority in Europe stood up against a plan to wipe out that continent's entire Jewish population, as well as Gypsies, the disabled, and homosexuals? And how was it that the United States and its allies failed to act in time to save millions of innocent lives?

When my father came home from Europe, he didn't have answers to those questions. Indeed, we have continued asking these questions for the past six decades. What my father did bring back from Nuremberg was an unyielding and firm conviction to teach what he learned to as many people as he could, beginning with the members of his own family. From an early age, I can remember learning from my father names of people like Goebbels, Mengele, and Eichmann, and places like Auschwitz, Majdanek, and Treblinka.

As an Irish Catholic boy growing up in Connecticut, my early education in the history of the Holocaust was something of an anomaly. Fortunately, this is no longer the case today. Yet there are still communities, here in America, and even more so around the world, where far too little is known about the Holocaust. More shockingly still, there are those individuals and groups which question or deny the very existence of the Holocaust a charge that is often interwoven with the very same poisonous anti-Semitism that led to this human tragedy.

On this anniversary, therefore, it is critical not only to remember those who perished, but to redouble our efforts to enhance and increase awareness of the Holocaust. This is particularly important today, as each day there remain fewer and fewer living witnesses to the Holocaust those who themselves wore the yellow star and still have prisoner numbers tattooed on their arms.

In the effort to keep the memory of the Holocaust alive, we have an invaluable resource located just a few minutes from here, the United States Holocaust Memorial Museum. That museum represents a steadfast commitment by our Nation to ensure that the Holocaust will never, ever fade away into the mist of history. I imagine that most, if not all, of my colleagues have already visited the museum. I would certainly urge any of my colleagues who might not have done so to visit, and to encourage their staffs and their constituents who visit our Nation's Capital to do the same.

Finally, it is crucial that on this anniversary, we take meaningful steps to address acts of genocide in our own time. Today, in the Darfur province of Sudan, tens of thousands have already died as a result of a murderous ethnic cleansing campaign by the government-supported Janjaweed militias. It is estimated that as many as 350,000 could die in the coming months if action is not taken. Certainly, the sheer magnitude of the events in Darfur does not approach that of the Holocaust. On a fundamental level, however, the world is facing the same choice we did over 60 years go: do we respond to heinous crimes against humanity, or do we ignore a growing tragedy until it is far, far too late? This is the challenge that confronts us today, as we commemorate the liberation of Auschwitz and the other Nazi death camps to ensure that the cry of ''never again'' does not ring tragically hollow.

In closing, Mr. President, I would like to note that in addition to the anniversary that we are commemorating this week, today's date marks a special occasion in the Jewish calendar. Today is the holiday of Tu B'Shvat, the traditional New Year for trees. It heralds the coming of the spring, and is an occasion for celebrating renewal, transition, and hope. It is my hope that as Americans and people around the world reflect on the 60th anniversary of liberation, we can seize this solemn occasion to look towards the future, and to plant new seeds of hope, tolerance, and justice among all of humankind.

Ms. COLLINS. Mr. President, the world pauses this week to observe the 60th anniversary of an event that calls for the deepest solemnity and reflection. In early 1945, as American and British armies closed in on the Third Reich from the west, Soviet forces were on the march through Poland. On January 27, they came to a place called Auschwitz.

In the Nazi death industry, Auschwitz was its most productive factory. It is estimated that some one and a half million were murdered there. The victims were Poles, Slavs, Russians, Gypsies, but the majority were Jews. They died from disease, starvation, exposure and exhaustion, on the gallows and in front of the firing squads, but mostly they were marched into the gas chambers. From the camp's establishment in 1940 until its liberation, the ovens of

Auschwitz operated around the clock, their smokestacks spewing the stench of inhumanity across the countryside.

The Holocaust is a story of incomprehensible inhumanity, of an act of enormity that passed all moral bounds and entered the realm of pure evil. It also, however, is a story of incredible heroism, of men and women who risked their lives, many who sacrificed their lives, for others—not just family and friends, but often total strangers.

Some of these heroes are well known to us: Raoul Wallenberg and Oskar Schlindler, to name just two. Some are less known, but equally deserving of mankind's gratitude. The American journalist Varian Fry, the beneficiary of a privileged childhood and an Ivy League education, risked his life repeatedly spiriting 2,000 Jews out of occupied France through the network he created of black-market funds, forged documents and secret escape routes. In 1941, in retaliation for an escape by others, a group of Auschwitz prisoners was lined up before a firing squad. At the last moment, the Roman Catholic Priest Maximillian Kolbe voluntarily stepped forward to take a father's place.

The names of some heroes will never be known to us. In the weeks before the liberation, the Nazis began dismantling the machinery of death at Auschwitz in order to hide their crimes. The gas chambers and crematoria were dynamited, the mass graves were disguised, and the infamous March of Death began. Nearly 60,000 prisoners, already weakened by hunger and illness, were driven on foot across the harsh winter countryside to camps within the Reich. The penalty for failure to keep up was summary execution.

That also was the penalty for the people who offered food, water, and—whenever the opportunity arose—escape when this sorrowful parade passed through their villages. One survivor of the March of Death, Jan Wygas, tells of a villager who approached his column of prisoners with a bottle of water:

> ''Let them drink,'' she said in German to the SS guards. ''They are people, too.'' She gave the water to one of the prisoners. The SS man yelled at her to move back. As she turned to walk away, he shot her in the back of the head. I saw this with my own eyes.

And yet, despite this brutality heaped on top of brutality, the people of the villages continued to offer aid, in Poland, in Silesia, even in Germany itself.

Indeed, there are stories of those within the regime who resisted in whatever way they could. In his inspiring Holocaust memoir, ''Anton the Dove Fancier,'' Bernard Gotfryd tells of the time in 1944 when he was sent as a slave laborer to a German aircraft plant. Like his co-workers, Gotfryd did his best to be the worst worker possible, turning out defective parts and causing his machine to break down constantly. His stern German supervisor, known only as Herr Gruber, seemed not to notice this widespread incompetence, despite being under constant pressure to increase production.

Once, Gotfryd sprained his ankle so severely he could not walk and could barely stand. In most cases, this disability would have earned a prisoner a spot on a train to a death camp. Again, Herr Gruber seemed not to notice.

In the summer of 1944, Gotfryd discovered a treasure in the pocket of his work overalls: a sausage and a slab of real bread wrapped in newspaper. The rare and delicious food nourished his body. The newspaper nourished his soul, for it told of the Allied invasion of Normandy. The meaning of this message was to hold on, salvation was on the way. Gotfryd knew the messenger could only have been Herr Gruber.

From where does this courage, this compassion, this self-sacrifice for total strangers come? None of us can say with certainty, but we all are blessed by its presence.

On the other hand, the source of the hatred that led one of Europe's greatest powers to enact blatantly discriminatory laws, then to revel in a night of shattered windows, and finally to commit mass murder is known to us all too well. It is that particularly virulent and persistent form of mindless bigotry called anti-Semitism.

One would think that the stories of Holocaust survivors, the irrefutable evidence before our eyes for the last 60 years, the memorials at such places as Auschwitz, and the debt we owe 6 million victims would be more than enough to eradicate this scourge. Tragically, Mr. President, that is not the case.

Earlier this month, our State Department released a Report on Global Anti-Semitism. This report is the result of the Global Anti-Semitism Review Act of 2004, introduced by my distinguished colleague from Ohio, Senator VOINOVICH. I am proud to have been a co-sponsor.

To say that the findings of this report are discouraging is a gross understatement. In country after country around the world, there has been a sharp increase in both the frequency and severity of anti-Semitic incidents in the first years of the 21st Century. Clearly, the lessons of the first half of the 20th are in danger of being forgotten.

These incidents are not just the random vandalism of Jewish cemeteries or synagogues, or the occasional incident of harassment or assault, and the perpetrators are not just neo-Nazis or skinheads on the fringe of society. The new strain of this disease combines ancient anti-Jewish prejudice with a new demonization of the State of Israel and unbridled anti-Americanism, replete with Nazi comparisons and symbolism. In this new anti-Semitism, the extreme right and the extreme left have gone around the bend so far that they now have joined forces.

We see evidence of this new anti-Semitism all around us. The Protocols of the Elders of Zion is cited with increasing frequency in the Middle East press, instead of being consigned, along with its ideological sequel, Mein Kampf, to the ash heap of literary history. In some areas of Europe, the swastika replaces the letter ''s'' in anti-Israel and anti-American posters, bumper stickers and buttons. There is the absurd rumor that Jews in New York City had advance warning of the September 11 attacks. The Holocaust itself, when not being denied, is at least being diminished.

The answer is not to silence these despicable ideas but to respond to them. We all have an obligation to history and to humanity to speak out, loudly and without exception, to this perversion of the truth and this degradation of civilization.

Julia Skalina is an Auschwitz survivor, a native of Czechoslovakia who now lives in my home State, in the city of Portland. She is a frequent speaker at schools in Maine. These are her words: ''I learned what hatred can do, what people driven by hatred can do. I wish any future generation should never have to live through what we lived through.''

That wish will come true only if we—all of us—make it so. The horror of the Holocaust and the magnificence of the human spirit that it revealed demand this of us.

COUNTRY OF ORIGIN LABELING

Mr. BURNS. Mr. President, yesterday, along with my colleagues Senators JOHNSON, THOMAS, THUNE, BINGAMAN, and DORGAN, I introduced a bill on country-of-origin labeling. The bill would accelerate the date of implementation of mandatory COOL, and expand labeling requirements to include processed foods.

Country-of-origin labeling is probably one of the most important issues for cattle producers in Montana. They raise the best beef in the world, and they are proud of that. They want the American consumer to know that beef in the freezer case is ''Made in the U.S.A''.

Of course, I have supported country-of-origin labeling for many years, and I was glad to see it finally pass in 2002 when we passed the 2002 farm bill. But since then, there have been some folks who won't rest until they dismantle the program. The implementation has been delayed, writing the rules has been delayed—well, I say enough is enough. Mandatory COOL is the law of the land. Let's get it implemented.

We need to get the country-of-origin labeling done. It needs to be done right, and it needs to be mandatory. Getting it done right is the key. I have a concern with the COOL law currently on the books. My legislation begins to fix one part of that law.

Right now, very little beef will actually be labeled in the grocery stores. The law excludes over half of the beef sold in this country. ''Processed foods'' includes a big portion of the beef products you and I are used to: Beef jerky,

sausage, marinated foods—all of these items would be excluded under the current COOL law. I want to see that fixed, and that is what my bill will do. But I do not want mandatory COOL to be delayed any longer. That is why my legislation will implement the mandatory COOL law, as it is written, 1 year ahead of what the current law says, and then direct USDA to work on including processed foods.

Let me be clear. I want to see COOL done right, but under no set of circumstances do I support rolling back country-of-origin labeling. COOL needs to be mandatory. We have tried a voluntary program for 2 years. No one has participated. It is time for the packers and the processors to realize that Montana's cow/calf producers want labeling. They want to tell consumers where their beef comes from. I support that. I have pushed for mandatory COOL for years, and I will continue to do so in this Congress.

TRIBUTE TO HOWARD LIEBENGOOD

Mr. WARNER. Mr. President, I today pay tribute to my friend, Howard Liebengood, who died earlier this month. Howard's most recent service to the Senate was as Senator BILL FRIST's Chief of Staff. I was privileged to meet Howard when I came to the Senate 27 years ago, when he was our Sergeant at Arms. Howard was a treasured and invaluable member of the Senate family who will be greatly missed.

As I reflect on the privilege of serving my State and working with so many able and dedicated Senate staffers, Howard Liebengood stands out as one of the most effective members of our Senate staff whose exemplary career is testimony of his dedication to public service.

Howard's hallmark was his ever-present smile and vast knowledge of Senate practices and procedures.

His air of calm pervaded hot debates on tough issues as he reminded us that more challenging issues had been resolved with less acrimony in days past.

His outstanding record of service will stand as an everlasting manual from which present and future generations of Senate staffers can learn. Howard made the Senate a better place to work and our Nation a better place to live. His enormous contributions over his lengthy career will be remembered and cherished by his colleagues.

My staff joins me in sending our deepest sympathy to the Liebengood family.

FOOD AID FUNDING

Mr. KOHL. Mr. President, very soon the administration is expected to send to Congress supplemental appropriation requests to address ongoing military needs in Iraq and the humanitarian crisis posed by the tsunami in the Indian Ocean. My hope is that the administration will include adequate food aid funding in that supplemental proposal. Recent press reports suggest they may be moving in that direction. If, however, the administration's proposed supplemental fails to provide adequate food aid funding, it is my intention to offer an amendment that would essentially accomplish four things.

First, my amendment would provide full funding to meet U.S. food aid commitments from the tsunami under PL–480 title II. Second, my amendment will replenish PL–480 title II development funds that help meet our ongoing development programs across the globe. Third, it will shore up PL–480 title I funds that have been used as a stop-gap measure to address the crisis. And finally, it will replenish the Bill Emerson Humanitarian Trust, BEHT, so that our aid workers and development personnel can be assured of adequate resources to carry out their important lifesaving work in future crises.

The tsunami brought images of destruction and human suffering on a scale that is hard for many of us to imagine. Americans responded with great generosity by committing unprecedented funds through private donations. Some $50 million, I am told, has been pledged through the American Red Cross alone.

Federal workers and their cooperators in Washington and around the globe made an extraordinary effort to respond. Food resources that were prepositioned, and even some in transit, were shifted to address this crisis. For all their hard work and creativity, I commend them.

What concerns me now, however, is how we proceed after the television networks scale back their coverage. Enormous need will remain even after the emergency is contained. It will be months, perhaps years, before rice paddies are desalinated, fishing boats are rebuilt and fishing nets are repaired. Self-sufficiency will not happen overnight. And while the people most directly affected by the tsunami are struggling to achieve a measure of self-sufficiency, the dire need for food aid continues in places such as Ethiopia and Sudan and many others. That is why I believe it is so critical that we reinforce our food aid capacity.

In his inaugural address, the President spoke forcefully about ending tyranny and spreading democracy. Everyone shares those objectives. We also know that those objectives cannot be achieved solely by force or gesture politics. They demand a commitment to diplomacy and human compassion. Adequate funding for food aid is central to that process, and I invite my colleagues to join me in this effort.

ROBERT T. MATSUI UNITED STATES COURTHOUSE

Mrs. FEINSTEIN. Mr. President, I have joined Senators BOXER and DURBIN in introducing legislation that would rename the federal courthouse in Sacramento, CA, in honor of recently deceased U.S. Representative Robert T. Matsui. This represents a fitting tribute to a great man and a dedicated public servant.

On January 1, 2005, the people of the Sacramento area, the State of California, and the Nation suffered a great loss when Bob Matsui passed away. For 26 years in Congress and 7 years before that as a member of the Sacramento City Council, Bob was a reasoned and dependable voice. A problem solver, Bob was a thoughtful and constructive leader who brought people together to find solutions to public policy issues.

I had the distinct pleasure of working with Bob on a number of issues relating to our home State of California. I will remember him as a great human being, as a trusted colleague, as a fine public servant, and someone in whom I was proud to place friendship, respect, and collegiality.

Proud of his ideals, Bob never let disagreement lead to rancor. The sheer number of tributes paid from both sides of the aisle clearly demonstrates the enormous respect he inspired among his colleagues. Likewise, the tremendous outpouring of support shown at services held in his honor reminds us just how endeared he had become to those he represented over the years.

Bob's path to public service was greatly fueled by experiences in his youth, especially his internment along with thousands of other Japanese Americans during World War II.

When he was just six months old, Bob and his family were sent to an internment camp in Northern California, leaving behind their home and their livelihood. Bob would spend the first four years of his life there.

I think this experience had a very sobering impact on his life. But rather than let it lead to resentment and hatred, I think it had an impact on his knowing what he wanted to do with his life, and that was public service.

In fact, one of Bob's most significant legacies will be the work he did to help the Government make amends with the Japanese Americans who were interned like himself.

As a member of Congress, Bob was successful in passing legislation that offered a formal apology from the Government for the internment program and provided compensation to victims. This is a great legacy and it will be remembered well.

Bob also excelled in his knowledge and expertise of Social Security as well as tax and trade policy. He had an influential place on the House Ways and Means Committee, which will miss his leadership.

The Sacramento area, where Bob was born and which he represented for over three decades in public office, shows numerous examples of Bob's achievements. From the light-rail train system to comprehensive flood protection, Bob's mark is everywhere.

The renaming of this particular courthouse in Bob's honor is especially fitting. During his career in Congress, Bob was instrumental in obtaining more than $142 million in federal funding for the courthouse.

Bob did what he did extraordinarily well. Throughout his career he showed that he was a skilled politician as well as a great policymaker. His constituents considered themselves lucky to have his representation, and I consider myself lucky to have known him.

Through his many accomplishments, Bob Matsui secured his legacy of devoted public service. I offer my gratitude for his service and support this legislation in his honor.

ADDITIONAL STATEMENTS

CONGRATULATIONS TO THE RED ROVER MARCHING BAND

• Mr. SANTORUM. Mr. President, President George W. Bush's inauguration ceremony was truly a spectacular event. The sights and sounds that thousands of Americans witnessed on Thursday, January 20, 2005, will remain in their minds forever.

The 243 students of the Easton High School Red Rover Marching Band in Easton, PA, however, will have the lasting memory of marching up Pennsylvania Avenue to the White House to perform for the President and First Lady.

The Presidential inauguration is not only a time to peacefully celebrate a transition of power, but it is a time for students and bands from all over the nation to perform for the President and the First Lady. As bystanders and thousands across the country watched the inaugural parade, the performers put a face and familiarity to such a momentous event.

Prior to the inauguration, on Tuesday, January 18th, 2005, I had the opportunity to meet with the students of the Red Rover Marching Band and to listen as they practiced for their inaugural performance. The Red Rover Marching Band was chosen out of 300 bands from across the nation. In our meeting, I could feel the excitement of these high school students as they prepared for the opportunity to display their talents and participate in such an important event. It brings a great sense of pride to the residents of Easton and to all Pennsylvanians that the Red Rover Marching Band was selected to represent the musical talents of Pennsylvania youth in the inaugural parade.

It is a great honor for the Red Rover Marching Band to participate in such a dramatic event of pomp and circumstance. I am thankful for the time that they put in practicing and reviewing their song selection. They should be proud to be among the many other top-notch bands that performed before the President and First Lady in the Inaugural Parade. Their hard work certainly paid off. I am pleased that the Red Rover Marching Band represented our Commonwealth and specifically Easton, Pennsylvania on such an historic day in our Nation's history.•

REMEMBERING G. FRED DIBONA, JR.

• Mr. SANTORUM. Mr. President, today I reflect on the loss of a dear friend. On January 11, 2005, G. Fred DiBona, Jr. passed away after a 15-month battle with cancer. I have known Fred for more than 11 years and have developed a close relationship with Fred and his family. The DiBona family has suffered a tremendous loss, and I offer them my condolences and deepest sympathy during this difficult time.

On February 20, 1951, G. Fred DiBona, Jr. was born in South Philadelphia to Common Pleas Court Judge, G. Fred DiBona and the former Rose D'Amico. Fred Jr. was raised in Philadelphia, and went on to graduate from South Philadelphia High School and Davis and Elkins College. He also received a law degree from the Delaware School of Law.

At the age of 25, Fred became chairman of the Philadelphia Zoning Board of Adjustment. After a three-year post with the Zoning Board, Fred served as President of the Philadelphia Port Corporation, President of the Greater Philadelphia Chamber of Commerce, and finally as President and Chief Executive Officer of Independence Blue Cross.

With vision and confidence, Fred completely revolutionized Independence Blue Cross. He devoted a great deal of time and energy to Independence Blue Cross, and implemented a vision of trustworthy insurance service to his customers for many years. Throughout his career, Fred worked vigorously and tirelessly in the pursuit of excellence, and I am grateful for the many years of service he provided to his community.

Fred will also be remembered for his community activism and willingness to serve on several boards and councils. Specifically, he served consecutive terms as chairman of the Blue Cross and Blue Shield Association, the country's largest association of private health insurers. He is also a former member of the Harvard Health Policy and Management Executive Council, a group at the Harvard School of Public Health. Fred also served on the boards of Aqua America Inc., Crown Holdings Inc., Exelon Corporation, The GEO Group, Inc., and Tasty Baking Company. Fred's involvement in civic organizations, including the Peter Nero and Philly Pops Board, displayed his dedication as a professional to his community.

It is noticeable by the several awards that Fred received over the years that his dedication to service graced his community tremendously. In 1995 Fred received the National Patriot's Award from the Congressional Medal of Honor Society. In 1996, he received the Thomas Cahill Leadership Award and the Jewish National Fund Tree of Life Award. Fred has also been honored with the Annual Business Leadership Award from LaSalle University; the Good Scout Award for the Cradle of Liberty Council, Boy Scouts of America; the 95th Annual Whitney M. Young Jr. Leadership Award from the Urban League of Philadelphia; and the 50th annual Business Leader of the Year award from Drexel University.

Despite his numerous accolades, Fred was an extremely humble man and a positive role model to others. I was proud to have Fred serve as my first finance chairman in my 1994 race for the Senate. It was during that time that we began to develop a close relationship.

Fred not only leaves behind a legacy, but also a wonderful family. Fred was a loving husband to Sylvia and father to Fred and Christine. My thoughts and prayers are with the DiBona family during the days and months ahead.•

CARROLL COLLEGE FIGHTING SAINTS

• Mr. BURNS. Mr. President, with great pride and admiration I honor the Carroll College football team, better known as the Fighting Saints who, on December 18, 2004, defeated the University of St. Francis Cougars to win their third consecutive NAIA football championship. Carroll is the first team to achieve this feat since Texas A & I accomplished it in 1974–1976.

St. Francis was leading 13–12 with just 1:13 left to play in the game and 89 long yards for Carroll College. Without a timeout remaining, quarterback Tyler Emmert drove the Saints within field goal range and with ten seconds on the clock to spare, which gave freshmen kicker Marcus Miller an opportunity to kick a 32-yard field goal.

Along with the honor of being national champions, quarterback Tyler Emmert was named the offensive MVP of the NAIA All-American Team. Four other team members of the Fighting Saints were also named to the NAIA All-American Team and two received honorable mentions. This great team is led by head coach Mike Van Diest who was named 2003 NAIA National Coach of the Year and Frontier Conference Coach of the Year. Van Diest also received the Frank Leahy Coach of the Year Award and the Johnny Vaught Head Coach Award, both presented by the All-American Football Foundation. The Carroll College football team was well represented on the 2004 NAIA All-American squad with five players making the first team. The Saints placed three players on offense—lineman Kyle Baker, quarterback Tyler Emmert and wide receiver Kevin McCutcheon. Linebacker Gary Cooper and defensive lineman Kevin Cicero were named to the first-team defense.

On this outstanding Carroll team, 23 of the 52 players had never been to a

championship game before. This victory must be credited to all of the players on this fine team. At this time I would like to submit a full roster of the Fighting Saints to be printed for the RECORD of the Senate following my statement.

Carroll College is not known just for their football program. U.S. News and World Report ranked Carroll College as the Fourth Best Western Regional Comprehensive College in America's Best Colleges for 2005. The Talking Saints forensics team is ranked in the top five of all universities and colleges in the United States. Their Nursing Department uses state-of-the-art technology including a $30,000 simulated patient, the most advanced of its kind and the only one in the state of Montana. Nine faculty members received Fulbright Scholarships, which continues to add to the school's excellent reputation. The ABET, Accreditation Board for Engineering and Technology, recently presented Carroll College with its Innovation Award in recognition of the creative way that they combined their engineering and mathematics curriculums.

I congratulate the three-time national champions and the fine educational institution of Carroll College.

Carroll College 2004 Football Roster, 51-man playoff roster:

A.J. Porrini, Mike Pancich, Seamus Mohillo, Justin Rigen, Mark Esponda, Cody Zimmerman, Marcus Miller, Andy Johnson, John Barnett, Matt Thomas, Dustin Michaelis, Tyler Emmert, Kevin McCutcheon, Jed Thomas, Regan Mack, Zach Thiry, Nick Milodragovich, Josh Schmidt, Zach Bumgarner, Austin Hall, T.J. Lehman, Jayce Peavler, Ryan Grosulak, Mike Maddox, Gary Cooper, Ellis Beckwith, Nick Bradeen, C.J. Bugas, Jeff Pasha, Phil Lenoue, Dan Mazurek, Kyle Baker, Kyle Cicero, Jason Ostler, Devin Wolf, Bryson Pelc, Sam Morton, Kevin Cicero, Nick Hammond, Paul Barnett, Tom Boyle, Scott Holbrook, Kendall Selle, Casey Crites, Nick Colasurdo, Mike Donovan, John Klaboe, Andrew Davenport, Jeff Shirley, and Chris Ramstead.

President: Dr. Tom Trebon.

Athletic Director: Bruce M. Parker.

Head Coach: Mike Van Diest.

Assistant Coaches: Nick Howlett, Jim Hogan, Mike McMahon, Kyle Mihelish, Gary Guthmiller, Mark Gallik, Mark Lenhardt, Jarod Wirt, Daryl Wilkerson.

Student Coaches: Mike Mahoney, Tyler Peterson.●

CELEBRATION OF THE 75TH ANNIVERSARY OF THE JEWISH FEDERATION OF SILICON VALLEY

● Mrs. BOXER. Mr. President, I take this opportunity to recognize the 75th anniversary of the Jewish Federation of Silicon Valley.

In 1930, the Jewish Federation of Silicon Valley, JFSV, was incorporated into the national Jewish Federation system to promote philanthropic and humanitarian activities in Santa Clara County. For 75 years, JFSV has served as a focal point for the Jewish community in Silicon Valley. With a membership of over 13,000, the JFSV is committed to preservation and enrichment of Jewish culture, and to expressing Jewish community concerns about Jewish life in Santa Clara County, the United States, Israel and throughout the world.

Over the past 75 years, JFSV has expanded greatly, and now offers a wide variety of programs to its members. The Silicon Valley Young Adults Division offers educational and social programs to members ages 25–40. The Women's Philanthropy Division focuses on community-building, educational, social, and cultural enrichment for women, while offering great networking opportunities to women members. Blue Knot, the Jewish Technology Initiative, creates opportunities for Jewish professionals in the technology sector to exchange ideas and expand networks.

JFSV is based on the caring philosophies of Klal Yisrael, the responsibility of each Jew for another, and Tikun Olam, repairing the world through social action. JFSV has mentored many members who have dedicated themselves to community service in Silicon Valley and the Greater Bay Area. Through its outreach, JFSV has successfully enhanced social and civic participation in the Silicon Valley community.

The Jewish Federation of Silicon Valley's service to the Jewish community, both in Santa Clara County and nationwide, is truly inspiring. I congratulate the Jewish Federation of Silicon Valley on their 75th anniversary and wish them another 75 years of success.●

40TH ANNIVERSARY OF ANALOG DEVICES, INC.

● Mr. KENNEDY. Mr. President, I welcome this opportunity to recognize a significant milestone in the life of a truly innovative Massachusetts company. On January 18, Analog Devices, Inc., of Norwood, MA celebrated its 40th anniversary.

The firm was founded in 1965 by two M.I.T. graduates, Ray Stata and Matthew Lorber. It is now the world's largest supplier of some of the key data converters and amplifiers used in nearly every form of electronic communications equipment.

Its earnings place it in the top 10 among companies in Massachusetts, and it has manufacturing plants and technology design centers in Massachusetts and nine other States, including Arizona, California, New Hampshire, New Jersey, North Carolina, Oregon, Texas, Utah, and Washington, as well as 11 other countries.

Analog Devices has been in the vanguard of the innovation revolution that has transformed the economy of Massachusetts, and that continues to shape the economic future of this country. When I first came to the Senate, our State economy was characterized by a reliance on older industries, many of which migrated South, and then overseas.

Fortunately, in the decades since then, innovators like Ray Stata and Matthew Lorber, began to launch the industries of the future in our State, including information technology, electronics, and biomedicine. We still face significant economic challenges, as all States do. But we take great pride in reports that consistently place us among the most economically competitive regions of the country, and we are hopeful about our future.

The Analog Devices team has a great deal to celebrate as they conclude their 40th year, including several noteworthy recent accomplishments.

Analog Devices was recognized by its industry peers in the Massachusetts Telecommunications Council as State Telecom Company of the Year in 2004.

Jerald G. Fishman was named CEO of the Year in 2004 by Electronic Business magazine, a prestigious industry publication with a large circulation among electronic industry executives.

In 2001, in recognition of his enormous contributions and commitment to education, the United States Semiconductor Industry Association honored Ray Stata with the prestigious Robert N. Noyce Award.

The strong foundation laid by Analog Devices in its first 40 years will bring decades more of creativity, innovation, prosperity, and investment to our State, and I congratulate this outstanding company for it's done so well.●

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–101. A message from the President of the United States, transmitting, pursuant to law, the report of the continuation of the national emergency with respect to terrorists who threaten to disrupt the Middle East peace process; to the Committee on Banking, Housing, and Urban Affairs.

EC–102. A communication from the Deputy Secretary, Department of the Treasury, transmitting, pursuant to law, the periodic report on the national emergency with respect to the risk of nuclear proliferation created by the accumulation of weapons-usable fissile material in the territory of the Russian Federation that was declared in Executive Order 13159 of June 21, 2000; to the Committee on Banking, Housing, and Urban Affairs.

EC–103. A communication from the Deputy Secretary, Department of the Treasury, transmitting, pursuant to law the periodic report on the national emergency with respect to the Western Balkans that was declared in Executive Order 13219 of June 26, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–104. A communication from the Deputy Secretary, Department of the Treasury, transmitting, pursuant to law, a final periodic report on the national emergency with respect to Libya that was declared in Executive Order 12543 of January 7, 1986, and terminated in Executive Order 13357 of September 20, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–105. A communication from the Chief Financial Officer, Department of Housing and Urban Development, transmitting, pursuant to law, the Department of Housing and Urban Development's report on its competitive sourcing efforts for FY 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–106. A communication from the Regulatory Specialist, Comptroller of the Currency, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Proper disposal of Consumer Information Under the Fair and Accurate Credit Transactions Act of 2003'' (RIN1557–AC84) received on January 13, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–107. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations (69 FR 70192)'' (44 CFR 67) received on January 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–108. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations (69 FR 71718)'' (44 CFR 65) received on January 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–109. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations (69 FR 72128)'' (44 CFR 65) received on January 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–110. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations (69 FR 70191)'' (44 CFR 67) received on January 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–111. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations (69 FR 72131)'' (44 CFR Part 67) received on January 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–112. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations (69 FR 70185)'' (44 CFR 67) received on January 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–113. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility (69 FR 70377)'' (44 CFR part 64) received on ; to the Committee on Banking, Housing, and Urban Affairs.

EC–114. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations (69 FR 71721)'' (44 CFR Part 67) received on January 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–115. A communication from the Assistant General Counsel, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Revisions to FHA Credit Watch Termination Initiative'' (RIN2502–AH60) received on January 24, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–116. A communication from the Assistant General Counsel, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs; Additional Exceptions to Time Restrictions on Sales'' (RIN2502–AI18) received on January 24, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–117. A communication from the Assistant General Counsel, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Home Equity Conversion Mortgage (HECM) Program: Insurance for Mortgages to Refinance Existing HECMs and Reduced Initial Mortgage Insurance Premiums (MIP)'' (RIN2502–AH63) received on January 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–118. A communication from the Assistant General Counsel, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Modification of the Community Development Block Grant for Metropolitan City and Other Conforming Amendments'' (RIN2506–AC15) received on January 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–119. A communication from the Assistant General Counsel, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Distribution of Tax Credit Proceeds'' (RIN2502–AH91) received on January 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–120. A communication from the Assistant General Counsel, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''HOME Investment Partnerships Program; Amendments to Homeownership Affordability Requirements'' (RIN2501–AD06) received on January 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–121. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled ''12 CFR Part 747 Civil Monetary Penalty Inflation Adjustment'' received on January 24, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–122. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled ''12 CFR 717.83 Fair Credit Reporting—Disposal of Consumer Information; 12 CFR 748.0—Security Program ; 12 CFR Part 748, appendix A—Guidelines for Safeguarding Member Information'' received on January 24, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–123. A communication from the Deputy Secretary, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Asset-Backed Securities'' (RIN3235–AF74) received on January 13, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–124. A communication from the Deputy General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary for Public Affairs, received on December 31, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–125. A communication from the Deputy General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary for Policy Development and Research, received on December 31, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–126. A communication from the Deputy General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination confirmed for the position of Deputy Secretary, received on December 31, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–127. A communication from the Deputy General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination confirmed for the position of Chief Financial Officer, received on December 31, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–128. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the Financial Report of the United States Government for Fiscal Year 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–129. A communication from the Chairman and President of the Export-Import Bank of the United States, transmitting, pursuant to law, the report of a transaction involving exports to Egypt; to the Committee on Banking, Housing, and Urban Affairs.

EC–130. A communication from the Director of the Office of Federal Housing Enterprise Oversight, transmitting a report on the standard of reasonable assurance pertaining to the effectiveness of its internal management controls during Fiscal Year 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–131. A communication from the Deputy Secretary of the Treasury, transmitting, pursuant to law, the periodic report on the national emergency with respect to the Development Fund for Iraq that was declared in Executive Order 13303 of May 22, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–132. A communication from the Deputy Secretary of the Treasury, transmitting, pursuant to law, the report on the national emergency with respect to Burma that was declared in Executive Order 13046 of May 20, 1997; to the Committee on Banking, Housing, and Urban Affairs.

EC–133. A communication from the Deputy Secretary, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Registration Under the Advisers Act of Certain Hedge Fund Advisers'' (RIN3235–AJ25) received on December 8, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–134. A communication from the Deputy Secretary, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Disposal of Consumer Report Information'' (RIN3235–AJ24) received on December 3, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–135. A communication from the Director of Legislative Affairs, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the report of a rule entitled ''Deposit Insurance Assessments—Certified Statements'' received on December 31, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–136. A communication from the Senior Paralegal, Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustment'' (RIN1550–AB95) received on December 17, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–137. A communication from the Senior Paralegal, Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''EGRPRA Regulatory Review—Application and Reporting Requirements'' (RIN1550–AB93) received on December 17, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–138. A communication from the Chief Counsel of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''31 CFR Parts 515, 538 and 560: Cuban Assets Control Regulations; Sudanese Sanctions Regulations; Iranian Assets Control Regulations'' received on December 17, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–139. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Entity List: Removal of Four Russian Entities'' (RIN0694–AD12) received on December 6, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–140. A communication from the Assistant Secretary, Division of Corporate Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Temporary Postponement of Final Phase-In Period for Acceleration of Periodic Reports'' (RIN3235–AJ30) received on December 8, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–141. A communication from the Assistant Secretary, Division of Market Regulation, Securities and Exchange Commission, transmitting, the report of a rule entitled ''Rule 17Ad–20: Issuer Restrictions and Prohibitions to or from Securities Intermediaries'' (RIN3235–AJ26) received on December 8, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–142. A communication from the Assistant to the Federal Reserve Board, transmitting, pursuant to law, the report of a rule entitled ''12 CFR Parts 208, 211, 222, and 225: Proper Disposal of Consumer Information Under the Fair and Accurate Credit Transactions Act of 2003'' received on January 3, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–143. A communication from the Assistant to the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report of a rule entitled ''Regulation C (Home Mortgage Disclosure)'' received on January 3, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–144. A communication from the Assistant General Counsel for Regulations, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Implementation of Requirement in HUD Programs for Use of Data Universal Numbering System (DUNS) Identifier'' (RIN2501–AD01) received on January 3, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–145. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled ''12 CFR Part 723: Member Business Loans'' received on January 3, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–146. A communication from the Assistant General Counsel, Office of Public and Indian Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''PHA Discretion in Treatment of Over-Income Families'' (RIN2577–AC42) received on January 3, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–147. A communication from the Assistant General Counsel, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''FHA TOTAL Mortgage Scorecard'' (RIN2502–AI00) received on January 3, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–148. A communication from the Deputy General Counsel, Government Contracting and Business Development, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled ''Small Business Government Contracting Programs; Subcontracting (and Correction)'' (RIN3245–AF12); to the Committee on Small Business and Entrepreneurship.

EC–149. A communication from the Deputy Assistant Administrator, Drug Enforcement Administration, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Exemption of Chemical Mixtures'' (RIN1117–AA31) received on January 5, 2005; to the Committee on the Judiciary.

EC–150. A communication from the Deputy Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, transmitting, pursuant to law, the report of a rule entitled ''Establishment of the Yamhill-Carlton District Viticultural Area'' (RIN1513–AA59) received on January 5, 2005; to the Committee on the Judiciary.

EC–151. A communication from the Deputy Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, transmitting, pursuant to law, the report of a rule entitled ''Establishment of the Southern Oregon Viticultural Area (2002R–38P)'' (RIN1513–AA75) received on January 5, 2005; to the Committee on the Judiciary.

EC–152. A communication from the General Counsel, Executive Office for Immigration Review, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Execution of Removal Orders: Countries to Which Aliens May be Removed'' (RIN1125–AA50) received on January 24, 2005; to the Committee on the Judiciary.

EC–153. A communication from the Deputy Assistant Administrator, Drug Enforcement Agency, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Recordkeeping and Reporting Requirements for Drug Products Containing Gamma-Hydroxybutyric Acid (GHB)'' (RIN1117–AA71) received on January 24, 2005; to the Committee on the Judiciary.

EC–154. A communication from the Under Secretary and Director of the United States Patent Office, transmitting, pursuant to law, the report of a rule entitled ''Changes to Implement the Cooperative Research and Technology Enhancement Act of 2004'' (RIN0651–AB76) received on January 13, 2005; to the Committee on the Judiciary.

EC–155. A communication from the Under Secretary and Director of the United States Patent and Trademark Office, transmitting, pursuant to law, the report of a rule entitled ''Changes in Fees for Filing Applications for Trademark Registration'' (RIN0651–AB83) received on January 13, 2005; to the Committee on the Judiciary.

EC–156. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Semiannual Report of the Inspector General and the Management Response for the period of April 1, 2004 to September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–157. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the report of the Office of Inspector General for the period April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–158. A communication from the Director of the Peace Corps, transmitting, pursuant to law, the report on the Office of the Inspector General for the period April 1, 2004, through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–159. A communication from the Chairman, Federal Trade Commission, transmitting, pursuant to law, the report on the Office of Inspector General from the period ending September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–160. A communication from the Federal Co-Chair, Appalachian Regional Commission, transmitting, pursuant to law, the report on the Office of Inspector General for the period April 1, 2004, through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–161. A communication from the Attorney General, transmitting, pursuant to law, the Semiannual Management Report to Congress: April 1, 2004 through September 30, 2004, and the Semiannual Report to Congress by the Office of the Inspector General for the same period; to the Committee on Homeland Security and Governmental Affairs.

EC–162. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, the semiannual report on Office of Inspector General auditing activity, and the report providing management's perspective on the implementation status of audit recommendations; to the Committee on Homeland Security and Governmental Affairs.

EC–163. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, the report on Fiscal Year 2004 Annual Performance and Accountability; to the Committee on Homeland Security and Governmental Affairs.

EC–164. A communication from the Chair, Equal Employment Opportunity Commission, transmitting, pursuant to law, the report on the Office of Inspector General for the period ended September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–165. A communication from the Acting Director, Office of Government Ethics, transmitting, pursuant to law, the report on Fiscal Year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–166. A communication from the Executive Director, National Capitol Planning Commission, transmitting, pursuant to law, the report on competitive sourcing initiatives in Fiscal Year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–167. A communication from the Chairman, Board of Governors, United States Postal Service, transmitting, pursuant to law, the Board's report under the Government in the Sunshine Act for the calendar year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–168. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report on competitive sourcing accomplishments for Fiscal Year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–169. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the report on the Office of Inspector General for the period April 1, 2004, through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–170. A communication from the Director, Office of Personnel Management, transmitting the report on the Federal Senior Executive Service Candidate Development Program; to the Committee on Homeland Security and Governmental Affairs.

EC–171. A communication from the Special Counsel, transmitting, pursuant to law, the report on Fiscal Year 2004 performance and accountability; to the Committee on Homeland Security and Governmental Affairs.

EC–172. A communication from the Secretary of Education, transmitting, pursuant to law, the report on Inspector General audit follow-up from the period April 1, 2004, through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–173. A communication from the Special Counsel, Office of Special Counsel, transmitting, pursuant to law, the Fiscal Year 2004 Report on Agency Management of Commercial Activities under the FAIR Act; to the Committee on Homeland Security and Governmental Affairs.

EC–174. A communication from the Secretary of Energy, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–175. A communication from the Director, Financial Management and Assurance, General Accounting Office, transmitting, pursuant to law, the Congressional Award Foundation's Fiscal Years 2003 and 2002 Financial Statements; to the Committee on Homeland Security and Governmental Affairs.

EC–176. A communication from the Chairman, Consumer Product Safety Commission, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–177. A communication from the Director, Information Security Oversight Office, National Archives and Records Administration, transmitting, pursuant to law, a report to the President concerning an assessment of declassification in the Executive Branch; to the Committee on Homeland Security and Governmental Affairs.

EC–178. A communication from the Public Printer, Government Printing Office, transmitting, pursuant to law, the Annual Report for Fiscal Year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–179. A communication from the Executive Director, Federal Retirement Thrift Investment Board, transmitting, pursuant to law, the report of the Office of the Inspector General for fiscal year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–180. A communication from the Secretary of Education, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–181. A communication from the Federal Co-Chair, Appalachian Regional Commission, transmitting, a report relative to competitive sourcing efforts during fiscal year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–182. A communication from the Chairman, National Labor Relations Board, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–183. A communication from the United States Trade Representative, Executive Office of the President, transmitting, pursuant to law, the fiscal year 2003 Annual Performance Report, and the fiscal year 2005 Performance Plan; to the Committee on Homeland Security and Governmental Affairs.

EC–184. A communication from the Chairman, National Science Board, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–185. A communication from the Acting Chairman, Merit Systems Protection Board, transmitting, pursuant to law, a report entitled ''Managing Federal Recruitment: Issues, Insights, and Illustrations''; to the Committee on Homeland Security and Governmental Affairs.

EC–186. A communication from the Chief Executive Officer, Corporation for National and Community Service, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–187. A communication from the Chairman, National Science Board, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–188. A communication from the Administrator, Agency for International Development, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–189. A communication from the Inspector General, Railroad Retirement Board, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–190. A communication from the Secretary of Education, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–191. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–192. A communication from the Inspector General, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–193. A communication from the Director, Office of Personnel Management, the President's Pay Agent, transmitting, pursuant to law, a report justifying the reasons for the extension of locality-based comparability payments to categories of positions that are in more than one executive agency; to the Committee on Homeland Security and Governmental Affairs.

EC–194. A communication from the Acting Chairman, Merit Systems Protection Board, transmitting, pursuant to law, the Performance and Accountability Report for Fiscal Year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–195. A communication from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, the Fiscal Year 2004 Performance and Accountability Report; to the Committee on Homeland Security and Governmental Affairs.

EC–196. A communication from the Chief Executive Officer, Corporation for National and Community Service, transmitting, pursuant to law, the report of a vacancy and the designation of acting officer for the position of Inspector General; to the Committee on Homeland Security and Governmental Affairs.

EC–197. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, the report on Fiscal Year 2004 competitive sourcing accomplishments; to the Committee on Homeland Security and Governmental Affairs.

EC–198. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the report on the Office of Inspector General for the period April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–199. A communication from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, the report on the Office of Inspector General for the period ending September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–200. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the report on the Office of Inspector General for the period April 1, 2004, through September 30, 2004, and the report on the Office of Treasury Inspector General for Tax Administration for the period April 1, 2004, through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–201. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Locality-Based Comparability Payments'' (RIN3206-AJ45) received on January 5, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–202. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Federal Employees' Retirement System; Death Benefits and Employee Refunds'' (RIN3206-AK57) received on January 5, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–203. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Final Regulations on Senior Executive Pay and Performance Awards; Aggregate Limitation on Pay'' (RIN3206-AK32) received on January 13, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–204. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2001-27'' (FAC 2001-27) received on January 24, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–205. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Federal Employees Health Benefits Program: Modification of Two-Option Limitation for Health Benefits Plans and Continuation of Coverage for Annuitants Whose Plan Terminates an Option'' (RIN3206-AK48) received on January 24, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–206. A communication from the Acting Director, Office of Government Ethics, transmitting, pursuant to law, the report of a rule entitled ''Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations'' (RIN3209-AA14) received on January 24, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–207. A communication from the Chairman, Consumer Product Safety Commission, transmitting, pursuant to law, the report on Fiscal Year 2004 Performance and Accountability; to the Committee on Homeland Security and Governmental Affairs.

EC–208. A communication from the Assistant Administrator, United States Agency for International Development, transmitting, pursuant to law, the report on Fiscal Year 2004 performance and accountability; to the Committee on Homeland Security and Governmental Affairs.

EC–209. A communication from the Chairman, National Credit Union Administration, transmitting, pursuant to law, the report on the Office of Inspector General for the period April 1, 2004, through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–210. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report on the Office of Inspector General for the period April 1, 2004, through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–211. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on the Office of Inspector General for the period April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–212. A communication from the Chairman, Farm Credit System Insurance Corporation, transmitting, pursuant to law, the report on the Federal Managers' Financial Integrity Act and the Inspector General Act Amendments of 1978; to the Committee on Homeland Security and Governmental Affairs.

EC–213. A communication from the Administrator, Small Business Administration, transmitting, pursuant to law, the report on the Office of Inspector General for the period April 1, 2004, through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–214. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report on the Office of Inspector General for the period April 1, 2004, through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–215. A communication from the Secretary of State, transmitting, pursuant to law, the Department's Performance and Accountability Report and the report of the Office of the Inspector General for Fiscal Year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–216. A communication from the Director, Financial Management, General Accounting Office, transmitting, pursuant to law, the Fiscal Year 2004 annual report of the Comptrollers' General Retirement System; to the Committee on Homeland Security and Governmental Affairs.

EC–217. A communication from the Deputy Archivist, National Archives and Records Administration, transmitting, pursuant to law, the report of a rule entitled ''Records Management; Unscheduled Records'' (RIN3095-AB41); to the Committee on Homeland Security and Governmental Affairs.

EC–218. A communication from the Chairman, Securities and Exchange Commission, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–219. A communication from the Director of Administration, National Labor Relations Board, transmitting, pursuant to law, the Board's Performance and Accountability Report for Fiscal Year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–220. A communication from the Chairman, International Trade Commission, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–221. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled ''Letter Report: Auditor's Examination of Personnel Process Used to Fill a Vacant Position in the Emergency Medical Services''; to the Committee on Homeland Security and Governmental Affairs.

EC–222. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled ''Letter Report: Responses to Specific Questions Regarding the District's Proposed Baseball Stadium''; to the Committee on Homeland Security and Governmental Affairs.

EC–223. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the Commission's Performance and Accountability Reports for Fiscal Year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–224. A communication from the Acting Secretary, Commission of Fine Arts, transmitting, pursuant to law, a report concerning the 2004 Inventory of Commercial and Inherently Governmental Activities Report; to the Committee on Homeland Security and Governmental Affairs.

EC–225. A communication from the President and CEO, Overseas Private Investment Corporation, transmitting, pursuant to law, the report of the Office of the Inspector General for the period of April 1, 2004 through September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–226. A communication from the Acting Director, Office of Government Ethics, transmitting, pursuant to law, the Fiscal Year 2004 Performance Accountability Report; to the Committee on Homeland Security and Governmental Affairs.

EC–227. A communication from the General Counsel, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report of a nomination confirmed for the position of Administrator, Office of Federal Procurement Policy; to the Committee on Homeland Security and Governmental Affairs.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. GRASSLEY for the Committee on Finance.

*Michael O. Leavitt, of Utah, to be Secretary of Health and Human Services.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. GRASSLEY (for himself, Mr. KOHL, Mr. HATCH, Mr. CARPER, Mr. FRIST, Mr. CHAFEE, Mr. DODD, Mrs. FEINSTEIN, Mr. HAGEL, Mr. KYL, Ms. LANDRIEU, Mrs. LINCOLN, Mr. LUGAR, Mr. MCCONNELL, Mr. SCHUMER, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. LOTT, Mr. ALEXANDER, Ms. SNOWE, Mr. SESSIONS, Mr. DEMINT, Mr. LIEBERMAN, Mr. MARTINEZ, and Mr. ENSIGN):

S. 5. A bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; to the Committee on the Judiciary.

By Ms. COLLINS (for herself, Mr. CARPER, Mr. VOINOVICH, Mr. FEINGOLD, Mr. AKAKA, and Mr. LIEBERMAN):

S. 21. A bill to provide for homeland security grant coordination and simplification, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. STEVENS (for himself, Mr. INOUYE, Ms. SNOWE , and Mr. DODD):

S. 39. A bill to establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration; to the Committee on Commerce, Science, and Transportation.

By Mr. NELSON of Florida (for himself, Mr. MARTINEZ, Mr. SESSIONS, and Mr. ALLEN):

S. 145. A bill to amend title 10, United States Code, to require the naval forces of the Navy to include not less than 12 operational aircraft carriers; to the Committee on Armed Services.

By Mr. INOUYE:

S. 146. A bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 147. A bill to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity; to the Committee on Indian Affairs.

By Mr. MCCAIN (for himself, Mr. STEVENS, and Mr. DORGAN):

S. 148. A bill to establish a United States Boxing Commission to administer the Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN:

S. 149. A bill for the relief of Ziad Mohamed Shaban Khweis, Heyam Ziad Khweis, and Juman Ziad Khweis; to the Committee on the Judiciary.

By Mr. JEFFORDS (for himself, Ms. COLLINS, Mr. LIEBERMAN, Ms. SNOWE, Mr. SCHUMER, Mr. BIDEN, Mrs. BOXER, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. REED, and Mr. SARBANES):

S. 150. A bill to amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes; to the Committee on Environment and Public Works.

By Mr. COLEMAN (for himself and Mr. PRYOR):

S. 151. A bill to amend title 38, United States Code, to require an annual plan on outreach activities of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. 152. A bill to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 153. A bill to direct the Secretary of the Interior to conduct a resource study of the Rim of the Valley Corridor in the State of California to evaluate alternatives for protecting the resources of the Corridor, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. JOHNSON:

S. 154. A bill to grant a Federal charter to the National American Indian Veterans, Incorporated; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Mr. HATCH, Mr. GRASSLEY, Mr. CORNYN, and Mr. KYL):

S. 155. A bill to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law-abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to reform and facilitate prosecution of juvenile gang members who commit violent crimes, to expand and improve gang prevention programs, and for other purposes; to the Committee on the Judiciary.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 156. A bill to designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. KOHL:

S. 157. A bill to amend the Internal Revenue Code of 1986 to permit interest on Federally guaranteed water, wastewater, and essential community facilities loans to be tax exempt; to the Committee on Finance.

By Mr. LIEBERMAN (for himself, Mrs. CLINTON, Mr. DODD, and Mr. SCHUMER):

S. 158. A bill to establish the Long Island Sound Stewardship Initiative; to the Committee on Environment and Public Works.

By Ms. MURKOWSKI:

S. 159. A bill to eliminate the sunset for the determination of the Federal medical assistance percentage for Alaska; to the Committee on Finance.

By Ms. MURKOWSKI:

S. 160. A bill to amend the Internal Revenue Code of 1986 to allow individuals a refundable credit against income tax for the purchase of private health insurance, and for other purposes; to the Committee on Finance.

By Mr. McCAIN (for himself and Mr. KYL):

S. 161. A bill to provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER:

S. 162. A bill to amend chapter 99 of the Internal Revenue code of 1986 to clarify that certain coal industry health benefits may not be modified or terminated; to the Committee on Finance.

By Mr. BENNETT:

S. 163. A bill to establish the National Mormon Pioneer Heritage Area in the State of Utah, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BENNETT:

S. 164. A bill to provide for the acquisition of certain property in Washington County, Utah; to the Committee on Energy and Natural Resources.

By Mr. COLEMAN:

S. 165. A bill for the relief of Tchisou Tho; to the Committee on the Judiciary.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 166. A bill to amend the Oregon Resource Conservation Act of 1996 to reauthorize the participation of the Bureau of Reclamation in the Deschutes River Conservancy, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. CORNYN, and Mrs. FEINSTEIN):

S. 167. A bill to provide for the protection of intellectual property rights, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. NELSON of Nebraska (for himself, Mr. HAGEL, Mr. KENNEDY, Mrs. FEINSTEIN, and Mr. INOUYE):

S. Res. 10. A resolution honoring the life of Johnny Carson; considered and agreed to.

By Mr. KYL (for himself, Mr. BROWNBACK, Mr. LOTT, Mr. CHAMBLISS, and Mr. SANTORUM):

S. Res. 11. A resolution honoring the service of Reverend Lloyd Ogilvie; considered and agreed to.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. Res. 12. A resolution commending the University of Southern California Trojans football team for winning the 2004 Bowl Championship Series national championship game; considered and agreed to.

By Mr. NELSON of Florida (for himself, Mr. ALLARD, Mr. ALLEN, Mr. NELSON of Nebraska, Mr. SESSIONS, and Mr. ENZI):

S. Con. Res. 4. A concurrent resolution expressing the sense of the Congress that the Department of Defense should continue to exercise its statutory authority to support the activities of the Boy Scouts of America, in particular the periodic national and world Boy Scout Jamborees; to the Committee on Armed Services.

By Mr. LUGAR (for himself and Mr. BIDEN):

S. Con. Res. 5. A concurrent resolution congratulating the people of Ukraine for conducting a democratic, transparent, and fair runoff presidential election on December 26, 2004, and congratulating Viktor Yushchenko on his election as President of Ukraine and his commitment to democracy and reform; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 8

At the request of Mr. ENSIGN, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Arizona (Mr. McCAIN) were added as cosponsors of S. 8, a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

S. 14

At the request of Ms. STABENOW, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 14, a bill to provide fair wages for America's workers, to create new jobs through investment in America, to provide for fair trade and competitiveness, and for other purposes.

S. 15

At the request of Mr. REID, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 15, a bill to improve education for all students, and for other purposes.

S. 16

At the request of Mr. KENNEDY, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 16, a bill to reduce to the cost of quality health care coverage and improve the availability of health care coverage for all Americans.

S. 19

At the request of Mr. CONRAD, the names of the Senator from Wisconsin (Mr. KOHL) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 19, a bill to reduce budget deficits by restoring budget enforcement and strengthening fiscal responsibility.

S. 20

At the request of Mr. REID, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 20 , a bill to expand access to preventive health care services that help reduce unintended pregnancy, reduce the number of abortions, and improve access to women's health care.

S. 27

At the request of Mrs. HUTCHISON, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 27, a bill to amend the Internal Revenue Code of 1986 to make permanent the deduction of State and local general sales taxes.

S. 50

At the request of Mr. INOUYE, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 50, a bill to authorize and strengthen the National Oceanic and Atmospheric Administration's tsunami detection, forecast, warning, and mitigation program, and for other purposes.

S. 51

At the request of Mr. BROWNBACK, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 51, a bill to ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child.

S. 57

At the request of Mr. ALLARD, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 57, a bill to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000.

S. 65

At the request of Mr. INHOFE, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 65, a bill to amend the age restrictions for pilots.

S. 98

At the request of Mr. ALLARD, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 98, a bill to amend the Bank Holding Company Act of 1956 and the Revised Statutes of the United States to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

S. 103

At the request of Mr. TALENT, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 103, a bill to respond to the illegal production, distribution, and use of methamphetamine in the United States, and for other purposes.

S. 132

At the request of Mrs. LINCOLN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 132, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for premiums on mortgage insurance.

At the request of Mr. SMITH, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 132, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS—MONDAY, JANUARY 24, 2005

By Ms. STABENOW (for herself, Mr. REID, Mr. CORZINE, Mr. KENNEDY, Mr. INOUYE, Ms. MIKULSKI, Mr. DORGAN, Mr. LEAHY, Mr. ROCKEFELLER, Mr. SCHUMER, Mr. DURBIN, and Mr. DAYTON):

S. 14. A bill to provide fair wages for America's workers, to create new jobs through investment in America, to provide for fair trade and competitiveness, and for other purposes; to the Committee on Finance.

Ms. STABENOW. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 14

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Fair Wage, Competition, and Investment Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
TITLE I—FAIR WAGES FOR AMERICA'S WORKERS
Subtitle A—Overtime Rights Protection
Sec. 111. Short title.
Sec. 112. Clarification of regulations relating to overtime compensation.
Subtitle B—Fair Minimum Wage
Sec. 121. Short title.
Sec. 122. Minimum wage.
Subtitle C—Sense of the Senate Regarding Multiemployer Pension Plans
Sec. 131. Sense of the Senate regarding multiemployer pension plans.
TITLE II—CREATING NEW JOBS THROUGH INVESTMENT IN AMERICA
Subtitle A—Eliminating Incentives for Outsourcing
Sec. 211. Taxation of income of controlled foreign corporations attributable to imported property.
Sec. 212. Amendments to the Worker Adjustment and Retraining Notification Act.
Subtitle B—Investment in Infrastructure
CHAPTER 1—TRANSPORTATION INFRASTRUCTURE
Sec. 221. Transportation infrastructure funding.
CHAPTER 2—WATER INFRASTRUCTURE
Sec. 231. Water infrastructure funding.
CHAPTER 3—RAIL INFRASTRUCTURE
Sec. 241. Rail infrastructure funding.
Sec. 242. Grant authority.
Sec. 243. Grant conditions for right-of-way projects.
Sec. 244. Use of funds for near-term projects.
Sec. 245. Treatment of rail operators using grant-funded rail infrastructure.
CHAPTER 4—TRANSIT INFRASTRUCTURE
Sec. 251. Transit.
CHAPTER 5—AVIATION INFRASTRUCTURE
Sec. 261. Authorization of appropriations.
Sec. 262. Distribution of funds.
Sec. 263. Nonapplicability of certain laws.
Sec. 264. Use of funds for near-term projects.
CHAPTER 6—BROADBAND ACCESS TAX CREDIT
Sec. 271. Expensing of broadband Internet access expenditures.
CHAPTER 7—RESEARCH AND DEVELOPMENT TAX CREDIT
Sec. 281. Findings.
Sec. 282. Permanent extension of research credit.
Sec. 283. Increase in rates of alternative incremental credit.
Sec. 284. Alternative simplified credit for qualified research expenses.
Sec. 285. Expansion of research credit.
Subtitle C—Technology Programs
Sec. 291. Authorizations of appropriations for the Advanced Technology Program and the Manufacturing Extension Partnership Program.
Sec. 292. Sense of the Senate promoting science and technology funding for a strong economic future.
TITLE III—FAIR TRADE AND COMPETITIVENESS
Subtitle A—Trade Enforcement Enhancement
Sec. 311. Identification of trade expansion priorities.
Sec. 312. Chief enforcement negotiator.
Sec. 313. Foreign debt.
Sec. 314. Authorization of appropriations.
Subtitle B—Exchange Rate Policy and Currency Manipulation
Sec. 321. Negotiations regarding currency valuation.
Subtitle C—Trade Adjustment Assistance
CHAPTER 1—SERVICE WORKERS
Sec. 331. Short title.
Sec. 332. Extension of trade adjustment assistance to services sector.
Sec. 333. Trade adjustment assistance for firms and industries.
Sec. 334. Monitoring and reporting.
Sec. 335. Alternative trade adjustment assistance.
Sec. 336. Effective date.
CHAPTER 2—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES
Sec. 341. Short title.
Sec. 342. Purpose.
Sec. 343. Trade adjustment assistance for communities.
Sec. 344. Conforming amendments.
Sec. 345. Effective date.
CHAPTER 3—OFFICE OF TRADE ADJUSTMENT ASSISTANCE
Sec. 351. Short title.
Sec. 352. Office of Trade Adjustment Assistance.
Sec. 353. Effective date.
CHAPTER 4—IMPROVEMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS
Sec. 361. Improvement of the affordability of the credit.
Sec. 362. Offering of Federal fallback coverage.
Sec. 363. Clarification of eligibility of spouse of certain individuals entitled to medicare.
Subtitle D—Sense of the Senate on Free Trade Agreements
Sec. 371. Sense of the Senate on free trade agreements.

TITLE I—FAIR WAGES FOR AMERICA'S WORKERS

Subtitle A—Overtime Rights Protection

SEC. 111. SHORT TITLE.

This subtitle may be cited as the ''Overtime Rights Protection Act of 2005''.

SEC. 112. CLARIFICATION OF REGULATIONS RELATING TO OVERTIME COMPENSATION.

Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(k)(1) Notwithstanding the provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly referred to as the Administrative Procedures Act) or any other provision of law, any portion of the final rule promulgated on April 23, 2004, revising part 541 of title 29, Code of Federal Regulations, that exempts from the overtime pay provision of section 7 of this Act any employee who would not otherwise be exempt if the regulations in effect on March 31, 2003 remained in effect, shall have no force or effect and that portion of such regulations (as in effect on March 31, 2003) that would prevent such employee from being exempt shall be reinstated.

''(2) The Secretary shall adjust the minimum salary level for exemption under section 13(a)(1) in the following manner:

''(A) Not later than 60 days after the date of enactment of this subsection, the Secretary shall increase the minimum salary level for exemption under subsection (a)(1) for executive, administrative, and managerial occupations from the level of $155 per week in 1975 to $591 per week (an amount equal to the increase in the Employment Cost Index (published by the Bureau of Labor Statistics) for executive, administrative, and managerial occupations between 1975 and 2005).

''(B) Not later than December 31 of the calendar year following the increase required in subparagraph (A), and each December 31 thereafter, the Secretary shall increase the minimum salary level for exemption under subsection (a)(1) by an amount equal to the

increase in the Employment Cost Index for executive, administrative, and managerial occupations for the year involved.''.

Subtitle B—Fair Minimum Wage

SEC. 121. SHORT TITLE.

This subtitle may be cited as the ''Fair Minimum Wage Act of 2005''.

SEC. 122. MINIMUM WAGE.

(a) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than—

''(A) $5.85 an hour, beginning on the 60th day after the date of enactment of the Fair Minimum Wage Act of 2005;

''(B) $6.55 an hour, beginning 12 months after that 60th day; and

''(C) $7.25 an hour, beginning 24 months after that 60th day;''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 60 days after the date of enactment of this Act.

Subtitle C—Sense of the Senate Regarding Multiemployer Pension Plans

SEC. 131. SENSE OF THE SENATE REGARDING MULTIEMPLOYER PENSION PLANS.

(a) FINDINGS.—The Senate makes the following findings:

(1) Multiemployer pension plans have been a major force in the delivery of employee benefits to active and retired American workers and their dependents for over half a century.

(2) There are approximately 1,700 multiemployer defined benefit pension plans in which approximately 9,700,000 workers and retirees participate.

(3) Three-quarters of the approximately 60,000 to 65,000 employers that participate in multiemployer plans have fewer that 100 employees.

(4) Multiemployer plans allow for greater access and affordability for smaller employers and pension portability for their employees as they move from one job to another, and permit workers to earn a pension where they might otherwise not be able to do so.

(5) The 2000–2002 drop in the stock market and decline in equity values has affected all investors, including multiemployer plans.

(6) The decline in value sustained by multiemployer defined benefit pension plans have threatened the stability of this private sector source of secure retirement income.

(7) Participating employers could face onerous excise taxes and other penalties as a result of the serious, adverse financial impact due to these market losses.

(8) In 2004, the United States Senate recognized the severity of this situation and passed by an overwhelmingly, large bipartisan margin of 86 to 9 temporary relief provisions for single and multiemployer defined benefit pension plans.

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

(1) expresses its strong support for multiemployer defined benefit pension plans;

(2) recognizes the importance of an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women;

(3) recognizes that multiemployer pension plan relief must be designed for the multiemployer labor-relations environment that supports the plans; and

(4) supports legislation to strengthen and protect the viability of multiemployer pension plans for the continued benefit of current and retired members, and their families and survivors, and to strengthen the ability of all plans to address funding problems that occur.

TITLE II—CREATING NEW JOBS THROUGH INVESTMENT IN AMERICA

Subtitle A—Eliminating Incentives for Outsourcing

SEC. 211. TAXATION OF INCOME OF CONTROLLED FOREIGN CORPORATIONS ATTRIBUTABLE TO IMPORTED PROPERTY.

(a) GENERAL RULE.—Subsection (a) of section 954 of the Internal Revenue Code of 1986 (defining foreign base company income) is amended by striking ''and'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', and'', and by adding at the end the following new paragraph:

''(6) imported property income for the taxable year (determined under subsection (j) and reduced as provided in subsection (b)(5)).''.

(b) DEFINITION OF IMPORTED PROPERTY INCOME.—Section 954 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(j) IMPORTED PROPERTY INCOME.—

''(1) IN GENERAL.—For purposes of subsection (a)(6), the term 'imported property income' means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

''(A) manufacturing, producing, growing, or extracting imported property;

''(B) the sale, exchange, or other disposition of imported property; or

''(C) the lease, rental, or licensing of imported property.

Such term shall not include any foreign oil and gas extraction income (within the meaning of section 907(c)) or any foreign oil related income (within the meaning of section 907(c)).

''(2) IMPORTED PROPERTY.—For purposes of this subsection—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'imported property' means property which is imported into the United States by the controlled foreign corporation or a related person.

''(B) IMPORTED PROPERTY INCLUDES CERTAIN PROPERTY IMPORTED BY UNRELATED PERSONS.—The term 'imported property' includes any property imported into the United States by an unrelated person if, when such property was sold to the unrelated person by the controlled foreign corporation (or a related person), it was reasonable to expect that—

''(i) such property would be imported into the United States; or

''(ii) such property would be used as a component in other property which would be imported into the United States.

''(C) EXCEPTION FOR PROPERTY SUBSEQUENTLY EXPORTED.—The term 'imported property' does not include any property which is imported into the United States and which—

''(i) before substantial use in the United States, is sold, leased, or rented by the controlled foreign corporation or a related person for direct use, consumption, or disposition outside the United States; or

''(ii) is used by the controlled foreign corporation or a related person as a component in other property which is so sold, leased, or rented.

''(3) DEFINITIONS AND SPECIAL RULES.—

''(A) IMPORT.—For purposes of this subsection, the term 'import' means entering, or withdrawal from warehouse, for consumption or use. Such term includes any grant of the right to use intangible property (as defined in section 936(h)(3)(B)) in the United States.

''(B) UNITED STATES.—For purposes of this subsection, the term 'United States' includes the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

''(C) UNRELATED PERSON.—For purposes of this subsection, the term 'unrelated person' means any person who is not a related person with respect to the controlled foreign corporation.

''(D) COORDINATION WITH FOREIGN BASE COMPANY SALES INCOME.—For purposes of this section, the term 'foreign base company sales income' shall not include any imported property income.''.

(c) SEPARATE APPLICATION OF LIMITATIONS ON FOREIGN TAX CREDIT FOR IMPORTED PROPERTY INCOME.—

(1) BEFORE 2007.—

(A) IN GENERAL.—Paragraph (1) of section 904(d) of the Internal Revenue Code of 1986 (relating to separate application of section with respect to certain categories of income), as in effect for taxable years beginning before January 1, 2007, is amended by striking ''and'' at the end of subparagraph (H), by redesignating subparagraph (I) as subparagraph (J), and by inserting after subparagraph (H) the following new subparagraph:

''(I) imported property income, and''.

(B) IMPORTED PROPERTY INCOME DEFINED.—Paragraph (2) of section 904(d) of such Code, as so in effect, is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

''(H) IMPORTED PROPERTY INCOME.—The term 'imported property income' means any income received or accrued by any person which is of a kind which would be imported property income (as defined in section 954(j)).''.

(C) LOOK-THRU RULES TO APPLY.—Subparagraph (F) of section 904(d)(3) of such Code, as so in effect, is amended by striking ''or (D)'' and inserting ''(D), or (I)''.

(2) AFTER 2006.—

(A) IN GENERAL.—Paragraph (1) of section 904(d) of such Code (relating to separate application of section with respect to certain categories of income), as in effect for taxable years beginning after December 31, 2006, is amended by striking ''and'' at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

''(B) imported property income, and''.

(B) IMPORTED PROPERTY INCOME DEFINED.—Paragraph (2) of section 904(d) of such Code, as so in effect, is amended by redesignating subparagraphs (I) and (J) as subparagraphs (J) and (K), respectively, and by inserting after subparagraph (H) the following new subparagraph:

''(I) IMPORTED PROPERTY INCOME.—The term 'imported property income' means any income received or accrued by any person which is of a kind which would be imported property income (as defined in section 954(j)).''.

(C) CONFORMING AMENDMENT.—Clause (ii) of section 904(d)(2)(A) of such Code, as so in effect, is amended by inserting ''or imported property income'' after ''passive category income''.

(d) TECHNICAL AMENDMENTS.—

(1) Clause (iii) of section 952(c)(1)(B) of the Internal Revenue Code of 1986 (relating to certain prior year deficits may be taken into account) is amended—

(A) by redesignating subclauses (II), (III), (IV), and (V) as subclauses (III), (IV), (V), and (VI), and

(B) by inserting after subclause (I) the following new subclause:

''(II) imported property income,''.

(2) Paragraph (5) of section 954(b) of such Code (relating to deductions to be taken into account) is amended by striking ''and the foreign base company oil related income''

and inserting ''the foreign base company oil related income, and the imported property income''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of foreign corporations beginning after the date of the enactment of this Act, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end.

(2) SUBSECTION (c).—The amendments made by subsection (c)(1) shall apply to taxable years beginning after the date of the enactment of this Act and before January 1, 2007, and the amendments made by subsection (c)(2) shall apply to taxable years beginning after December 31, 2006.

SEC. 212. AMENDMENTS TO THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT.

(a) DEFINITION.—Section 2(a) of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101(a)) is amended—

(1) in paragraph (3)(B), by striking ''for—'' and all that follows through ''500 employees'' in clause (ii), and inserting ''for not less than 50 employees'';

(2) in paragraph (7), by striking ''and'' after the semicolon;

(3) in paragraph (8), by striking the period and inserting ''; and''; and

(4) by adding at the end the following:

''(9) the term 'offshoring of jobs' means any action taken by an employer the effect of which is to create, shift, or transfer employment positions or facilities outside the United States and which results in an employment loss during any 30-day period for 15 or more employees.''.

(b) NOTICE.—Section 3 of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''60-day'' and inserting ''90-day'';

(B) in paragraph (1), by striking ''and'' after the semicolon;

(C) in paragraph (2), by striking the period and inserting ''; and''; and

(D) by inserting after paragraph (2), the following:

''(3) to the Secretary of Labor.'';

(2) in subsection (b), by striking ''60-day'' both places that such term appears and inserting ''90-day''; and

(3) by adding at the end the following:

''(e) NOTICE FOR OFFSHORING OF JOBS.—In the case of a notice under subsection (a) regarding the offshoring of jobs, the notice shall include, in addition to the information otherwise required by the Secretary with respect to other notices under such subsection, information concerning—

''(1) the number of jobs affected;

''(2) the location that the jobs are being shifted or transferred to; and

''(3) the reasons that such shifting or transferring of jobs is occurring.''.

(c) TECHNICAL AMENDMENTS.—The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.) is amended—

(1) by striking ''plant closing or mass layoff'' each place that such term appears and inserting ''plant closing, mass layoff, or offshoring of jobs'';

(2) by striking ''closing or layoff'' each place that such term appears and inserting ''closing, layoff, or offshoring'';

(3) in section 3—

(A) in the section heading by striking ''**PLANT CLOSINGS AND MASS LAYOFFS**'' and inserting ''**PLANT CLOSINGS, MASS LAYOFFS, AND OFFSHORING OF JOBS**'';

(B) in subsection (b)(2)(A), by striking ''the closing or mass layoff'' and inserting ''the closing, layoff, or offshoring''; and

(C) in subsection (d), by striking ''section 2(a) (2) or (3)'' and inserting ''paragraph (2), (3), or (9) of section 2(a)''; and

(4) in section 5(a)(1), in the matter following subparagraph (B), by striking ''60 days'' and inserting ''90 days''.

(d) POSTING OF EMPLOYEE RIGHTS.—The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.) is amended by adding at the end the following:

''SEC. 12. POSTING OF NOTICE OF RIGHTS.

''(a) DEVELOPMENT.—Not later than 60 days after the date of enactment of this section, the Secretary of Labor shall develop a notice of employee rights under this Act for posting by employers.

''(b) POSTING.—Each employer shall post in a conspicuous place in places of employment the notice of the rights of employees as developed by the Secretary under subsection (a).''.

(e) ANNUAL REPORT.—The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.), as amended by subsection (d), is further amended by adding at the end the following:

''SEC. 13. CONTENTS OF ANNUAL REPORTS BY THE SECRETARY OF LABOR.

''(a) IN GENERAL.—The Secretary of Labor shall collect and compile statistics based on the information submitted to the Secretary under subsections (a)(3) and (e) of section 3.

''(b) REPORT.—Not later than 120 days after the date on which each regular session of Congress commences, the Secretary of Labor shall prepare and submit to the President and the appropriate committees of Congress a report on the offshoring of jobs (as defined in section 2(a)(9)). Each such report shall include information concerning—

''(1) the number of jobs affected by offshoring;

''(2) the locations to which jobs are being shifted or transferred;

''(3) the reasons why such shifts and transfers are occurring; and

''(4) any other relevant data compiled under subsection (a).''.

Subtitle B—Investment in Infrastructure

CHAPTER 1—TRANSPORTATION INFRASTRUCTURE

SEC. 221. TRANSPORTATION INFRASTRUCTURE FUNDING.

(a) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this chapter for each of fiscal years 2005 and 2006 $7,000,000,000, to remain available until expended.

(2) DISTRIBUTION.—The Secretary of Transportation, acting through the Administrator of the Federal Highway Administration, shall distribute funds made available under this subsection to States in accordance with section 105 of title 23, United States Code.

(b) ADDITIONAL REQUIREMENTS.—

(1) NONAPPLICABILITY OF CERTAIN PROVISIONS.—Funds made available under this section shall not be subject to—

(A) section 120 of title 23, United States Code; or

(B) any limitation on obligations under any other provision of law.

(2) USE OF FUNDS FOR NEAR-TERM PROJECTS.—The Secretary of Transportation shall ensure, to the maximum extent practicable, that funds made available under this section are directed to projects that may be obligated in the near term, as determined by the Secretary of Transportation.

CHAPTER 2—WATER INFRASTRUCTURE

SEC. 231. WATER INFRASTRUCTURE FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator of the Environmental Protection Agency to make grants to States under—

(1) title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), $3,000,000,000 for each of fiscal years 2005 and 2006; and

(2) section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), $3,000,000,000 for each of fiscal years 2005 and 2006.

(b) AVAILABILITY OF FUNDS.—Funds transferred under subsection (a) shall remain available until expended.

CHAPTER 3—RAIL INFRASTRUCTURE

SEC. 241. RAIL INFRASTRUCTURE FUNDING.

(a) AMOUNT FOR CAPITAL PROJECTS GRANTS.—There is authorized to be appropriated to the Secretary of Transportation for each of fiscal years 2005 and 2006, $1,500,000,000, which shall be available for the Secretary of Transportation to make grants to States, rail carriers, and other entities as determined by the Secretary of Transportation for intercity passenger and freight railroad capital projects in accordance with this chapter.

(b) AVAILABILITY OF FUNDS.—Funds transferred under subsection (a) shall remain available until expended.

(c) NONAPPLICABILITY OF CERTAIN PROVISIONS.—Funds made available under this chapter shall not be subject to any limitation on obligations under any other provision of law.

SEC. 242. GRANT AUTHORITY.

(a) PUBLIC BENEFIT PROJECTS.—The Secretary of Transportation shall make grants to States, rail carriers, and other entities, as determined by the Secretary, for intercity passenger and freight railroad capital projects that provide a public benefit, including projects involving the following purposes:

(1) Track and track structure rehabilitation, relocation, improvement, and development.

(2) Railroad safety and security improvements.

(3) Communications and signaling improvements.

(4) Intercity passenger rail equipment acquisition.

(5) Rail station and intermodal facilities development.

(b) PUBLIC BENEFIT DEFINED.—In this section, the term ''public benefit'' means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects (as defined by the Secretary after any consultation with State official and rail carriers that the Secretary determines appropriate).

SEC. 243. GRANT CONDITIONS FOR RIGHT-OF-WAY PROJECTS.

The Secretary of Transportation shall require as a condition of making any grant under this chapter that includes the improvement or use of rights-of-way owned by a railroad that—

(1) a written agreement exist between the applicant and the railroad regarding such use and ownership, including—

(A) any compensation for such use;

(B) assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; and

(C) an assurance by the railroad that collective bargaining agreements with the railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for

work performed by the railroad on the railroad transportation corridor; and

(2) the applicant agrees to comply with—

(A) the standards under section 24312 of title 49, United States Code, as such section was in effect on September 1, 2003, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with those standards for construction work financed under an agreement made under section; and

(B) the protective agreements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 with respect to employees affected by actions taken in connection with the project.

SEC. 244. USE OF FUNDS FOR NEAR-TERM PROJECTS.

The Secretary of Transportation shall ensure, to the maximum extent practicable, that funds made available under this chapter are directed to projects that may be obligated in the near term, as determined by the Secretary of Transportation.

SEC. 245. TREATMENT OF RAIL OPERATORS USING GRANT-FUNDED RAIL INFRASTRUCTURE.

A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this chapter—

(1) shall be considered an employer for purposes of the Railroad Retirement Act of 1974 (45 20 U.S.C. 231 et seq.); and

(2) shall be considered a carrier for purposes of the Railway Labor Act (43 U.S.C. 151 et seq.) unless such a person is an operator with respect to commuter rail passenger transportation (as defined in section 24102(4) of title 49, United States Code) of a State or local government authority (as such terms are defined in section 5302 of such title) eligible to receive financial assistance under section 5307 of such title, a contractor performing services in connection with the operations with respect to commuter rail passenger transportation (as so defined), or the Alaska Railroad or its contractors.

CHAPTER 4—TRANSIT INFRASTRUCTURE

SEC. 251. TRANSIT.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) AMOUNTS FOR FISCAL YEARS 2005 AND 2006.—There is authorized to be appropriated to the Secretary of Transportation for each of the fiscal years 2005 and 2006, $1,750,000,000.

(2) AVAILABILITY OF FUNDS.—Funds appropriated under paragraph (1) shall remain available until expended.

(b) DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Of the funds authorized to be appropriated under subsection (a)—

(A) 50.18 percent shall be available to carry out section 5307 of title 49, United States Code;

(B) 45 percent shall be available to carry out section 5309(a)(1) of title 49, United States Code, of which—

(i) 40 percent shall be available to carry out subparagraph (A) of such paragraph;

(ii) 40 percent shall be available to carry out subparagraph (E) of such paragraph; and

(iii) 20 percent shall be available to carry out subparagraph (F) of such paragraph;

(C) 1.32 percent shall be available to carry out section 5310 of title 49, United States Code; and

(D) 3.5 percent shall be available to carry out section 5311 of title 49, United States Code.

(2) FORMULAS.—Funds made available under subparagraphs (A), (C), and (D) of paragraph (1) shall be distributed in accordance with the formulas established under sections 5307, 5310, and 5311, respectively, of title 49, United States Code.

(3) DETERMINATION BY SECRETARY.—

(A) IN GENERAL.—The Secretary of Transportation shall determine the allocation of funds made available under clauses (i) and (iii) of paragraph (1)(B).

(B) MODERNIZATION OF EXISTING FIXED GUIDEWAY SYSTEMS.—The Secretary of Transportation shall determine the amount apportioned to each urbanized area under paragraph (1)(B)(ii) on a pro rata basis in accordance with the distribution formula established under section 5337 of title 49, United States Code.

(C) NEAR TERM PROJECTS.—In allocating funds under this paragraph, the Secretary of Transportation shall ensure, to the maximum extent practicable, that funds are directed to near term projects.

(c) LIMITATION FOR CAPITAL PROJECTS.—Funds may be used under this section only for capital projects.

(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—Funds distributed under subsection (b) shall not be subject to sections 5307(e), 5309(h), or 5311(g) of title 49, United States Code.

CHAPTER 5—AVIATION INFRASTRUCTURE

SEC. 261. AUTHORIZATION OF APPROPRIATIONS FOR AVIATION INFRASTRUCTURE.

There is authorized to be appropriated for each of fiscal years 2005 and 2006 to carry out this chapter, $1,500,000,000, to remain available until expended.

SEC. 262. DISTRIBUTION OF FUNDS.

The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, shall distribute funds made available under this chapter to public use airports for the purposes provided under chapter 471 of title 49, United States Code, including for enhancement of aviation safety, enhancement of aviation capacity, and defrayal of the cost of security requirements imposed on airport operators by the Administrator or by the Administrator of the Transportation Security Administration.

SEC. 263. NONAPPLICABILITY OF CERTAIN LAWS.

Funds made available under this chapter shall not be subject to—

(1) a matching requirement under section 47109 of title 49, United States Code; or

(2) any limitation on obligation under any other provision of law.

SEC. 264. USE OF FUNDS FOR NEAR-TERM PROJECTS.

The Secretary of Transportation shall ensure, to the maximum extent practicable, that funds made available under this chapter are directed to projects that may be obligated in the near-term, as determined by the Secretary of Transportation.

CHAPTER 6—BROADBAND ACCESS TAX CREDIT

SEC. 271. EXPENSING OF BROADBAND INTERNET ACCESS EXPENDITURES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 190 the following new section:

"SEC. 191. BROADBAND EXPENDITURES.

''(a) TREATMENT OF EXPENDITURES.—

''(1) IN GENERAL.—A taxpayer may elect to treat any qualified broadband expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction.

''(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may prescribe by regulation.

''(b) QUALIFIED BROADBAND EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified broadband expenditure' means, with respect to any taxable year, any direct or indirect costs incurred and properly taken into account with respect to—

''(A) the purchase or installation of qualified equipment (including any upgrades thereto), and

''(B) the connection of such qualified equipment to any qualified subscriber.

''(2) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any costs incurred with respect to the launching of any satellite equipment.

''(3) LEASED EQUIPMENT.—Such term shall include so much of the purchase price paid by the lessor of qualified equipment subject to a lease described in subsection (c)(2)(B) as is attributable to expenditures incurred by the lessee which would otherwise be described in paragraph (1).

''(4) LIMITATION WITH REGARD TO CURRENT GENERATION BROADBAND SERVICES.—Only 50 percent of the amounts taken into account under paragraph (1) with respect to qualified equipment through which current generation broadband services are provided shall be treated as qualified broadband expenditures.

''(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—Qualified broadband expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

''(A) current generation broadband services are provided through such equipment to qualified subscribers, or

''(B) next generation broadband services are provided through such equipment to qualified subscribers.

''(2) LIMITATION.—

''(A) IN GENERAL.—Qualified expenditures shall be taken into account under paragraph (1) only with respect to qualified equipment—

''(i) the original use of which commences with the taxpayer, and

''(ii) which is placed in service, after the date of the enactment of this Act.

''(B) SALE-LEASEBACKS.—For purposes of subparagraph (A), if property—

''(i) is originally placed in service after the date of the enactment of this Act by any person, and

''(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in clause (ii).

''(d) SPECIAL ALLOCATION RULES.—

''(1) CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified broadband expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of the number of potential qualified subscribers within the rural areas and the underserved areas which the equipment is capable of serving with current generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with current generation broadband services.

''(2) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which next generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of—

''(i) the number of potential qualified subscribers within the rural areas and underserved areas, plus

''(ii) the number of potential qualified subscribers within the area consisting only of residential subscribers not described in clause (i),

which the equipment is capable of serving with next generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with next generation broadband services.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

''(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

''(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service carrier' means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

''(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 1,000,000 bits per second to the subscriber and at least 128,000 bits per second from the subscriber.

''(5) MULTIPLEXING OR DEMULTIPLEXING.—The term 'multiplexing' means the transmission of 2 or more signals over a single channel, and the term 'demultiplexing' means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

''(6) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband service' means the transmission of signals at a rate of at least 22,000,000 bits per second to the subscriber and at least 5,000,000 bits per second from the subscriber.

''(7) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means any person who purchases broadband services which are delivered to the permanent place of business of such person.

''(8) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

''(9) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the radio transmission of energy.

''(10) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of any digitized transmission signal which is assembled into packets or cells.

''(11) PROVIDER.—The term 'provider' means, with respect to any qualified equipment—

''(A) a cable operator,

''(B) a commercial mobile service carrier,

''(C) an open video system operator,

''(D) a satellite carrier,

''(E) a telecommunications carrier, or

''(F) any other wireless carrier,

providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment.

''(12) PROVISION OF SERVICES.—A provider shall be treated as providing services to 1 or more subscribers if—

''(A) such a subscriber has been passed by the provider's equipment and can be connected to such equipment for a standard connection fee,

''(B) the provider is physically able to deliver current generation broadband services or next generation broadband services, as applicable, to such a subscriber without making more than an insignificant investment with respect to such subscriber,

''(C) the provider has made reasonable efforts to make such subscribers aware of the availability of such services,

''(D) such services have been purchased by 1 or more such subscribers, and

''(E) such services are made available to such subscribers at average prices comparable to those at which the provider makes available similar services in any areas in which the provider makes available such services.

''(13) QUALIFIED EQUIPMENT.—

''(A) IN GENERAL.—The term 'qualified equipment' means equipment which provides current generation broadband services or next generation broadband services—

''(i) at least a majority of the time during periods of maximum demand to each subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

''(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

''(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

''(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

''(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

''(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

''(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

''(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber's premises.

''(14) QUALIFIED SUBSCRIBER.—The term 'qualified subscriber' means—

''(A) with respect to the provision of current generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) any residential subscriber residing in a dwelling located in a rural area or underserved area which is not a saturated market, and

''(B) with respect to the provision of next generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) any residential subscriber.

''(15) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means any individual who purchases broadband services which are delivered to such individual's dwelling.

''(16) RURAL AREA.—The term 'rural area' means any census tract which—

''(A) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

''(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

''(17) RURAL SUBSCRIBER.—The term 'rural subscriber' means any residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

''(18) SATELLITE CARRIER.—The term 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such point-to-multipoint distribution.

''(19) SATURATED MARKET.—The term 'saturated market' means any census tract in which, as of the date of the enactment of this section—

''(A) current generation broadband services have been provided by a single provider to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

''(B) such services can be utilized—

''(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

''(20) SUBSCRIBER.—The term 'subscriber' means any person who purchases current generation broadband services or next generation broadband services.

''(21) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)), but—

''(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

''(B) does not include a commercial mobile service carrier.

''(22) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

''(23) UNDERSERVED AREA.—The term 'underserved area' means—

''(A) any census tract which is located in—

''(i) an empowerment zone or enterprise community designated under section 1391, or

''(ii) the District of Columbia Enterprise Zone established under section 1400, or

''(B) any census tract—

''(i) the poverty level of which is at least 30 percent (based on the most recent census data), and

''(ii) the median family income of which does not exceed—

''(I) in the case of a census tract located in a metropolitan statistical area, 70 percent of the greater of the metropolitan area median family income or the statewide median family income, and

''(II) in the case of a census tract located in a nonmetropolitan statistical area, 70 percent of the nonmetropolitan statewide median family income.

''(24) UNDERSERVED SUBSCRIBER.—The term 'underserved subscriber' means any residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.

''(f) SPECIAL RULES.—

''(1) PROPERTY USED OUTSIDE THE UNITED STATES, ETC., NOT QUALIFIED.—No expenditures shall be taken into account under subsection (a)(1) with respect to the portion of the cost of any property referred to in section 50(b) or with respect to the portion of the cost of any property specified in an election under section 179.

''(2) BASIS REDUCTION.—

''(A) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a)(1).

''(B) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a)(1) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

''(3) COORDINATION WITH SECTION 38.—No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a)(1).''.

(b) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 512(b) of the Internal Revenue Code of 1986 (relating to modifications) is amended—

(1) by redesignating paragraph (18) as added by section 702(a) of the American Jobs Creation Act of 2004 as paragraph (19), and

(2) by adding at the end the following new paragraph:

''(20) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—A mutual or cooperative telephone company which for the taxable year satisfies the requirements of section 501(c)(12)(A) may elect to reduce its unrelated business taxable income for such year, if any, by an amount that does not exceed the qualified broadband expenditures which would be taken into account under section 191 for such year by such company if such company was not exempt from taxation. Any amount which is allowed as a deduction under this paragraph shall not be allowed as a deduction under section 191 and the basis of any property to which this paragraph applies shall be reduced under section 1016(a)(32).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1) of the Internal Revenue Code of 1986 (relating to capital expenditures) is amended by striking ''or'' at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting '', or'', and by adding at the end the following new subparagraph:

''(J) expenditures for which a deduction is allowed under section 191.''.

(2) Section 1016(a) of such Code is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', and'', and by adding at the end the following new paragraph:

''(32) to the extent provided in section 191(f)(2).''.

(3) The table of sections for part VI of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 190 the following new item:

''Sec. 191. Broadband expenditures.''.

(d) DESIGNATION OF CENSUS TRACTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (16), (22), and (23) of section 191(e) of the Internal Revenue Code of 1986 (as added by this section). In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(2) SATURATED MARKET.—

(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(19) of such section 191—

(i) the Secretary of the Treasury shall prescribe not later than 30 days after the date of the enactment of this Act the form upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts (and any other information required by the Secretary) not later than 60 days after the date of the publication of such form, and

(ii) the Secretary of the Treasury shall publish an aggregate list of such census tracts and the applicable providers not later than 30 days after the last date such submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of census tracts meeting such criteria subsequent to the list described in subparagraph (A)(ii).

(e) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or instrumentality shall adopt regulations or ratemaking procedures that would have the effect of eliminating or reducing any deduction or portion thereof allowed under section 191 of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the election to deduct qualified broadband expenditures under section 191 of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain low income and rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 191 of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified broadband expenditures satisfies the requirements of section 191 of such Code to provide broadband services, and

(B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 191 of such Code.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after the date of the enactment of this Act and before the date which is 60 months after the date of the enactment of this Act.

CHAPTER 7—RESEARCH AND DEVELOPMENT TAX CREDIT

SEC. 281. FINDINGS.

Congress finds the following:

(1) Research and development performed in the United States results in quality jobs, better and safer products, increased ownership of technology-based intellectual property, and higher productivity in the United States.

(2) Since 1994, private sector research and development employment has grown at a faster rate than overall private sector employment in the United States. From 1994 to 2000, there was an average annual growth rate of 5.4 percent in research and development employment, compared with 2.7 percent in total employment.

(3) The extent to which companies perform and increase research and development activities in the United States is in part dependent on Federal tax policy.

(4) The private sector performed most of the Nation's research and development and accounted for more than two-thirds of total research and development performance in 2003. Of the $194,000,000,000 in industrial research and development performed in 2003, more than 90 percent was funded by industry.

(5) Many of the countries with which the United States competes have introduced new or revised national plans for science, technology, and innovation policy, and a growing number of countries have established targets for increased research and development spending. Virtually all countries are seeking ways to enhance the quality and efficiency of public research, stimulate business investments in research and development, and strengthen linkages between the public and private sectors.

(6) Direct government support to business research and development has declined, both in absolute terms and as a share of business research and development, and greater emphasis is being placed on indirect measures, such as tax incentives for research and development.

(7) Congress should make permanent a research and development credit that provides a meaningful incentive to all types of taxpayers.

SEC. 282. PERMANENT EXTENSION OF RESEARCH CREDIT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 45C(b) of such Code is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 283. INCREASE IN RATES OF ALTERNATIVE INCREMENTAL CREDIT.

(a) IN GENERAL.—Subparagraph (A) of section 41(c)(4) of the Internal Revenue Code of 1986 (relating to election of alternative incremental credit) is amended—

(1) by striking ''2.65 percent'' and inserting ''3 percent'',

(2) by striking ''3.2 percent'' and inserting ''4 percent'', and

(3) by striking ''3.75 percent'' and inserting ''5 percent''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 284. ALTERNATIVE SIMPLIFIED CREDIT FOR QUALIFIED RESEARCH EXPENSES.

(a) IN GENERAL.—Subsection (c) of section 41 of the Internal Revenue Code of 1986 (relating to base amount) is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

''(5) ELECTION OF ALTERNATIVE SIMPLIFIED CREDIT.—

''(A) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 12 percent of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

''(B) SPECIAL RULE IN CASE OF NO QUALIFIED RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAXABLE YEARS.—

''(i) TAXPAYERS TO WHICH SUBPARAGRAPH APPLIES.—The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any 1 of the 3 taxable years preceding the taxable year for which the credit is being determined.

''(ii) CREDIT RATE.—The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

''(C) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies.''.

(b) COORDINATION WITH ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

(1) IN GENERAL.—Section 41(c)(4)(B) of the Internal Revenue Code of 1986 (relating to election) is amended by adding at the end the following: ''An election under this paragraph may not be made for any taxable year to which an election under paragraph (5) applies.''.

(2) TRANSITION RULE.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes the date of the enactment of this Act, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by subsection (a)) for such year.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 285. EXPANSION OF RESEARCH CREDIT.

(a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE RESEARCH CONSORTIA.—

(1) IN GENERAL.—Section 41(a) of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to a research consortium.''.

(2) RESEARCH CONSORTIUM DEFINED.—Section 41(f) of such Code (relating to special rules) is amended by adding at the end the following new paragraph:

''(6) RESEARCH CONSORTIUM.—

''(A) IN GENERAL.—The term 'research consortium' means any organization—

''(i) which is—

''(I) described in section 501(c)(3) or 501(c)(6) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct research, or

''(II) organized and operated primarily to conduct research in the public interest (within the meaning of section 501(c)(3)),

''(ii) which is not a private foundation,

''(iii) to which at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts (including as contributions) to such organization for research, and

''(iv) to which no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50 percent of the total amounts received by such organization during such calendar year for research.

''(B) TREATMENT OF PERSONS.—All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraph (A)(iii) and as a single person for purposes of subparagraph (A)(iv).''.

(3) CONFORMING AMENDMENT.—Section 41(b)(3)(C)(ii) of such Code is amended by inserting ''(other than a research consortium)'' after ''organization''.

(b) REPEAL OF LIMITATION ON CONTRACT RESEARCH EXPENSES PAID TO SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—Section 41(b)(3) of the Internal Revenue Code of 1986 (relating to contract research expenses) is amended by adding at the end the following new subparagraph:

''(D) AMOUNTS PAID TO ELIGIBLE SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—

''(i) IN GENERAL.—In the case of amounts paid by the taxpayer to—

''(I) an eligible small business,

''(II) an institution of higher education (as defined in section 3304(f)), or

''(III) an organization which is a Federal laboratory,

for qualified research, subparagraph (A) shall be applied by substituting '100 percent' for '65 percent'.

''(ii) ELIGIBLE SMALL BUSINESS.—For purposes of this subparagraph, the term 'eligible small business' means a small business with respect to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

''(I) in the case of a corporation, the outstanding stock of the corporation (either by vote or value), and

''(II) in the case of a small business which is not a corporation, the capital and profits interests of the small business.

''(iii) SMALL BUSINESS.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'small business' means, with respect to any calendar year, any person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was 500 or fewer. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

''(II) STARTUPS, CONTROLLED GROUPS, AND PREDECESSORS.—Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.

''(iv) FEDERAL LABORATORY.—For purposes of this subparagraph, the term 'Federal laboratory' has the meaning given such term by section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)), as in effect on the date of the enactment of this subparagraph.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

Subtitle C—Technology Programs

SEC. 291. AUTHORIZATIONS OF APPROPRIATIONS FOR THE ADVANCED TECHNOLOGY PROGRAM AND THE MANUFACTURING EXTENSION PARTNERSHIP PROGRAM.

(a) ADVANCED TECHNOLOGY PROGRAM.—

(1) FINDINGS.—Congress makes the following findings:

(A) The Advanced Technology Program (ATP) has played an important role in helping United States companies develop new, breakthrough technologies. ATP has funded research ranging from cancer vaccines, to hi-tech flexible displays, to composite materials, to fuel cells, all of which are the kinds of technological advances that give the United States a competitive advantage globally.

(B) The National Academy of Science has found it to be an effective program that could use more funding wisely, and the National Association of Manufacturers (NAM), the Biotechnology Industry Organization (BIO), the Industrial Research Institute, the Alliance for Science and Technology Research in America, and the American Chemical Society support ATP.

(C) Businesses need this type of program more than ever as venture capital funds have become more scarce in the current economy. ATP bridges this gap between the research lab and market capital, facilitating the critical transfer of technology to the private sector that leads to the development of products and services that make use of new, technological breakthroughs.

(D) Not only does ATP promote economic security and global competitiveness for the nation as a whole, it is an important program for generating jobs domestically. Last year nearly 80 percent of ATP awards went to small businesses, an essential job-creating sector in the United States economy.

(E) ATP is also vital to the homeland security of the United States. ATP has funded many projects in detection, preparedness, prevention and response with significant applications for homeland security. With continued financial support through ATP to develop these projects and their security applications, the United States will become more secure.

(F) Despite the importance and success of ATP, current funding levels do not meet the demand. Over 1,000 proposals for ATP funding that were submitted in 2002 yielded enough high quality projects for the ATP funding that was available in both fiscal years 2002 and 2003. The 870 applications for ATP funding received in fiscal year 2004 made the second highest number of applications for ATP funding that were received in any fiscal year, but funding was only available for 59 awards. No funding for new awards is available in fiscal year 2005.

(G) According to the 2004 annual report on the ATP, returns from just 41 of the 736 ATP

projects have exceeded $17,000,000,000 in economic benefits, more than 8 times the amount of money spent on all 736 projects.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce for the Advanced Technology Program of the National Institute of Standards and Technology—

(A) $247,200,000 for fiscal year 2005;

(B) $254,616,000 for fiscal year 2006;

(C) $262,254,000 for fiscal year 2007; and

(D) $270,122,000 for fiscal year 2008.

(b) MANUFACTURING EXTENSION PARTNERSHIP PROGRAM.—

(1) FINDINGS.—Congress makes the following findings:

(A) Small- and medium-sized manufacturers in the United States employ 7,000,000 people and contribute $711,000,000,000, or 7 percent of the Gross Domestic Product to the United States economy. The Hollings Manufacturing Extension Partnership (MEP) Program supports a network of locally run centers that provide technical advice and consulting to these firms in all fifty States and Puerto Rico. Since its inception, the Hollings MEP Program has assisted 149,000 of the 380,000 small and medium-sized manufacturers in the United States.

(B) The Hollings MEP Program is a proven program. Studies show that Hollings MEP Program manufacturers have four times more productivity growth than non-MEP firms, and the program has proven to lead to increased sales, increased capital investment, cost savings and the creation or retention of jobs in the United States.

(C) The Hollings MEP Program is more important today than ever as the Nation faces a looming current account deficit. The United States has lost over 880,000 manufacturing jobs during 2003 and 2004. Such manufacturing jobs pay on average 19 percent higher wages than the industry average.

(D) The Hollings MEP Program is not just about economic security. Manufacturers with fewer than 500 employees comprise more than 80 percent of the suppliers in key defense sectors. Helping such manufacturers helps the national security of the United States.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce for the Hollings Manufacturing Extension Partnership Program of the National Institute of Standards and Technology—

(A) $110,210,000 for fiscal year 2005;

(B) $113,516,000 for fiscal year 2006;

(C) $116,921,000 for fiscal year 2007; and

(D) $120,429,000 for fiscal year 2008.

(3) MANUFACTURING EXTENSION PARTNERSHIP PROGRAM DEFINED.—In this subsection, the term ''Hollings Manufacturing Extension Partnership Program'' means the program of Hollings Manufacturing Extension Partnership carried out by the National Institute of Standards and Technology under section 26 of the National Institute of Standards and Technology Act (15 U.S.C. 278l), as provided in part 292 of title 15, Code of Federal Regulations.

SEC. 292. SENSE OF THE SENATE PROMOTING SCIENCE AND TECHNOLOGY FUNDING FOR A STRONGER ECONOMIC FUTURE.

(a) FINDINGS.—The Senate makes the following findings:

(1) Leading economists have consistently attributed more than 50 percent of the growth in the economy of the United States to scientific and technological innovation. The economic future of the United States, thus, depends on the United States remaining the world leader in science and technology.

(2) If the United States loses its leadership in science and technology, its capacity for economic growth and high-wage job creation will soon atrophy, with deleterious effects on the national security of the United States. In 2001, the Hart-Rudman Commission on National Security for the 21st Century characterized the failure of the United States to invest in science and to reform science and mathematics education as the second biggest threat to national security, stating that ''[s]econd only to a weapon of mass destruction detonating in an American city, we can think of nothing more dangerous than a failure to manage properly science, technology, and education for the common good over the next quarter century''.

(3) The United States has reaped enormous economic benefits from being the first country to lead in the development of the Internet and the harnessing of biotechnology. These developments, though, are far from being the last technological revolutions to influence the economy of the United States. Technological changes that promise major economic effects are now being made in areas such as—

(A) microelectronics, including the continued miniaturization of electronic devices and the increasingly widespread diffusion of data processing power;

(B) high-end supercomputing;

(C) telecommunications technologies;

(D) artificial materials, including materials in which the structure has been designed and built at the atomic or molecular level, the essence of nanotechnology;

(E) robotics; and

(F) new energy technologies, particular including renewable energy technologies that are as inexpensive as traditional fossil sources of energy, technologies using hydrogen as an energy carrier, and technologies for energy efficiencies.

(4) Because of the interconnected nature of modern science and technology, advances in one field depend on research results in other, seemingly unrelated fields. Biomedical science has been consistently shown to rely on advances in fields such as chemistry, materials science, mathematics, computer science, and physics. Without basic advances in chemistry, computer science, and mathematics, the sequencing of the human genome could not have been successfully undertaken.

(5) In the 60 years since World War II, other countries and regions of the world have built science and technology capabilities that rival those of the United States today, or that could rival such capabilities of the United States in the future. The governments of China, India, Japan, and the countries of the European Union have all targeted significant advancements in research and innovation as central elements of the plans for future national and regional economic prosperity.

(6) President George W. Bush has largely ignored this challenge, proposing budgets that have under-funded or terminated key programs promoting United States scientific and technological strength, including cuts to—

(A) basic and applied research in the Department of Defense;

(B) agricultural research;

(C) transportation research; and

(D) fundamental research in the physical sciences and engineering at the Department of Energy and elsewhere.

(7) For other programs that have been proposed for small increases, such as the National Science Foundation, the amount of funding provided to individual grantees is well below the amounts that would lead to optimal scientific productivity and continued United States leadership in science and technology. In fiscal year 2004, the National Science Foundation's stringent peer review evaluation process judged approximately 12,000 out of some 40,000 proposals as ''very good to excellent'' or ''excellent,'' yet, due to budget constraints, only 56 percent of such proposals were funded.

(8) The National Science Foundation and the Office of Science in the Department of Energy are among the greatest assets of the United States for the advancement of science, mathematical, engineering, and technology research and education. Although the National Science Foundation accounts for only 4 percent of Federal research and development spending, it provides nearly 50 percent of all Federal support for nonmedical basic research conducted in United States colleges and universities. Similarly, the Office of Science of the Department of Energy funds over half of all university research in disciplines such as physics and materials science, and has played a crucial role in national science and technology initiatives such as advancing high-performance computing and the sequencing of the human genome. Both the National Science Foundation and the Office of Science fund research in new frontiers of scientific inquiry and contribute to creating a highly skilled, competitive workforce in science and engineering.

(9) President Bush has also consistently proposed terminating the Advanced Technology Program at the Department of Commerce, which helps stimulate companies to participate in high-risk, high-payoff research and development and is perhaps one of the most successful programs in directly stimulating industrial innovation in the United States. Projects supported by the Advanced Technology Program span a broad range of key technology areas, such as oil exploration, automobile manufacturing, and new medical diagnostic and therapeutic technologies and investments made by the program accelerate the development process for innovative technologies that promise significant commercial payoff and widespread benefits.

(10) The continual cycle of basic research, applied research, and development gives rise to new products and processes, new ideas and understanding, and new researchers and educators. Each link in this chain depends on the others. Basic research produces the fundamental understandings that underpin applications and the development process. The resulting technologies and innovations create economic growth through new products and job creation and stimulate new thinking and advances in scientific instrumentation, which in turn stimulate new inquiries that lead to new fundamental research. All of this activity improves the quality of life in the United States, and when adequately supported, contributes to the continued leadership of the United States in science and technology.

(11) A revitalized science and technology policy focused on advancing all of the links of this chain, from basic research through technology deployment, is necessary if the United States is to maintain its technological preeminence over the next decade and beyond. Applications stemming from basic research can take over 20 years to evolve into next generation technologies. Inadequate funding of basic research may not seem acute today, but 20 years from now, it will be extremely difficult to correct an inability of the United States to compete scientifically and technologically, which could be caused by inadequate funding now.

(12) In order to ensure strength in these areas, it is necessary for the United States Government to ensure that scientists and technology experts in the United States receive the best education possible. After the Russians launched Sputnik, Congress passed the National Defense Education Act of 1958

(Public Law 85–864), which declared ''an educational emergency'' and led to the more than doubling of Federal expenditures for education. The programs authorized under that Act helped the United States to improve rapidly in the areas of science and technology, and led to United States dominance in the arms race and the global economy.

(13) The United States would be well served by the enactment of a new National Defense Education Act. Third in the world in 1975, America now ranks 15th in the development of new scientists and engineers. Today, India and China annually produce 10 times as many new engineers as the United States. Out of over 15,000,000 college students in the United States, fewer than 400,000 individuals graduate with a bachelor's degree in math, science, engineering, or technology each year, and only 75,000 postgraduate students go on to obtain a master's degree in math, science, engineering, or technology.

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

(1) Congress and the President should direct significant new investments in the National Science Foundation, the Office of Science at the Department of Energy, the National Institutes of Health, and the National Institute of Standards and Technology to increase federally funded research in basic science and technology so that the United States can better compete in the international economy; and

(2) Congress and the President should direct significant new investments into the enhancement of elementary and secondary education programs related to math, science, and technology and substantially expand access to postsecondary education for United States students seeking degrees in math, science, and technology.

TITLE III—FAIR TRADE AND COMPETITIVENESS

Subtitle A—Trade Enforcement Enhancement

SEC. 311. IDENTIFICATION OF TRADE EXPANSION PRIORITIES.

Section 310 of the Trade Act of 1974 (19 U.S.C. 2420) is amended to read as follows:

''SEC. 310. IDENTIFICATION OF TRADE EXPANSION PRIORITIES.

''(a) IDENTIFICATION.—

''(1) IDENTIFICATION AND REPORT.—Within 30 days after the submission in each of calendar year 2005 through 2009 of the report required by section 181(b), the Trade Representative shall—

''(A) review United States trade expansion priorities;

''(B) identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent; and

''(C) submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and publish in the Federal Register a report on the priority foreign country practices identified.

''(2) FACTORS.—In identifying priority foreign country practices under paragraph (1), the Trade Representative shall take into account all relevant factors, including—

''(A) the major barriers and trade distorting practices described in the National Trade Estimate Report required under section 181(b);

''(B) the trade agreements to which a foreign country is a party and its compliance with those agreements;

''(C) the medium- and long-term implications of foreign government procurement plans; and

''(D) the international competitive position and export potential of United States products and services.

''(3) CONTENTS OF REPORT.—The Trade Representative may include in the report, if appropriate—

''(A) a description of foreign country practices that may in the future warrant identification as priority foreign country practices; and

''(B) a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, by existing bilateral trade agreements, or as part of trade negotiations with other countries and progress is being made toward the elimination of such practices.

''(b) INITIATION OF CONSULTATIONS.—By no later than the date that is 21 days after the date on which a report is submitted to the appropriate congressional committees under subsection (a)(1), the Trade Representative shall seek consultations with each foreign country identified in the report as engaging in priority foreign country practices for the purpose of reaching a satisfactory resolution of such priority practices.

''(c) INITIATION OF INVESTIGATION.—If a satisfactory resolution of priority foreign country practices has not been reached under subsection (b) within 90 days after the date on which a report is submitted to the appropriate congressional committees under subsection (a)(1), the Trade Representative shall initiate under section 302(b)(1) an investigation under this chapter with respect to such priority foreign country practices.

''(d) AGREEMENTS FOR THE ELIMINATION OF BARRIERS.—In the consultations with a foreign country that the Trade Representative is required to request under section 303(a) with respect to an investigation initiated by reason of subsection (c), the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly as possible or, if elimination of the practices is not feasible, an agreement that provides for compensatory trade benefits.

''(e) REPORTS.—The Trade Representative shall include in the semiannual report required by section 309 a report on the status of any investigations initiated pursuant to subsection (c) and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.''.

SEC. 312. CHIEF ENFORCEMENT NEGOTIATOR.

(a) ESTABLISHMENT OF POSITION.—Section 141(b)(2) of the Trade Act of 1974 (19 U.S.C. 2171(b)(2)) is amended to read as follows:

''(2) There shall be in the Office 3 Deputy United States Trade Representatives, 1 Chief Agricultural Negotiator, and 1 Chief Enforcement Negotiator. The 3 Deputy United States Trade Representatives and the 2 Chief Negotiators shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative, the Chief Agricultural Negotiator, or the Chief Enforcement Negotiator submitted to the Senate for its advice and consent, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative, the Chief Agricultural Negotiator, and the Chief Enforcement Negotiator shall hold office at the pleasure of the President and shall have the rank of Ambassador.''.

(b) FUNCTIONS OF POSITION.—Section 141(c) of the Trade Act of 1974 (19 U.S.C. 2171(c)) is amended by adding at the end the following new paragraph:

''(6) The principal function of the Chief Enforcement Negotiator shall be to conduct negotiations to ensure compliance with trade agreements relating to United States manufactured goods and services. The Chief Enforcement Negotiator shall recommend investigating and prosecuting cases before the World Trade Organization and under trade agreements to which the United States is a party. The Chief Enforcement Negotiator shall recommend administering United States trade laws relating to foreign government barriers to United States goods and services. The Chief Enforcement Negotiator shall perform such other functions as the United States Trade Representative may direct.''.

SEC. 313. FOREIGN DEBT.

(a) SHORT TITLE.—This section may be cited as the ''Foreign Debt Ceiling Act of 2005''.

(b) FOREIGN DEBT CEILING.—

(1) FINDINGS.—Congress makes the following findings:

(A) The United States has become the world's largest net debtor Nation, having run up massive trade deficits since the 1990s.

(B) At the end of 2002, the net United States foreign debt stood at $2,553,000,000,000.

(C) The United States foreign debt position worsened in 2003, when the United States had a record trade deficit of $489,000,000,000, equivalent to 4.4 percent of the United States GDP that year.

(D) The large and growing United States foreign debt represents claims on United States assets by foreign nationals, which will eventually have to be repaid. If unchecked, the foreign debt could seriously undermine our children's future standard of living.

(E) Moreover, the growing accumulation of foreign claims on United States assets, including over $1,200,000,000,000 in United States Treasury securities, makes the United States economy vulnerable to the whims of foreign investors.

(F) Congress presently places a ceiling on United States public debt, but does not place a ceiling on United States foreign debt.

(G) Just as Congress recognized the importance of placing a ceiling on the United States public debt, it is appropriate that Congress place a limit on the United States foreign debt.

(2) ACTIONS TRIGGERED BY UNITED STATES FOREIGN DEBT.—

(A) IN GENERAL.—Not later than the 15th day of the second month after the date of enactment of this Act, and every 3 months thereafter, the United States Trade Representative shall determine if—

(i) the net United States foreign debt for the preceding 12-month period is more than 25 percent of United States GDP for the same period; or

(ii) the United States trade deficit for the preceding 12-month period is more than 5 percent of United States GDP for the same period.

(B) ACTION BY USTR.—Whenever an affirmative determination is made under subparagraph (A) (i) or (ii), the United States Trade Representative shall—

(i) within 15 days of the determination, convene an emergency meeting of the Trade Policy Review Group to develop a plan of action to reduce the United States trade deficit; and

(ii) within 45 days of the determination, present to Congress a report detailing the Trade Policy Review Group's trade deficit reduction plan.

(3) MEASUREMENT OF FOREIGN DEBT.—

(A) STATISTICAL SOURCES.—For purposes of the calculations described in paragraph (2)(A), the United States Trade Representative shall rely on the most recent period for

which the following data, published by the Department of Commerce, is available:

(i) In the case of United States foreign debt, the United States Trade Representative shall use the net international investment position of the United States, with direct investment positions determined at market value, as compiled by the Bureau of Economic Analysis.

(ii) In the case of the United States trade deficit, the United States Trade Representative shall use the goods and services trade deficit data compiled by the United States Census Bureau.

(iii) In the case of the United States GDP, the United States Trade Representative shall use the nominal gross domestic product data compiled by the Bureau of Economic Analysis.

(B) ADJUSTMENT.—The United States Trade Representative may adjust the data described in subparagraph (A) to ensure that the determination is made for comparable time period.

SEC. 314. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS FOR THE OFFICE OF THE GENERAL COUNSEL AND THE OFFICE OF MONITORING AND ENFORCEMENT.—There are authorized to be appropriated to the Office of the United States Trade Representative for the appointment of additional staff in the Office of the General Counsel and the Office of Monitoring and Enforcement—

(1) $2,000,000 for fiscal year 2005; and

(2) $2,000,000 for fiscal year 2006.

(b) RESPONSIBILITIES OF ADDITIONAL STAFF.—The responsibilities of the additional staff appointed under subsection (a) shall include—

(1) investigating, prosecuting, and defending cases before the World Trade Organization and under trade agreements to which the United States is a party;

(2) administering United States trade laws, including title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq.) and other trade laws relating to foreign government barriers to United States goods and services, including barriers involving intellectual property rights, government procurement, and telecommunications; and

(3) monitoring compliance with the Uruguay Round Agreements (as defined in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501)) and other trade agreements, particularly by the People's Republic of China.

Subtitle B—Exchange Rate Policy and Currency Manipulation

SEC. 321. NEGOTIATIONS REGARDING CURRENCY VALUATION.

(a) FINDINGS.—Congress makes the following findings:

(1) The currency of the People's Republic of China, known as the yuan or renminbi, is artificially pegged at a level significantly below its market value. Economists estimate the yuan to be undervalued by between 15 percent and 40 percent or an average of 27.5 percent.

(2) The undervaluation of the yuan provides the People's Republic of China with a significant trade advantage by making exports less expensive for foreign consumers and by making foreign products more expensive for Chinese consumers. The effective result is a significant subsidization of China's exports and a virtual tariff on foreign imports.

(3) The Government of the People's Republic of China has intervened in the foreign exchange markets to hold the value of the yuan within an artificial trading range. China's foreign reserves are estimated to be over $609,900,000,000 as of January 12, 2004, and have increased by over $206,700,000,000 in the last 12 months.

(4) China's undervalued currency, China's trade advantage from that undervaluation, and the Chinese Government's intervention in the value of its currency violates the spirit and letter of the world trading system of which the People's Republic of China is now a member.

(5) The Government of the People's Republic of China has failed to promptly address concerns or to provide a definitive timetable for resolution of these concerns raised by the United States and the international community regarding the value of its currency.

(6) Article XXI of the GATT 1994 (as defined in section 2(1)(B) of the Uruguay Round Agreements Act (19 U.S.C. 3501(1)(B))) allows a member of the World Trade Organization to take any action which it considers necessary for the protection of its essential security interests. Protecting the United States manufacturing sector is essential to the interests of the United States.

(b) NEGOTIATIONS AND CERTIFICATION REGARDING THE CURRENCY VALUATION POLICY OF THE PEOPLE'S REPUBLIC OF CHINA.—

(1) IN GENERAL.—Notwithstanding the provisions of title I of Public Law 106–286 (19 U.S.C. 2431 note), on and after the date that is 180 days after the date of enactment of this Act, unless a certification described in paragraph (2) has been made to Congress, in addition to any other duty, there shall be imposed a rate of duty of 27.5 percent ad valorem on any article that is the growth, product, or manufacture of the People's Republic of China, imported directly or indirectly into the United States.

(2) CERTIFICATION.—The certification described in this paragraph means a certification by the President to Congress that the People's Republic of China is no longer acquiring foreign exchange reserves to prevent the appreciation of the rate of exchange between its currency and the United States dollar for purposes of gaining an unfair competitive advantage in international trade. The certification shall also include a determination that the currency of the People's Republic of China has undergone a substantial upward revaluation placing it at or near its fair market value.

(3) ALTERNATIVE CERTIFICATION.—If the President certifies to Congress 180 days after the date of enactment of this Act that the People's Republic of China has made a good faith effort to revalue its currency upward placing it at or near its fair market value, the President may delay the imposition of the tariffs described in paragraph (1) for an additional 180 days. If at the end of the 180-day period the President determines that China has developed and started actual implementation of a plan to revalue its currency, the President may delay imposition of the tariffs for an additional 12 months, so that the People's Republic of China shall have time to implement the plan.

(4) NEGOTIATIONS.—Beginning on the date of enactment of this Act, the Secretary of the Treasury, in consultation with the United States Trade Representative, shall begin negotiations with the People's Republic of China to ensure that the People's Republic of China adopts a process that leads to a substantial upward currency revaluation within 180 days after the date of enactment of this Act. Because various Asian governments have also been acquiring substantial foreign exchange reserves in an effort to prevent appreciation of their currencies for purposes of gaining an unfair competitive advantage in international trade, and because the People's Republic of China has concerns about the value of those currencies, the Secretary shall also seek to convene a multilateral summit to discuss exchange rates with representatives of various Asian governments and other interested parties, including representatives of other G–7 nations.

Subtitle C—Trade Adjustment Assistance

CHAPTER 1—SERVICE WORKERS

SEC. 331. SHORT TITLE.

This chapter may be cited as the ''Trade Adjustment Assistance Equity for Service Workers Act of 2005''.

SEC. 332. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE TO SERVICES SECTOR.

(a) ADJUSTMENT ASSISTANCE FOR WORKERS.—Section 221(a)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2271(a)(1)(A)) is amended by striking ''agricultural firm)'' and inserting ''agricultural firm, and workers in a service sector firm or subdivision of a service sector firm or public agency)''.

(b) GROUP ELIGIBILITY REQUIREMENTS.—Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''agricultural firm)'' and inserting ''agricultural firm, and workers in a service sector firm or subdivision of a service sector firm or public agency)'';

(B) in paragraph (1), by inserting ''or public agency'' after ''of the firm''; and

(C) in paragraph (2)—

(i) in subparagraph (A)(ii), by striking ''like or directly competitive with articles produced'' and inserting ''or services like or directly competitive with articles produced or services provided''; and

(ii) by striking subparagraph (B) and inserting the following:

''(B)(i) there has been a shift, by such workers' firm, subdivision, or public agency to a foreign country, of production of articles, or in provision of services, like or directly competitive with articles which are produced, or services which are provided, by such firm, subdivision, or public agency; or

''(ii) such workers' firm, subdivision, or public agency has obtained or is likely to obtain such services from a foreign country.'';

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''agricultural firm)'' and inserting ''agricultural firm, and workers in a service sector firm or subdivision of a service sector firm or public agency)'';

(B) in paragraph (2), by inserting ''or service'' after ''related to the article''; and

(C) in paragraph (3)(A), by inserting ''or services'' after ''component parts'';

(3) in subsection (c)—

(A) in paragraph (3)—

(i) by inserting ''or services'' after ''value-added production processes'';

(ii) by striking ''assembly or finishing'' and inserting ''assembly, finishing, or testing'';

(iii) by inserting ''or services'' after ''for articles''; and

(iv) by inserting ''(or subdivision)'' after ''such other firm''; and

(B) in paragraph (4)—

(i) by striking ''for articles'' and inserting '', or services, used in the production of articles or in the provision of services''; and

(ii) by inserting ''(or subdivision)'' after ''such other firm''; and

(4) by adding at the end the following new subsection:

''(d) BASIS FOR SECRETARY'S DETERMINATIONS.—

''(1) INCREASED IMPORTS.—For purposes of subsection (a)(2)(A)(ii), the Secretary may determine that increased imports of like or directly competitive articles or services exist if the workers' firm or subdivision or customers of the workers' firm or subdivision accounting for not less than 20 percent of the sales of the workers' firm or subdivision certify to the Secretary that they are obtaining such articles or services from a foreign country.

''(2) OBTAINING SERVICES ABROAD.—For purposes of subsection (a)(2)(B)(ii), the Secretary may determine that the workers' firm, subdivision, or public agency has obtained or is likely to obtain like or directly competitive services from a firm in a foreign country based on a certification thereof from the workers' firm, subdivision, or public agency.

''(3) AUTHORITY OF THE SECRETARY.—The Secretary may obtain the certifications under paragraphs (1) and (2) through questionnaires or in such other manner as the Secretary determines is appropriate.''.

(c) TRAINING.—Section 236(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2296(a)(2)(A)) is amended by striking ''$220,000,000'' and inserting ''$440,000,000''.

(d) DEFINITIONS.—Section 247 of the Trade Act of 1974 (19 U.S.C. 2319) is amended—

(1) in paragraph (1)—

(A) by inserting ''or public agency'' after ''of a firm''; and

(B) by inserting ''or public agency'' after ''or subdivision'';

(2) in paragraph (2)(B), by inserting ''or public agency'' after ''the firm'';

(3) by redesignating paragraphs (8) through (17) as paragraphs (9) through (18), respectively; and

(4) by inserting after paragraph (6) the following:

''(7) The term 'public agency' means a department or agency of a State or local government or of the Federal Government.

''(8) The term 'service sector firm' means an entity engaged in the business of providing services.''.

(e) TECHNICAL AMENDMENT.—Section 245(a) of the Trade Act of 1974 (19 U.S.C. 2317(a)) is amended by striking '', other than subchapter D''.

SEC. 333. TRADE ADJUSTMENT ASSISTANCE FOR FIRMS AND INDUSTRIES.

(a) FIRMS.—

(1) ASSISTANCE.—Section 251 of the Trade Act of 1974 (19 U.S.C. 2341) is amended—

(A) in subsection (a), by inserting ''or service sector firm'' after ''(including any agricultural firm'';

(B) in subsection (c)(1)—

(i) in the matter preceding subparagraph (A), by inserting ''or service sector firm'' after ''(including any agricultural firm'';

(ii) in subparagraph (B)(ii), by inserting ''or service'' after ''of an article''; and

(iii) in subparagraph (C), by striking ''articles like or directly competitive with articles which are produced'' and inserting ''articles or services like or directly competitive with articles or services which are produced or provided''; and

(C) by adding at the end the following:

''(e) BASIS FOR SECRETARY DETERMINATION.—

''(1) INCREASED IMPORTS.—For purposes of subsection (c)(1)(C), the Secretary may determine that increases of imports of like or directly competitive articles or services exist if customers accounting for not less than 20 percent of the sales of the workers' firm certify to the Secretary that they are obtaining such articles or services from a foreign country.

''(2) AUTHORITY OF THE SECRETARY.—The Secretary may obtain the certifications under paragraph (1) through questionnaires or in such other manner as the Secretary determines is appropriate. The Secretary may exercise the authority under section 249 in carrying out this subsection.''.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 256(b) of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended by striking ''$16,000,000'' and inserting ''$32,000,000''.

(3) DEFINITIONS.—Section 261 of the Trade Act of 1974 (19 U.S.C. 2351) is amended to read as follows:

''SEC. 261. DEFINITIONS.

''For purposes of this chapter:

''(1) FIRM.—The term 'firm' includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm where necessary to prevent unjustifiable benefits.

''(2) SERVICE SECTOR FIRM.—The term 'service sector firm' means a firm engaged in the business of providing services.''.

(b) INDUSTRIES.—Section 265(a) of the Trade Act of 1974 (19 U.S.C. 2355(a)) is amended by inserting ''or service'' after ''new product''.

SEC. 334. MONITORING AND REPORTING.

Section 282 of the Trade Act of 1974 (19 U.S.C. 2393) is amended—

(1) in the first sentence—

(A) by striking ''The Secretary'' and inserting ''(a) MONITORING PROGRAMS.—The Secretary'';

(B) by inserting ''and services'' after ''imports of articles'';

(C) by inserting ''and domestic provision of services'' after ''domestic production'';

(D) by inserting ''or providing services'' after ''producing articles''; and

(E) by inserting '', or provision of services,'' after ''changes in production''; and

(2) by adding at the end the following:

''(b) COLLECTION OF DATA AND REPORTS ON SERVICES SECTOR.—

''(1) SECRETARY OF LABOR.—Not later than 3 months after the date of the enactment of the Trade Adjustment Assistance Equity for Service Workers Act of 2005, the Secretary of Labor shall implement a system to collect data on adversely affected service workers that includes the number of workers by State, industry, and cause of dislocation of each worker.

''(2) SECRETARY OF COMMERCE.—Not later than 6 months after such date of enactment, the Secretary of Commerce shall, in consultation with the Secretary of Labor, conduct a study and report to the Congress on ways to improve the timeliness and coverage of data on trade in services, including methods to identify increased imports due to the relocation of United States firms to foreign countries, and increased imports due to United States firms obtaining services from firms in foreign countries.''.

SEC. 335. ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Section 246(a)(3) of the Trade Act of 1974 (19 U.S.C. 2318(a)(3)) is amended to read as follows:

''(3) ELIGIBILITY.—A worker in the group that the Secretary has certified as eligible for the alternative trade adjustment assistance program may elect to receive benefits under the alternative trade adjustment assistance program if the worker—

''(A) is covered by a certification under subchapter A of this chapter;

''(B) obtains reemployment not more than 26 weeks after the date of separation from the adversely affected employment;

''(C) is at least 40 years of age;

''(D) earns not more than $50,000 a year in wages from reemployment;

''(E) is employed on a full-time basis as defined by State law in the State in which the worker is employed; and

''(F) does not return to the employment from which the worker was separated.''.

(b) CONFORMING AMENDMENTS.—Section 246 of the Trade Act of 1974 (19 U.S.C. 2318) is amended—

(1) in subsection (a)(2)(A), by striking ''paragraph (3)(B)'' and inserting ''paragraph (3)'';

(2) in subsection (a)(2)(B), by striking ''paragraph (3)(B)'' and inserting ''paragraph (3)''; and

(3) in subsection (b)(2), by striking ''subsection (a)(3)(B)'' and inserting ''subsection (a)(3)''.

SEC. 336. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this chapter shall take effect on the date of enactment of this Act.

(b) SPECIAL RULE FOR CERTAIN SERVICE WORKERS.—A group of workers in a service sector firm, or subdivision of a service sector firm, or public agency (as defined in section 247 (7) and (8) of the Trade Act of 1974, as added by section 332(d) of this Act) who—

(1) would have been certified eligible to apply for adjustment assistance under chapter 2 of title II of the Trade Act of 1974 if the amendments made by this Act had been in effect on November 4, 2002; and

(2) file a petition pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2271) not later than 6 months after the date of enactment of this Act, shall be eligible for certification under section 223 of the Trade Act of 1974 (19 U.S.C. 2273) if the workers' last total or partial separation from the firm or subdivision of the firm or public agency occurred on or after November 4, 2002 and before the date of enactment of this Act.

CHAPTER 2—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

SEC. 341. SHORT TITLE.

This chapter may be cited as the ''Trade Adjustment Assistance for Communities Act of 2005''.

SEC. 342. PURPOSE.

The purpose of this chapter is to assist communities negatively impacted by trade with economic adjustment through the integration of political and economic organizations, the coordination of Federal, State, and local resources, the creation of community-based development strategies, and the provision of economic transition assistance.

SEC. 343. TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES.

(a) REPEAL OF TERMINATED PROVISIONS.—Chapter 4 of the Trade Act of 1974 (19 U.S.C. 2371 et seq.) is repealed.

(b) TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES.—Title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.) is amended by inserting after chapter 3 the following new chapter:

''CHAPTER 4—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

''SEC. 271. DEFINITIONS.

''In this chapter:

''(1) AFFECTED DOMESTIC PRODUCER.—The term 'affected domestic producer' means any manufacturer, producer, service provider, farmer, rancher, fisherman or worker representative (including associations of such persons) that was affected by a finding under the Antidumping Act, 1921 (title II of the Act of May 27, 1921; 42 Stat. 11, chapter 14), or by an antidumping or countervailing duty order issued under title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.).

''(2) AGRICULTURAL COMMODITY PRODUCER.—The term 'agricultural commodity producer' has the same meaning as the term 'person' as prescribed by regulations promulgated under section 1001(e) of the Food Security Act of 1985 (7 U.S.C. 1308(e)).

''(3) COMMUNITY.—The term 'community' means a city, county, or other political subdivision of a State or a consortium of political subdivisions of a State that the Secretary certifies as being negatively impacted by trade.

''(4) COMMUNITY NEGATIVELY IMPACTED BY TRADE.—A community negatively impacted by trade means a community with respect to which a determination has been made under section 273.

''(5) ELIGIBLE COMMUNITY.—The term 'eligible community' means a community certified under section 273 for assistance under this chapter.

''(6) FISHERMAN.—

''(A) IN GENERAL.—The term 'fisherman' means any person who—

''(i) is engaged in commercial fishing; or

''(ii) is a United States fish processor.

''(B) COMMERCIAL FISHING, FISH, FISHERY, FISHING, FISHING VESSEL, PERSON, AND UNITED STATES FISH PROCESSOR.—The terms 'commercial fishing', 'fish', 'fishery', 'fishing', 'fishing vessel', 'person', and 'United States fish processor' have the same meanings as given such terms in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

''(7) JOB LOSS.—The term 'job loss' means the total separation or partial separation of an individual, as those terms are defined in section 247.

''(8) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Commerce.

"SEC. 272. COMMUNITY TRADE ADJUSTMENT ASSISTANCE PROGRAM.

''(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of the Trade Adjustment Assistance for Communities Act of 2005, the Secretary shall establish a Trade Adjustment Assistance for Communities Program at the Department of Commerce.

''(b) PERSONNEL.—The Secretary shall designate such staff as may be necessary to carry out the responsibilities described in this chapter.

''(c) COORDINATION OF FEDERAL RESPONSE.—The Secretary shall—

''(1) provide leadership, support, and coordination for a comprehensive management program to address economic dislocation in eligible communities;

''(2) coordinate the Federal response to an eligible community—

''(A) by identifying all Federal, State, and local resources that are available to assist the eligible community in recovering from economic distress;

''(B) by ensuring that all Federal agencies offering assistance to an eligible community do so in a targeted, integrated manner that ensures that an eligible community has access to all available Federal assistance;

''(C) by assuring timely consultation and cooperation between Federal, State, and regional officials concerning economic adjustment for an eligible community; and

''(D) by identifying and strengthening existing agency mechanisms designed to assist eligible communities in their efforts to achieve economic adjustment and workforce reemployment;

''(3) provide comprehensive technical assistance to any eligible community in the efforts of that community to—

''(A) identify serious economic problems in the community that are the result of negative impacts from trade;

''(B) integrate the major groups and organizations significantly affected by the economic adjustment;

''(C) access Federal, State, and local resources designed to assist in economic development and trade adjustment assistance;

''(D) diversify and strengthen the community economy; and

''(E) develop a community-based strategic plan to address economic development and workforce dislocation, including unemployment among agricultural commodity producers, and fishermen;

''(4) establish specific criteria for submission and evaluation of a strategic plan submitted under section 274(d);

''(5) establish specific criteria for submitting and evaluating applications for grants under section 275;

''(6) administer the grant programs established under sections 274 and 275; and

''(7) establish an interagency Trade Adjustment Assistance for Communities Working Group, consisting of the representatives of any Federal department or agency with responsibility for economic adjustment assistance, including the Department of Agriculture, the Department of Education, the Department of Labor, the Department of Housing and Urban Development, the Department of Health and Human Services, the Small Business Administration, the Department of the Treasury, the Department of Commerce, and any other Federal, State, or regional department or agency the Secretary determines necessary or appropriate.

"SEC. 273. CERTIFICATION AND NOTIFICATION.

''(a) CERTIFICATION.—Not later than 45 days after an event described in subsection (c)(1), the Secretary shall determine if a community described in subsection (b)(1) is negatively impacted by trade, and if a positive determination is made, shall certify the community for assistance under this chapter.

''(b) DETERMINATION THAT COMMUNITY IS ELIGIBLE.—

''(1) COMMUNITY DESCRIBED.—A community described in this paragraph means a community with respect to which on or after October 1, 2005—

''(A) the Secretary of Labor certifies a group of workers (or their authorized representative) in the community as eligible for assistance pursuant to section 223;

''(B) the Secretary of Commerce certifies a firm located in the community as eligible for adjustment assistance under section 251;

''(C) the Secretary of Agriculture certifies a group of agricultural commodity producers (or their authorized representative) in the community as eligible for adjustment assistance under section 293;

''(D) an affected domestic producer is located in the community; or

''(E) the Secretary determines that a significant number of fishermen in the community is negatively impacted by trade.

''(2) NEGATIVELY IMPACTED BY TRADE.—The Secretary shall determine that a community is negatively impacted by trade, after taking into consideration—

''(A) the number of jobs affected compared to the size of the workforce in the community;

''(B) the severity of the rates of unemployment in the community and the duration of the unemployment in the community;

''(C) the income levels and the extent of underemployment in the community;

''(D) the outmigration of population from the community and the extent to which the outmigration is causing economic injury in the community; and

''(E) the unique problems and needs of the community.

''(c) EVENTS DESCRIBED.—

''(1) IN GENERAL.—An event described in this paragraph means one of the following:

''(A) A notification described in paragraph (2).

''(B) A certification of a firm under section 251.

''(C) A finding under the Antidumping Act, 1921, or an antidumping or countervailing duty order issued under title VII of the Tariff Act of 1930.

''(D) A determination by the Secretary that a significant number of fishermen in a community have been negatively impacted by trade.

''(2) NOTIFICATION.—The Secretary of Labor, immediately upon making a determination that a group of workers is eligible for trade adjustment assistance under section 223, (or the Secretary of Agriculture, immediately upon making a determination that a group of agricultural commodity producers is eligible for adjustment assistance under section 293, as the case may be) shall notify the Secretary of the determination.

''(d) NOTIFICATION TO ELIGIBLE COMMUNITIES.—Immediately upon certification by the Secretary that a community is eligible for assistance under subsection (b), the Secretary shall notify the community—

''(1) of the determination under subsection (b);

''(2) of the provisions of this chapter;

''(3) how to access the clearinghouse established by the Department of Commerce regarding available economic assistance;

''(4) how to obtain technical assistance provided under section 272(c)(3); and

''(5) how to obtain grants, tax credits, low income loans, and other appropriate economic assistance.

"SEC. 274. STRATEGIC PLANS.

''(a) IN GENERAL.—An eligible community may develop a strategic plan for community economic adjustment and diversification.

''(b) REQUIREMENTS FOR STRATEGIC PLAN.—A strategic plan shall contain, at a minimum, the following:

''(1) A description and justification of the capacity for economic adjustment, including the method of financing to be used.

''(2) A description of the commitment of the community to the strategic plan over the long term and the participation and input of groups affected by economic dislocation.

''(3) A description of the projects to be undertaken by the eligible community.

''(4) A description of how the plan and the projects to be undertaken by the eligible community will lead to job creation and job retention in the community.

''(5) A description of how the plan will achieve economic adjustment and diversification.

''(6) A description of how the plan and the projects will contribute to establishing or maintaining a level of public services necessary to attract and retain economic investment.

''(7) A description and justification for the cost and timing of proposed basic and advanced infrastructure improvements in the eligible community.

''(8) A description of how the plan will address the occupational and workforce conditions in the eligible community.

''(9) A description of the educational programs available for workforce training and future employment needs.

''(10) A description of how the plan will adapt to changing markets and business cycles.

''(11) A description and justification for the cost and timing of the total funds required by the community for economic assistance.

''(12) A graduation strategy through which the eligible community demonstrates that the community will terminate the need for Federal assistance.

''(c) GRANTS TO DEVELOP STRATEGIC PLANS.—The Secretary, upon receipt of an application from an eligible community, may award a grant to that community to be used to develop the strategic plan.

''(d) SUBMISSION OF PLAN.—A strategic plan developed under subsection (a) shall be submitted to the Secretary for evaluation and approval.

"SEC. 275. GRANTS FOR ECONOMIC DEVELOPMENT.

''(a) IN GENERAL.—The Secretary, upon approval of a strategic plan from an eligible

community, may award a grant to that community to carry out any project or program that is certified by the Secretary to be included in the strategic plan approved under section 274(d), or consistent with that plan.

''(b) ADDITIONAL GRANTS.—

''(1) IN GENERAL.—Subject to paragraph (2), in order to assist eligible communities to obtain funds under Federal grant programs, other than the grants provided for in section 274(c) or subsection (a), the Secretary may, on the application of an eligible community, make a supplemental grant to the community if—

''(A) the purpose of the grant program from which the grant is made is to provide technical or other assistance for planning, constructing, or equipping public works facilities or to provide assistance for public service projects; and

''(B) the grant is one for which the community is eligible except for the community's inability to meet the non-Federal share requirements of the grant program.

''(2) USE AS NON-FEDERAL SHARE.—A supplemental grant made under this subsection may be used to provide the non-Federal share of a project, unless the total Federal contribution to the project for which the grant is being made exceeds 80 percent and that excess is not permitted by law.

''(c) RURAL COMMUNITY PREFERENCE.—The Secretary shall develop guidelines to ensure that rural communities receive preference in the allocation of resources.

''SEC. 276. GENERAL PROVISIONS.

''(a) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this chapter. Before implementing any regulation or guideline proposed by the Secretary with respect to this chapter, the Secretary shall submit the regulation or guideline to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives for approval.

''(b) SUPPLEMENT NOT SUPPLANT.—Funds appropriated under this chapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide economic development assistance for communities.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $100,000,000 for each of fiscal years 2005 through 2008, to carry out this chapter. Amounts appropriated pursuant to this subsection shall remain available until expended.''.

SEC. 344. CONFORMING AMENDMENTS.

(a) TERMINATION.—Section 285(b) of the Trade Act of 1974 (19 U.S.C. 2271 note) is amended by adding at the end the following new paragraph:

''(3) ASSISTANCE FOR COMMUNITIES.—Technical assistance and other payments may not be provided under chapter 4 after September 30, 2008.''.

(b) TABLE OF CONTENTS.—The table of contents for title II of the Trade Act of 1974 is amended by striking the items relating to chapter 4 of title II and inserting after the items relating to chapter 3 the following new items:

''CHAPTER 4—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

''Sec. 271. Definitions.
''Sec. 272. Community Trade Adjustment Assistance Program.
''Sec. 273. Certification and notification.
''Sec. 274. Strategic plans.
''Sec. 275. Grants for economic development.
''Sec. 276. General provisions.''.

(c) JUDICIAL REVIEW.—Section 284(a) of the Trade Act of 1974 (19 U.S.C. 2395(a)) is amended by striking ''section 271'' and inserting ''section 273''.

SEC. 345. EFFECTIVE DATE.

The amendments made by this chapter shall take effect on the date of enactment of this Act.

CHAPTER 3—OFFICE OF TRADE ADJUSTMENT ASSISTANCE

SEC. 351. SHORT TITLE.

This chapter may be cited as the ''Trade Adjustment Assistance for Firms Reorganization Act''.

SEC. 352. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.) is amended by inserting after section 255 the following new section:

''SEC. 255A. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

''(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Trade Adjustment Assistance for Firms Reorganization Act, there shall be established in the International Trade Administration of the Department of Commerce an Office of Trade Adjustment Assistance.

''(b) PERSONNEL.—The Office shall be headed by a Director, and shall have such staff as may be necessary to carry out the responsibilities of the Secretary of Commerce described in this chapter.

''(c) FUNCTIONS.—The Office shall assist the Secretary of Commerce in carrying out the Secretary's responsibilities under this chapter.''.

(b) CONFORMING AMENDMENT.—The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 255, the following new item:

''Sec. 255A. Office of Trade Adjustment Assistance.''.

SEC. 353. EFFECTIVE DATE.

The amendments made by this chapter shall take effect on the date of enactment of this Act.

CHAPTER 4—IMPROVEMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS

SEC. 361. IMPROVEMENT OF THE AFFORDABILITY OF THE CREDIT.

(a) IMPROVEMENT OF AFFORDABILITY.—

(1) IN GENERAL.—Section 35(a) of the Internal Revenue Code of 1986 (relating to credit for health insurance costs of eligible individuals) is amended to read as follows:

''(a) AMOUNT OF CREDIT.—

''(1) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by subtitle A an amount equal to the excess of—

''(A) the amount paid by the taxpayer for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months beginning in the taxable year, over

''(B) the amount described in paragraph (2).

''(2) AMOUNT DESCRIBED.—For purposes of paragraph (1), the amount described in this paragraph is the lesser of—

''(A) the amount equal to 20 percent of the amount determined under paragraph (1)(A) for the taxable year, or

''(B) the amount equal to 5 percent of the taxpayer's certified income (as determined under subsection (g)(9)) for such taxable year.''.

(2) CONFORMING AMENDMENT.—Section 7527(b) of such Code (relating to advance payment of credit for health insurance costs of eligible individuals) is amended by striking ''65 percent of the amount'' and all that follows through the period at the end and inserting ''the amount determined under section 35(a)(1) for such taxable year.''.

(b) DETERMINATION OF CERTIFIED INCOME.—Section 35(g) of such Code (relating to special rules), is amended—

(1) by redesignating paragraph (9) as paragraph (10), and

(2) by inserting after paragraph (8) the following new paragraph:

''(9) CERTIFIED INCOME.—

''(A) IN GENERAL.—The Secretary shall enter into agreements with States to determine an individual's certified income for purposes of subsection (a)(2)(B) for any taxable year.

''(B) REQUIREMENTS.—An agreement under subparagraph (A) with a State shall—

''(i) permit an individual to complete an application for certification of income for a taxable year (in such form and manner as the Secretary shall determine) and to submit the application to the State,

''(ii) require the State to determine the individual's income for the taxable year on the basis of the individual's monthly family income as of the month preceding the month in which the application is submitted, and

''(iii) require the State to issue a certification of income to the individual upon receipt of an application under clause (i), which shall apply for purposes of determining the taxpayer's certified income for purposes of subsection (a)(2)(B) for the taxable year unless the State determines upon completion of the processing of the application that the certification is erroneous.

''(C) NOTIFICATION OF CHANGE IN INCOME.—An individual issued a certification of income shall notify the State of any substantial change in income that applies for at least 60 days and the taxpayer's certified income for the taxable year shall be adjusted accordingly. An individual who fails to so notify the State shall remit the difference (if any) between the amount described in subsection (a)(2) for the taxable year and such amount which would have been described under such subsection for such taxable year if the notification had been made as an addition to tax, plus interest at the underpayment rate established under section 6621.''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 2004.

SEC. 362. OFFERING OF FEDERAL FALLBACK COVERAGE.

(a) PROVISION OF FALLBACK COVERAGE.—

(1) IN GENERAL.—The Director of the Office of Personnel Management jointly with the Secretary of the Treasury shall establish a program under which eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) are offered enrollment under health benefit plans that are made available under FEHBP.

(2) TERMS AND CONDITIONS.—The terms and conditions of health benefits plans offered under paragraph (1) shall be the same as the terms and coverage offered under FEHBP, except that the percentage of the premium charged to eligible individuals (as so defined) for such health benefit plans shall be equal to the percentage that an employee would be required to contribute for coverage under FEHBP.

(3) STUDY.—The Director of the Office of Personnel Management jointly with the Secretary of the Treasury shall conduct a study of the impact of the offering of health benefit plans under this subsection on the terms and conditions, including premiums, for health benefit plans offered under FEHBP and shall submit to Congress, not later than 2 years after the date of the enactment of this Act, a report on such study. Such report may contain such recommendations regarding the establishment of separate risk pools for individuals covered under FEHBP and eligible individuals covered under health benefit plans offered under paragraph (1) as may

be appropriate to protect the interests of individuals covered under FEHBP and alleviate any adverse impact on FEHBP that may result from the offering of such health benefit plans.

(4) FEHBP DEFINED.—In this section, the term ''FEHBP'' means the Federal Employees Health Benefits Program offered under chapter 89 of title 5, United States Code.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 35(e) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

''(K) Coverage under a health benefits plan offered under section 362(a)(1) of the Fair Wage, Competition, and Investment Act of 2005.''.

(2) Section 173(f)(2)(A) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(2)(A)) is amended by adding at the end the following new clause:

''(xi) Coverage under a health benefits plan offered under section 362(a)(1) of the Fair Wage, Competition, and Investment Act of 2005.''.

SEC. 363. CLARIFICATION OF ELIGIBILITY OF SPOUSE OF CERTAIN INDIVIDUALS ENTITLED TO MEDICARE.

(a) IN GENERAL.—Subsection (b) of section 35 of the Internal Revenue Code of 1986 (defining eligible coverage month) is amended by adding at the end the following:

''(3) SPECIAL RULE FOR SPOUSE OF INDIVIDUAL ENTITLED TO MEDICARE.—Any month which would be an eligible coverage month with respect to a taxpayer (determined without regard to subsection (f)(2)(A)) shall be an eligible coverage month for any spouse of such taxpayer.''.

(b) CONFORMING AMENDMENT.—Section 173(f)(5)(A)(i) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(5)(A)(i)) is amended by inserting ''(including with respect to any month for which the eligible individual would have been treated as such but for the application of paragraph (7)(B)(i))'' before the comma.

Subtitle D—Sense of the Senate on Free Trade Agreements

SEC. 371. SENSE OF THE SENATE ON FREE TRADE AGREEMENTS.

(a) FINDINGS.—The Senate makes the following findings:

(1) The United States is participating in the Doha Round of World Trade Organization (''WTO'') negotiations, which seeks to lower trade barriers for all members of the WTO.

(2) In addition to participating in the Doha Round of WTO negotiations, the United States is negotiating bilateral free trade agreements with 20 countries.

(3) Only 1 of those 20 countries is among the top 30 trading partners of the United States.

(4) During the debate on the legislation that was enacted as the Trade Act of 2002 (Public Law 107–210; 116 Stat. 933), a representative of the President argued that ''[i]ncreased trade will help our workers, farmers, businesses, and economy by enhancing employment opportunities, opening more markets to American goods and services, and increasing choices and lowering costs for consumers''.

(5) During that debate and on other occasions, the President and individuals in the Executive Branch of the United States have repeatedly argued that increased trade means an increase in the number of jobs in the United States and a higher standard of living for people in the United States.

(6) The President and individuals in the Executive Branch of the United States have also argued that trade expands markets for United States goods and services, creates higher-paying jobs in the United States, and invigorates local communities and their economies.

(7) Trade agreements between the United States and countries with small economies have little impact on creating jobs in the United States or a higher standard of living for people in the United States.

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

(1) the trade policy of the United States should focus on creating more jobs in the United States and a higher standard of living for people in the United States; and

(2) to best accomplish these goals, the United States should focus its efforts on trade negotiations occurring at the WTO and, when negotiating trade agreements on a bilateral basis, focus on agreements with countries that have large economies that will provide meaningful export opportunities for United States farmers, workers, and businesses.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY (for himself, Mr. KOHL, Mr. HATCH, Mr. CARPER, Mr. FRIST, Mr. CHAFEE, Mr. DODD, Mrs. FEINSTEIN, Mr. HAGEL, Mr. KYL, Ms. LANDRIEU, Mrs. LINCOLN, Mr. LUGAR, Mr. MCCONNELL, Mr. SCHUMER, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. LOTT, Mr. ALEXANDER, Ms. SNOWE, Mr. SESSIONS, Mr. DEMINT, Mr. LIEBERMAN, Mr. MARTINEZ, and Mr. ENSIGN):

S. 5. A bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to join Senators GRASSLEY, HATCH, CARPER, and many others in introducing the Class Action Fairness Act of 2005. This legislation addresses the continuing problems in class action litigation, particularly unfair and abusive settlements that shortchange consumers across America.

The time for this bill has come. We have worked together on a bipartisan basis on this legislation in past Congresses. In fact, versions of this bill have passed the House of Representatives on two occasions in the past. In the Senate, we passed this bill through the Judiciary Committee in each of the last two Congresses and came within one vote of gaining cloture on the bill.

We worked successfully to substantially improve this bill during the last Congress. As a result of the interest of Senators FEINSTEIN, DODD, SCHUMER and LANDRIEU, we have changed the bill in important ways. Now, only cases that are truly national in scope will be tried primarily in the Federal courts. Cases that primarily involve people from only one State and that interpret State law will remain in State court. These changes will ensure that class action cases are handled efficiently and in the appropriate venues and that no case that has merit will be turned away.

We have a simple story to tell. Consumers are too often getting the short end of the stick in class action cases, recovering coupons or pocket change, while their lawyers reap millions. Many of these complex class action cases proceed exactly as we would hope. Injured parties, represented by strong advocates, get their day in court or reach a positive settlement that is good for the parties and handled well by their attorney.

Unfortunately, this is not how it always works. Rather, more and more frequently, some are taking advantage of the system and, as a result, consumers are getting the short end of the stick, recovering coupons or pocket change, while the real reward is going to others. The Washington Post put it clearly, ''no portion of the American civil justice system is more of a mess than the world of class actions.''

Our remedy is straightforward. Consumers deserve notices that are written in plain English so they can understand their rights and responsibilities in the lawsuit. Too many of the class action notices are designed to be impossible to comprehend. Further, if the cases are settled, the notice to the class members must clearly describe the terms of the settlement, the benefits to each plaintiff and a summary of the attorneys' fees in the case and how they were calculated. We are grateful that the Federal Judicial Conference has adopted our idea and has already begun to improve the notices provided to class action plaintiffs.

Second, State attorneys general should be notified of proposed class action settlements to stop abusive cases if they want. This encourages a neutral third party to weigh in on whether a settlement is fair and to alert the court if they do not believe that it is. The Attorney General review is an extra layer of security for the plaintiffs and is designed to ensure that abusive settlements are not approved without a critical review by one or more experts.

Third, a class action consumer bill of rights will help limit coupon or other unfair settlements.

Finally, we allow many class action lawsuits to be removed to Federal court. This is only common sense. These are national cases affecting consumers in 50 States. If the court rules were being drafted today, these are exactly the types of cases which we would want and expect to be tried in Federal court.

Stories of nightmare class action settlements that affect consumers around the country are all too frequent. For example, a suit against Blockbuster video yielded dollar off coupons for future video rentals for the plaintiffs while their attorneys collected $9.25 million. In California State court, a class of 40 million consumers received $13 rebates on their next purchase of a computer or monitor—in other words they had to purchase hundreds of dollars more of the defendants' product to redeem the coupons. In essence, the

plaintiffs received nothing, while their attorneys took almost $6 million in legal fees. We could list many, many more examples, but let me discuss just one more case that is almost too strange to believe.

I am speaking about the Bank of Boston class action suit and the outrageous case of Martha Preston from Baraboo, WI. She was an unnamed class member of a class action lawsuit against her mortgage company that ended in a settlement. The plaintiffs' lawyers were supposed to represent her. Instead, the settlement that they negotiated for her was a bad joke. She received $4 and change in the lawsuit, while her attorneys pocketed $8 million.

Yet, the huge sums her attorneys received were not the worst of the story. Soon after receiving her $4, Ms. Preston discovered that her lawyers took $80, 20 times her recovery, from her escrow account to help pay their fees. Naturally shocked, she and the other plaintiffs sued the lawyers who quickly turned around and sued her in Alabama, a State she had never visited, for $25 million. Not only was she $75 poorer for her class action experience, but she also had to defend herself against a $25 million suit by the very people who took advantage of her in the first place.

No one can argue with a straight face that the class action process is not in serious need of reform.

Comprehensive studies support the anecdotes we have discussed. For example, a study on the class action problem by the Manhattan Institute demonstrates that class action cases are being brought disproportionately in a few counties where plaintiffs expect to be able to take advantage of lax certification rules.

The study focused on three county courts—Madison County, IL; Jefferson County, TX; and Palm Beach County, FL—that have seen a steep rise in class action filings over the last several years that seems disproportional to their populations. They found that rural Madison County, IL, ranked third nationwide, after Los Angeles County, CA, and Cook County, IL, in the estimated number of class actions filed each year, whereas rural Jefferson County and Palm Beach County ranked eighth and ninth, respectively. As plaintiff attorneys found that Madison County was a welcoming host, the number of class action suits filed there rose 1,850 percent between 1998 and 2000.

Another trend evident in the research was the use of ''cut-and-paste'' complaints in which plaintiffs'' attorneys file a number of suits against different defendants in the same industry challenging standard industry practices. For example, in one situation, six law firms filed nine nearly identical class actions in Madison County in the same week alleging that the automobile insurance industry is defrauding Americans in the way that they calculate claims rates for totaled vehicles.

The system is not working as intended and needs to be fixed. The way to fix it is to move more of these cases currently being brought in small State courts like Madison County, IL, to Federal court.

The Federal courts are better venues for class actions for a variety of reasons articulated clearly in a RAND study. RAND proposed three primary explanations why these cases should be in Federal court. ''First, federal judges scrutinize class action allegations more strictly than state judges, and deny certification in situations where a state judge might grant it improperly. Second, state judges may not have adequate resources to oversee and manage class actions with a national scope. Finally, if a single judge is to be charged with deciding what law will apply in a multistate class action, it is more appropriate that this take place in federal court than in state court.''

We all know that class actions can result in significant and important benefits for class members and society, and that most class lawyers and most State courts are acting responsibly. Class actions have been used to desegregate racially divided schools, to obtain redress for victims of employment discrimination, and to compensate individuals exposed to toxic chemicals or defective products. Class actions increase access to our civil justice system because they enable people to pursue claims that collectively would otherwise be too expensive to litigate.

The difficulty in any effort to improve a basically good system is weeding out the abuses without causing undue damage. The legislation we propose attempts to do this.

Let me emphasize the limited scope of this legislation. We do not close the courthouse door to any class action. We do not require that State attorneys general do anything with the notice they receive. We do not deny reasonable fees for class lawyers. And we do not mandate that every class action be brought in Federal court. Instead, we simply promote closer and fairer scrutiny of class actions and class settlements.

Right now, people across the country can be dragged into lawsuits unaware of their rights and unarmed on the legal battlefield. What our bill does is give back to regular people their rights and representation. This measure may not stop all abuses, but it moves us forward. It will help ensure that unsuspecting people like Martha Preston don't get ripped off.

We believe this is a moderate approach to correct the worst abuses, while preserving the benefits of class actions. It is both pro-consumer and pro-defendant. We believe it will make a difference.

By Ms. COLLINS (for herself, Mr. CARPER, Mr. VOINOVICH, Mr. FEINGOLD, Mr. AKAKA, and Mr. LIEBERMAN):

S. 21. A bill to provide for homeland security grant coordination and simplification, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President I rise with my good friend Senator CARPER to offer the Homeland Security Grant Enhancement Act in order to streamline and strengthen the way we help our States, communities, and first responders protect our homeland.

Three years ago, the Senate spent nearly three months on the Homeland Security Act, yet the law contains virtually no guidance on how the Department is to assist State and local governments with their homeland security needs. In fact, the 187–page Homeland Security Act mentions the issue of grants to first responders in but a single paragraph. The decisions on how Federal dollars should be spent or how much money should be allocated to whom were left for another day. That day has come.

During the 108th Congress, Senator CARPER and I introduced similar legislation to more than double the proportion of homeland Security funding distributed based on risk, while also helping all States achieve a baseline level of preparedness and an ability to respond. The Senate Committee on Homeland Security and Governmental Affairs held three hearings at which first responders, State and local officials, and Secretary Ridge all testified that the grant distribution system needs fixing. The 9/11 Commission also urged that the system be changed. It is therefore time for Congress to finally address this critical issue.

The bill that we introduce today is identical to legislation that passed the Senate by voice-vote as an amendment to the Intelligence reform bill at the end of the last Congress.

That measure was supported by Senators from big States—like Michigan and Ohio—and small States like Maine, Delaware and Connecticut. The wide breadth of support in the Senate is indicative of the fact that this bill takes a balanced approach to homeland security funding.

It recognizes that threat-based funding is a critical part of homeland security funding. It also recognizes that first responders in every State and territory stand at the front lines of securing the homeland.

This legislation will also coordinate government-wide homeland security funding by promoting one-stop-shopping for homeland security funding opportunities. It would establish an information clearinghouse to assist first responders and State and local governments in accessing homeland security grant information and other resources within the new department. This clearinghouse will improve access to homeland security grant information, coordinate technical assistance for vulnerability and threat assessments, provide information regarding homeland security best practices, and compile information regarding homeland security equipment purchased with Federal funds.

Establishment of these programs will mean first responders can spend more time training to save lives and less-time filling out paper work. The inflexible structure of past homeland security funding, along with shifting federal requirements and increasing amounts of paperwork, poses a number of challenges to State and local governments as they attempt to provide these funds to first responders.

The legislation would provide greater flexibility in the use of those unspent funds. It would give the Department of Homeland Security flexibility to allow States, via a wavier from the Secretary, to use funds from one category, such as training, for another purpose, such as purchasing equipment.

The Senate Committee on Homeland Security and Governmental Affairs will act promptly to mark-up and report this important measure to establish a streamlined, efficient, and fair method for homeland security funds to get into the hands of first responders.

By Mr. STEVENS (for himself, Mr. INOUYE, Ms. SNOWE, and Mr. DODD):

S. 39. A bill to establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration; to the Committee on Commerce, Science, and Transportation.

Mr. STEVENS. Mr. President, I introduce today S. 39, the ''National Ocean Exploration Program Act'' to expand exploration and knowledge of our Nation's oceans. When I introduced this bill in the 108th Congress, Senator Hollings and Senator INOUYE were original co-sponsors. Senator Hollings has left this body, but he worked closely with Senator INOUYE and me on this bill and we thank him for his contributions to ocean policy. Senators SNOWE and DODD would like to be added as original co-sponsors of this bill.

Senator INOUYE and I introduce this legislation today in an effort to increase and coordinate research and exploration of our Nation's oceans. Alaska and Hawaii are uniquely dependent on the ocean for food, employment, recreation, and the delivery of goods. However, approximately 95 percent of the ocean floor remains unexplored, much of it located in the polar latitudes and the southern ocean. This legislation will advance ocean exploration and increase funding for greater research.

In its final report, the U.S. Commission on Ocean Policy recommended that the National Oceanic and Atmospheric Administration and the National Science Foundation lead an expanded National Ocean Exploration Program. This legislation will accomplish that goal.

The National Exploration Program expands ocean exploration. Through this program we will determine whether there are new marine substances with potential therapeutic benefits; study unique marine ecosystems, organisms and the geology of the world's oceans; and maximize ocean research by integrating multiple scientific disciplines in the ocean science community.

The program will focus on remote ocean research and exploration. Specifically, research will be conducted on hydrothermal vents communities and seamounts. Increased research in these areas, where organisms exist in highly toxic environments, should yield significant scientific and medical breakthroughs.

Decades ago I help Oscar Dyson, a great Alaska fisherman, secure a small grant to explore the North Pacific. With that grant he discovered a great number of marine species that are now considered vital to the North Pacific. It is my hope that the National Ocean Exploration Program Act will be the catalyst for that type of ocean exploration and discovery.

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

S. 39

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 ''National Ocean Exploration Program Act''.

SEC. 2. ESTABLISHMENT.

The Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, shall, in consultation with the National Science Foundation and other appropriate Federal agencies, establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration.

SEC. 3. PURPOSES.

The purposes of the program are the following:

(1) To explore the physical, biological, chemical, geological, archaeological, temporal, and other related characteristics of the oceans to benefit, inform, and inspire the American people.

(2) To create missions and scientific activities of discovery that will improve our understanding, appreciation, and stewardship of the unique marine ecosystems, organisms, chemistry, and geology of the world's oceans, and to enhance knowledge of submerged maritime historical and archaeological sites.

(3) To facilitate discovery of marine natural products from these ecosystems that may have potential beneficial uses, including those that may help combat disease or provide therapeutic benefits.

(4) To communicate such discoveries and knowledge to policymakers, regulators, researchers, educators, and interested non-governmental entities in order to support policy decisions and to spur additional scientific research and development.

(5) To maximize effectiveness by integrating multiple scientific disciplines, employing the diverse resources of the ocean science community, and making ocean exploration data and information available in a timely and consistent manner.

(6) To achieve heightened education, environmental literacy, public understanding and appreciation of the oceans.

SEC. 4. AUTHORITIES.

In carrying out the program the Administrator of the National Oceanic and Atmospheric Administration shall—

(1) conduct interdisciplinary exploration voyages or other scientific activities in conjunction with other Federal agencies or academic or educational institutions, to survey little known areas of the marine environment, inventory, observe, and assess living and nonliving marine resources, and report such findings;

(2) give priority attention to deep ocean regions, with a focus on surveying deep water marine systems that hold potential for important scientific and medical discoveries, such as hydrothermal vent communities and seamounts;

(3) conduct scientific voyages to locate, define, and document historic shipwrecks, submerged sites, and other ocean exploration activities that combine archaeology and oceanographic sciences;

(4) develop, in consultation with the National Science Foundation, a transparent process for reviewing and approving proposals for activities to be conducted under this program;

(5) enhance the technical capability of the United States marine science community by promoting the development of improved oceanographic research, communication, navigation, and data collection systems, as well as underwater platforms and sensors;

(6) conduct public education and outreach activities that improve the public understanding of ocean science, resources, and processes, in conjunction with relevant educational programs of the National Oceanic and Atmospheric Administration, the National Science Foundation, and other agencies;

(7) accept donations of property, data, and equipment to be applied for the purpose of exploring the oceans or increasing knowledge of the oceans; and

(8) establish an ocean exploration forum to encourage partnerships and promote communication among experts and other stakeholders in order to enhance the scientific and technical expertise and relevance of the national program.

SEC. 5. EXPLORATION TECHNOLOGY AND INFRASTRUCTURE TASK FORCE.

The National Oceanic and Atmospheric Administration, in coordination with the National Aeronautics and Space Administration, the U.S. Geological Survey, Office of Naval Research, and relevant governmental, non-governmental, academic, and other experts, shall convene an ocean technology and infrastructure task force to develop and implement a strategy—

(1) to facilitate transfer of new exploration technology to the program;

(2) to improve availability of communications infrastructure, including satellite capabilities, to the program;

(3) to develop an integrated, workable and comprehensive data management information processing system that will make information on unique and significant features obtained by the program available for research and management purposes; and

(4) to encourage cost-sharing partnerships with governmental and non-governmental entities that will assist in transferring exploration technology and technical expertise to the program.

SEC. 6. INTERAGENCY FINANCING.

The National Oceanic and Atmospheric Administration, the National Science Foundation, and other Federal agencies involved in the program, are authorized to participate in interagency financing and share, transfer, receive and spend funds appropriated to any federal participant the program for the purposes of carrying out any administrative or programmatic project or activity under this section. Funds may be transferred among such departments and agencies through a appropriate instrument that specifies the

goods, services, or space being acquired from another Federal participant and the costs of the same.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the National Oceanic and Atmospheric Administration to carry out the program—

(1) $45,000,000 for each of fiscal years 2006 through 2011; and

(2) $55,000,000 for each of fiscal years 2012 through 2017.

By Mr. NELSON of Florida (for himself, Mr. MARTINEZ, Mr. SESSIONS, and Mr. ALLEN):

S. 145. A bill to amend title 10, United States Code, to require the naval forces of the Navy to include not less than 12 operational aircraft carriers; to the Committee on Armed Services.

Mr. NELSON of Florida. Mr. President, I feel strongly that any reduction in the size of the Nation's carrier fleet is not in the best interest of national security. Therefore, I am introducing legislation to require the Navy to include not less than 12 operational aircraft carriers. I am pleased to be joined by my co-sponsors, Senator MARTINEZ, Senator ALLEN, and Senator SESSIONS.

America's aircraft carrier fleet has played and continues to play a critical role in the global war on terrorism. Carrier based strike, electronic warfare, and reconnaissance aircraft, and even more importantly, special operations forces have provided the most responsive and capable support throughout operations in the Gulf region. Nothing has changed in the strategic environment to suggest that America is more, or as secure with eleven carriers as we are with twelve. The operational tempo of our aircraft carriers has never been higher and it is hard to imagine that it will slow any time soon.

The range of strategic threats and opportunities that face the Nation at this moment in the war on terror does not support the idea that we can reduce our carrier fleet without creating significant and unavoidable risk to our global reach and sustainability. I urge my colleagues to join with us to ensure the Navy's global flexibility and striking power. Cutting our carrier fleet now increases strategic risk and reduces our combat power and capability, all for relatively small budgetary savings.

I look forward to working with Chairman WARNER and Senator LEVIN to gain the Armed Services Committee's approval of this legislation, and its passage by the full Senate. Identical legislation is being introduced in the House by Representative ANDER CRENSHAW, and I look forward to working with my colleagues in both houses to see that this vital national security legislation reaches the President's desk.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 145

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

SECTION 1. REQUIREMENT FOR 12 OPERATIONAL AIRCRAFT CARRIERS WITHIN NAVAL FORCES OF THE NAVY.

Section 5062 of title 10, United States Code, is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

''(b) The naval combat forces of the Navy shall include not less than 12 operational aircraft carriers. For purposes of this subsection, an operational aircraft carrier includes an aircraft carrier that is temporarily unavailable for worldwide deployment due to routine or scheduled maintenance or repair.''.

By Mr. INOUYE:

S. 146. A bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

Mr. INOUYE. Mr. President, many of you know of my continued support and advocacy on the importance of addressing the plight of Filipino World War II veterans. As an American, I believe the treatment of Filipino World War II veterans is bleak and shameful. The Philippines became a United States possession in 1898, when it was ceded by Spain, following the Spanish-American War. In 1934, the Congress enacted the Philippine Independence Act, Public Law 73–127, which provided a 10-year time frame for the independence of the Philippines. Between 1934 and final independence in 1946, the United States retained certain powers over the Philippines including the right to call military forces organized by the newly-formed Commonwealth government into the service of the United States Armed Forces.

The Commonwealth Army of the Philippines was called to serve with the United States Armed Forces in the Far East during World War II under President Roosevelt's July 26, 1941 military order. The Filipinos who served were entitled to full veterans' benefits by reason of their active service with our armed forces. Hundreds were wounded in battle and many hundreds more died in battle. Shortly after Japan's surrender, the Congress enacted the Armed Forces Voluntary Recruitment Act of 1945 for the purpose of sending Filipino troops to occupy enemy lands, and to oversee military installations at various overseas locations. These troops were authorized to receive pay and allowances for services performed throughout the Western Pacific. Although hostilities had ceased, wartime service of these troops continued as a matter of law until the end of 1946.

Despite all of their sacrifices, on February 18, 1946, the Congress passed the Rescission Act of 1946, now codified as Section 107 of Title 38 of the United States Code. The 1946 Act deemed that the service performed by these Filipino veterans would not be recognized as ''active service'' for the purpose of any U.S. law conferring ''rights, privileges, or benefits.'' Accordingly, Section 107 denied Filipino veterans access to health care, particularly for non-service-connected disabilities, and pension benefits. Section 107 also limited service-connected disability and death compensation for Filipino veterans to 50 percent of what their American counterparts receive.

On May 27, 1946, the Congress enacted the Second Supplemental Surplus Appropriations Rescission Act, which duplicated the language that had eliminated Filipino veterans' benefits under the First Rescission Act. Thus, Filipino veterans who fought in the service of the United States during World War II have been precluded from receiving most of the veterans' benefits that had been available to them before 1946, and that are available to all other veterans of our armed forces regardless of race, national origin, or citizenship status.

The Filipino Veterans Equity Act, which I introduce today, would restore the benefits due to these veterans by granting full recognition of service for the sacrifices they made during World War II. These benefits include veterans health care, service-connected disability compensation, non-service connected disability compensation, dependent indemnity compensation, death pension, and full burial benefits.

Throughout the years, I have sponsored several measures to rectify the lack of appreciation America has shown to these gallant men and women who stood in harm's way with our American soldiers and fought the common enemy during World War II. It is time that we as a Nation, recognize our long-standing history and friendship with the Philippines. Of the 120,000 that served in the Commonwealth Army during World War II, there are approximately 60,000 Filipino veterans currently residing in the United States and the Philippines. According to the Department of Veterans Affairs, the Filipino veteran population is expected to decrease to approximately 20,000 or roughly one-third of the current population by 2010.

Heroes should never be forgotten or ignored; let us not turn our backs on those who sacrificed so much. Let us instead work to repay all of these brave men for their sacrifices by providing them the veterans' benefits they deserve.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 146

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 ''Filipino Veterans Equity Act of 2005''.

SEC. 2. CERTAIN SERVICE IN THE ORGANIZED MILITARY FORCES OF THE PHILIPPINES AND THE PHILIPPINE SCOUTS DEEMED TO BE ACTIVE SERVICE.

(a) IN GENERAL.—Section 107 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''not'' after ''Army of the United States, shall''; and

(B) by striking '', except benefits under—'' and all that follows in that subsection and inserting a period;

(2) in subsection (b)—

(A) by striking ''not'' after ''Armed Forces Voluntary Recruitment Act of 1945 shall''; and

(B) by striking ''except—'' and all that follows in that subsection and inserting a period; and

(3) by striking subsections (c) and (d).

(b) CONFORMING AMENDMENTS.—(1) The heading of such section is amended to read as follows:

''§ 107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts''.

(2) The item relating to such section in the table of sections at the beginning of chapter 1 of such title is amended to read as follows:

''107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts.''.

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall take effect on January 1, 2005.

(b) APPLICABILITY.—No benefits shall accrue to any person for any period before the effective date of this Act by reason of the amendments made by this Act.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 147. A bill to express the policy of the United State regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity; to the Committee on Indian Affairs.

Mr. AKAKA. Mr. President, I rise today with the senior Senator from Hawaii to introduce the Native Hawaiian Government Reorganization Act of 2005. This is bipartisan legislation that we have been working on with our colleagues in Hawaii's Congressional delegation for the past 6 years. During the past 2 years, we have worked closely with Hawaii's Governor, Linda Lingle, Hawaii's first Republican governor in 40 years, to get this legislation enacted. We have also worked closely with the Hawaii State legislature which has passed two resolutions unanimously in support of Federal Recognition for Native Hawaiians. I mention this, to underscore the fact that this is bipartisan legislation.

The Native Hawaiian Government Reorganization Act of 2005 does three things:

(1) It authorizes the Office of Native Hawaiian Relations in the Department of the Interior to serve as a liaison between Native Hawaiians and the federal government. Funding for Native Hawaiian programs currently administered by the Departments of Health and Human Services, HHS, Education, or Housing and Urban Development, HUD, would continue to be administered by those agencies.

(2) It establishes the Native Hawaiian Interagency Coordinating Group—an interagency group to be composed of federal officials from agencies which administer Native Hawaiian programs and services. Many are not aware that Native Hawaiians have their own programs which are currently administered by different agencies in the Federal Government. This group would encourage communication and collaboration between the Federal agencies working with Native Hawaiians.

(3) It establishes a process for the reorganization of the Native Hawaiian governing entity. While Congress has traditionally treated Native Hawaiians in a manner parallel to American Indians and Alaska Natives, the formal policy of self-governance and self determination has not been extended to Native Hawaiians. The bill establishes a process for the reorganization of the Native Hawaiian governing entity for the purposes of Federal recognition. The bill itself does not extend Federal recognition—it authorizes the process for Federal recognition.

Following recognition of the Native Hawaiian government, negotiations will ensue between the Native Hawaiian governing entity and Federal and State Governments over matters such as the transfer of lands and natural resources; the exercise of governmental authority over any transferred lands, natural resources and other assets, including land use; the exercise of civil and criminal jurisdiction, and the delegation of governmental powers and authorities to the Native Hawaiian governing entity by the Federal and State Governments. This reflects the cooperation between the Federal and State governments and the Native Hawaiian governing entity. It also reflects a new paradigm where recognition provides the governing entity with a seat at the table to negotiate such matters.

The bill will not diminish funding for American Indians and Alaska Natives because Native Hawaiians have their own education, health and housing programs which have been separately funded since their creation in 1988.

Finally, the bill does not authorize gaming in Hawaii.

Some have characterized this bill as race-based legislation. As indigenous peoples, Native Hawaiians never relinquished their inherent rights to sovereignty. We were a government that was overthrown. While the history of the Native Hawaiian government ended in 1893 with great emotion and despair, inspired by the dignity and grace of Queen Liliuokalani, Native Hawaiians have preserved their culture, tradition, subsistence rights, language, and distinct communities. We have tried to hold on to our homeland. Hawaii, for us, is our homeland.

I am Native Hawaiian and Chinese. I appreciate the culture and ethnicity of my ancestors. I can trace my Chinese roots back to Fukien Province in China. My Native Hawaiian roots, however, are in Hawaii because it is our Hawaiian homeland.

My Chinese ancestors came to Hawaii to build a better life. My Native Hawaiian grandparents and parents had America come into their homeland and forever change their lives. This is a profound difference.

I am proud to be an American, and I am proud to have served my country in the military. As long as Hawaii is a part of the United States, however, I believe the United States must fulfill its responsibility to Hawaii's indigenous peoples. I believe it is imperative to clarify the existing legal and political relationship between the United States and Native Hawaiians by providing Native Hawaiians with Federal recognition for the purposes of a government-to-government relationship. Therefore, because this legislation is based on the political and legal relationship between the United States and its indigenous peoples, which has been upheld for many, many years, by the United States Supreme Court, based on the Indian Commerce Clause, I strenuously disagree with the mischaracterization of this legislation as race-based.

Why is this bill so important? This bill is critical for the people of Hawaii because of the monumental step forward it provides for Hawaii's indigenous peoples. As many of my colleagues know, the Kingdom of Hawaii was overthrown in 1893 with the assistance of agents from the United States. In 1993, we enacted Public Law 103–150, commonly referred to as the Apology Resolution, which acknowledged the illegal overthrow of the Kingdom of Hawaii and the deprivation of the rights of Native Hawaiians to self determination. The Apology Resolution committed the United States to acknowledge the ramifications of the overthrow in order to provide a proper foundation of reconciliation between the United States and the Native Hawaiian people.

This bill provides a step forward in the process of reconciliation. The bill establishes the structure for Native Hawaiians and non-Native Hawaiians to discuss longstanding issues resulting from the overthrow of the Kingdom of Hawaii. The structure is the negotiation process between the federally recognized Native Hawaiian government and the Federal and State governments that I referred to earlier in my statement.

This discussion has been assiduously avoided because no one has known how to address or deal with the emotions that are involved when these matters are discussed. There has been no structured process. Instead, there has been fear as to what the discussion would entail, causing people to avoid and shirk the issues. Such behavior has led

to high levels of anger and frustration as well as misunderstanding between Native Hawaiians and non-Native Hawaiians.

As a young child, I was discouraged from speaking Hawaiian because I was told that I needed to succeed in the Western world. My parents witnessed the overthrow and lived during a time when all things Hawaiian, including language, which they both spoke fluently, hula, custom, and tradition, were viewed unfavorably and discouraged. I, therefore, was discouraged from speaking the language and practicing Hawaiian customs and tradition. My experience mirrors that of my generation of Hawaiians.

My generation learned to accept what was ingrained into us by our parents, and while we were concerned about the longstanding issues resulting from the overthrow dealing with political status and lands, we were told not to ''make waves'' by addressing these matters. My children, however, have had the advantage of growing up during the Hawaiian renaissance, a period of revival for Hawaiian language, custom, and tradition. My grandchildren, benefitting from this revival, can speak Hawaiian and know so much about our history.

It is this generation, however, that is growing impatient with the lack of progress in efforts to resolve longstanding issues. It is this generation that does not understand why we have not discussed these matters. It is this generation that cannot believe that we, as Native Hawaiians, have let the situation continue for 110 years.

It is an active minority within this generation, spurred by frustration and sadness, that embraces independence from the United States.

It is for this generation that I bring this bill forward to ensure that there is a structured process to address these issues.

My point is that Hawaii's people, both Native Hawaiians and non-Native Hawaiians, are no longer willing to pretend that the longstanding issues resulting from the overthrow do not exist. We need the structured process that this bill provides, first in reorganizing the Native Hawaiian governing entity, and second by providing that entity with the opportunity to negotiate and resolve issues with the Federal and State governments to alleviate the growing mistrust, misunderstanding, anger, and frustration about these matters in Hawaii. This can only be done through a government-to-government relationship.

This bill is of significant importance in Hawaii. It has no impact on any of the other states. Hawaii's entire Congressional delegation supports this legislation. Our Governor, the first Republican to be elected in 40 years, supports this legislation. Indeed, it is her Number One Federal priority. The Hawaii State Legislature supports this legislation. And most importantly, a clear majority of the Native Hawaiian people and the people of Hawaii support this legislation.

I ask you to stand with me and my esteemed friend, Hawaii's revered senior Senator, our two House members, our Governor, the Hawaii State legislature, and the people of Hawaii to enact this critical measure for my state.

I ask unanimous consent that the text of my bill be printed in the RECORD.

Mr. AKAKA. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 147

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 ''Native Hawaiian Government Reorganization Act of 2005''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States;

(2) Native Hawaiians, the native people of the Hawaiian archipelago that is now part of the United States, are indigenous, native people of the United States;

(3) the United States has a special political and legal responsibility to promote the welfare of the native people of the United States, including Native Hawaiians;

(4) under the treaty making power of the United States, Congress exercised its constitutional authority to confirm treaties between the United States and the Kingdom of Hawaii, and from 1826 until 1893, the United States—

(A) recognized the sovereignty of the Kingdom of Hawaii;

(B) accorded full diplomatic recognition to the Kingdom of Hawaii; and

(C) entered into treaties and conventions with the Kingdom of Hawaii to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

(5) pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside approximately 203,500 acres of land to address the conditions of Native Hawaiians in the Federal territory that later became the State of Hawaii;

(6) by setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii;

(7) approximately 6,800 Native Hawaiian families reside on the Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Hawaiian Home Lands are on a waiting list to receive assignments of Hawaiian Home Lands;

(8)(A) in 1959, as part of the compact with the United States admitting Hawaii into the Union, Congress established a public trust (commonly known as the ''ceded lands trust''), for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians;

(B) the public trust consists of lands, including submerged lands, natural resources, and the revenues derived from the lands; and

(C) the assets of this public trust have never been completely inventoried or segregated;

(9) Native Hawaiians have continuously sought access to the ceded lands in order to establish and maintain native settlements and distinct native communities throughout the State;

(10) the Hawaiian Home Lands and other ceded lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival and economic self-sufficiency of the Native Hawaiian people;

(11) Native Hawaiians continue to maintain other distinctly native areas in Hawaii;

(12) on November 23, 1993, Public Law 103–150 (107 Stat. 1510) (commonly known as the ''Apology Resolution'') was enacted into law, extending an apology on behalf of the United States to the native people of Hawaii for the United States' role in the overthrow of the Kingdom of Hawaii;

(13) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through the Kingdom of Hawaii or through a plebiscite or referendum;

(14) the Apology Resolution expresses the commitment of Congress and the President—

(A) to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii;

(B) to support reconciliation efforts between the United States and Native Hawaiians; and

(C) to consult with Native Hawaiians on the reconciliation process as called for in the Apology Resolution;

(15) despite the overthrow of the government of the Kingdom of Hawaii, Native Hawaiians have continued to maintain their separate identity as a distinct native community through cultural, social, and political institutions, and to give expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency;

(16) Native Hawaiians have also given expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency—

(A) through the provision of governmental services to Native Hawaiians, including the provision of—

(i) health care services;

(ii) educational programs;

(iii) employment and training programs;

(iv) economic development assistance programs;

(v) children's services;

(vi) conservation programs;

(vii) fish and wildlife protection;

(viii) agricultural programs;

(ix) native language immersion programs;

(x) native language immersion schools from kindergarten through high school;

(xi) college and master's degree programs in native language immersion instruction;

(xii) traditional justice programs, and

(B) by continuing their efforts to enhance Native Hawaiian self-determination and local control;

(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources;

(18) the Native Hawaiian people wish to preserve, develop, and transmit to future generations of Native Hawaiians their lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, to control

and manage their own lands, including ceded lands, and to achieve greater self-determination over their own affairs;

(19) this Act provides a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct, indigenous, native community to reorganize a Native Hawaiian governing entity for the purpose of giving expression to their rights as native people to self-determination and self-governance;

(20) Congress—

(A) has declared that the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) has identified Native Hawaiians as a distinct group of indigenous, native people of the United States within the scope of its authority under the Constitution, and has enacted scores of statutes on their behalf; and

(C) has delegated broad authority to the State of Hawaii to administer some of the United States' responsibilities as they relate to the Native Hawaiian people and their lands;

(21) the United States has recognized and reaffirmed the special political and legal relationship with the Native Hawaiian people through the enactment of the Act entitled, ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (Public Law 86–3; 73 Stat. 4), by—

(A) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held as a public trust for 5 purposes, 1 of which is for the betterment of the conditions of Native Hawaiians; and

(B) transferring the United States' responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands that comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act;

(22) the United States has continually recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, indigenous, native people who exercised sovereignty over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

(C) the United States extends services to Native Hawaiians because of their unique status as the indigenous, native people of a once-sovereign nation with whom the United States has a political and legal relationship; and

(D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States; and

(23) the State of Hawaii supports the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States as evidenced by 2 unanimous resolutions enacted by the Hawaii State Legislature in the 2000 and 2001 sessions of the Legislature and by the testimony of the Governor of the State of Hawaii before the Committee on Indian Affairs of the Senate on February 25, 2003.

SEC. 3. DEFINITIONS.

In this Act:

(1) ABORIGINAL, INDIGENOUS, NATIVE PEOPLE.—The term ''aboriginal, indigenous, native people'' means people whom Congress has recognized as the original inhabitants of the lands that later became part of the United States and who exercised sovereignty in the areas that later became part of the United States.

(2) ADULT MEMBER.—The term ''adult member'' means a Native Hawaiian who has attained the age of 18 and who elects to participate in the reorganization of the Native Hawaiian governing entity.

(3) APOLOGY RESOLUTION.—The term ''Apology Resolution'' means Public Law 103–150, (107 Stat. 1510), a Joint Resolution extending an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893, overthrow of the Kingdom of Hawaii.

(4) COMMISSION.—The term ''commission'' means the Commission established under section 7(b) to provide for the certification that those adult members of the Native Hawaiian community listed on the roll meet the definition of Native Hawaiian set forth in paragraph (8).

(5) COUNCIL.—The term ''council'' means the Native Hawaiian Interim Governing Council established under section 7(c)(2).

(6) INDIGENOUS, NATIVE PEOPLE.—The term ''indigenous, native people'' means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(7) INTERAGENCY COORDINATING GROUP.—The term ''Interagency Coordinating Group'' means the Native Hawaiian Interagency Coordinating Group established under section 6.

(8) NATIVE HAWAIIAN.—For the purpose of establishing the roll authorized under section 7(c)(1) and before the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity, the term ''Native Hawaiian'' means—

(A) an individual who is one of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who—

(i) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and

(ii) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(B) an individual who is one of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or a direct lineal descendant of that individual.

(9) NATIVE HAWAIIAN GOVERNING ENTITY.—The term ''Native Hawaiian Governing Entity'' means the governing entity organized by the Native Hawaiian people pursuant to this Act.

(10) OFFICE.—The term ''Office'' means the United States Office for Native Hawaiian Relations established by section 5(a).

(11) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 4. UNITED STATES POLICY AND PURPOSE.

(a) POLICY.—The United States reaffirms that—

(1) Native Hawaiians are a unique and distinct, indigenous, native people with whom the United States has a special political and legal relationship;

(2) the United States has a special political and legal relationship with the Native Hawaiian people which includes promoting the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution, including but not limited to Article I, section 8, clause 3, to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of—

(A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);

(B) the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (Public Law 86–3, 73 Stat. 4); and

(C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

(4) Native Hawaiians have—

(A) an inherent right to autonomy in their internal affairs;

(B) an inherent right of self-determination and self-governance;

(C) the right to reorganize a Native Hawaiian governing entity; and

(D) the right to become economically self-sufficient; and

(5) the United States shall continue to engage in a process of reconciliation and political relations with the Native Hawaiian people.

(b) PURPOSE.—The purpose of this Act is to provide a process for the reorganization of the Native Hawaiian governing entity and the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, the United States Office for Native Hawaiian Relations.

(b) DUTIES.—The Office shall—

(1) continue the process of reconciliation with the Native Hawaiian people in furtherance of the Apology Resolution;

(2) upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States, effectuate and coordinate the special political and legal relationship between the Native Hawaiian governing entity and the United States through the Secretary, and with all other Federal agencies;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity by providing timely notice to, and consulting with, the Native Hawaiian people and the Native Hawaiian governing entity before taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

(4) consult with the Interagency Coordinating Group, other Federal agencies, the Governor of the State of Hawaii and relevant agencies of the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) prepare and submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian governing entity and providing recommendations for any necessary changes to Federal law or regulations promulgated under the authority of Federal law.

SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.

(a) ESTABLISHMENT.—In recognition that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the ''Native Hawaiian Interagency Coordinating Group''.

(b) COMPOSITION.—The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from—

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact Native Hawaiian resources, rights, or lands; and

(2) the Office.

(c) LEAD AGENCY.—

(1) IN GENERAL.—The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group.

(2) MEETINGS.—The Secretary shall convene meetings of the Interagency Coordinating Group.

(d) DUTIES.—The Interagency Coordinating Group shall—

(1) coordinate Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government that may significantly or uniquely affect Native Hawaiian resources, rights, or lands;

(2) ensure that each Federal agency develops a policy on consultation with the Native Hawaiian people, and upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States, consultation with the Native Hawaiian governing entity; and

(3) ensure the participation of each Federal agency in the development of the report to Congress authorized in section 5(b)(5).

SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY AND THE REAFFIRMATION OF THE POLITICAL AND LEGAL RELATIONSHIP BETWEEN THE UNITED STATES AND THE NATIVE HAWAIIAN GOVERNING ENTITY.

(a) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.—The right of the Native Hawaiian people to reorganize the Native Hawaiian governing entity to provide for their common welfare and to adopt appropriate organic governing documents is recognized by the United States.

(b) COMMISSION.—

(1) IN GENERAL.—There is authorized to be established a Commission to be composed of nine members for the purposes of—

(A) preparing and maintaining a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity; and

(B) certifying that the adult members of the Native Hawaiian community proposed for inclusion on the roll meet the definition of Native Hawaiian in paragraph (8) of section 3.

(2) MEMBERSHIP.—

(A) APPOINTMENT.—Within 180 days of the date of enactment of this Act, the Secretary shall appoint the members of the Commission in accordance with subclause (B). Any vacancy on the Commission shall not affect its powers and shall be filled in the same manner as the original appointment.

(B) REQUIREMENTS.—The members of the Commission shall be Native Hawaiian, as defined in section 3(8), and shall have expertise in the determination of Native Hawaiian ancestry and lineal descendancy.

(3) EXPENSES.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(4) DUTIES.—The Commission shall—

(A) prepare and maintain a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity; and

(B) certify that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(8).

(5) STAFF.—

(A) IN GENERAL.—The Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(B) COMPENSATION.—

(i) IN GENERAL.—Except as provided in clause (ii), the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) MAXIMUM RATE OF PAY.—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(6) DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.—

(A) IN GENERAL.—An employee of the Federal Government may be detailed to the Commission without reimbursement.

(B) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(7) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(8) EXPIRATION.—The Secretary shall dissolve the Commission upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States.

(c) PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.—

(1) ROLL.—

(A) CONTENTS.—The roll shall include the names of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity and are certified to be Native Hawaiian as defined in section 3(8) by the Commission.

(B) FORMATION OF ROLL.—Each adult member of the Native Hawaiian community who elects to participate in the reorganization of the Native Hawaiian governing entity shall submit to the Commission documentation in the form established by the Commission that is sufficient to enable the Commission to determine whether the individual meets the definition of Native Hawaiian in section 3(8).

(C) DOCUMENTATION.—The Commission shall—

(i) identify the types of documentation that may be submitted to the Commission that would enable the Commission to determine whether an individual meets the definition of Native Hawaiian in section 3(8);

(ii) establish a standard format for the submission of documentation; and

(iii) publish information related to clauses (i) and (ii) in the Federal Register;

(D) CONSULTATION.—In making determinations that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(8), the Commission may consult with Native Hawaiian organizations, agencies of the State of Hawaii including but not limited to the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and the State Department of Health, and other entities with expertise and experience in the determination of Native Hawaiian ancestry and lineal descendancy.

(E) CERTIFICATION AND SUBMITTAL OF ROLL TO SECRETARY.—The Commission shall—

(i) submit the roll containing the names of the adult members of the Native Hawaiian community who meet the definition of Native Hawaiian in section 3(8) to the Secretary within two years from the date on which the Commission is fully composed; and

(ii) certify to the Secretary that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(8).

(F) PUBLICATION.—Upon certification by the Commission to the Secretary that those listed on the roll meet the definition of Native Hawaiian in section 3(8), the Secretary shall publish the roll in the Federal Register.

(G) APPEAL.—The Secretary may establish a mechanism for an appeal for any person whose name is excluded from the roll who claims to meet the definition of Native Hawaiian in section 3(8) and to be 18 years of age or older.

(H) PUBLICATION; UPDATE.—The Secretary shall—

(i) publish the roll regardless of whether appeals are pending;

(ii) update the roll and the publication of the roll on the final disposition of any appeal;

(iii) update the roll to include any Native Hawaiian who has attained the age of 18 and who has been certified by the Commission as meeting the definition of Native Hawaiian in section 3(8) after the initial publication of the roll or after any subsequent publications of the roll.

(I) FAILURE TO ACT.—If the Secretary fails to publish the roll, not later than 90 days after the date on which the roll is submitted to the Secretary, the Commission shall publish the roll notwithstanding any order or directive issued by the Secretary or any other official of the Department of the Interior to the contrary.

(J) EFFECT OF PUBLICATION.—The publication of the initial and updated roll shall serve as the basis for the eligibility of adult members of the Native Hawaiian community whose names are listed on those rolls to participate in the reorganization of the Native Hawaiian governing entity.

(2) ORGANIZATION OF THE NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL.—

(A) ORGANIZATION.—The adult members of the Native Hawaiian community listed on the roll published under this section may—

(i) develop criteria for candidates to be elected to serve on the Native Hawaiian Interim Governing Council;

(ii) determine the structure of the Council; and

(iii) elect members from individuals listed on the roll published under this subsection to the Council.

(B) POWERS.—

(i) IN GENERAL.—The Council—

(I) may represent those listed on the roll published under this section in the implementation of this Act; and

(II) shall have no powers other than powers given to the Council under this Act.

(ii) FUNDING.—The Council may enter into a contract with, or obtain a grant from, any Federal or State agency to carry out clause (iii).

(iii) ACTIVITIES.—

(I) IN GENERAL.—The Council may conduct a referendum among the adult members of the Native Hawaiian community listed on the roll published under this subsection for the purpose of determining the proposed elements of the organic governing documents of the Native Hawaiian governing entity, including but not limited to—

(aa) the proposed criteria for citizenship of the Native Hawaiian governing entity;

(bb) the proposed powers and authorities to be exercised by the Native Hawaiian governing entity, as well as the proposed privileges and immunities of the Native Hawaiian governing entity;

(cc) the proposed civil rights and protection of the rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities of the Native Hawaiian governing entity; and

(dd) other issues determined appropriate by the Council.

(II) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS.—Based on the referendum, the Council may develop proposed organic governing documents for the Native Hawaiian governing entity.

(III) DISTRIBUTION.—The Council may distribute to all adult members of the Native Hawaiian community listed on the roll published under this subsection—

(aa) a copy of the proposed organic governing documents, as drafted by the Council; and

(bb) a brief impartial description of the proposed organic governing documents;

(IV) ELECTIONS.—The Council may hold elections for the purpose of ratifying the proposed organic governing documents, and on certification of the organic governing documents by the Secretary in accordance with paragraph (4), hold elections of the officers of the Native Hawaiian governing entity pursuant to paragraph (5).

(3) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS.—Following the reorganization of the Native Hawaiian governing entity and the adoption of organic governing documents, the Council shall submit the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(4) CERTIFICATIONS.—

(A) IN GENERAL.—Within the context of the future negotiations to be conducted under the authority of section 8(b)(1), and the subsequent actions by the Congress and the State of Hawaii to enact legislation to implement the agreements of the 3 governments, not later than 90 days after the date on which the Council submits the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—

(i) establish the criteria for citizenship in the Native Hawaiian governing entity;

(ii) were adopted by a majority vote of the adult members of the Native Hawaiian community whose names are listed on the roll published by the Secretary;

(iii) provide authority for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;

(iv) provide for the exercise of governmental authorities by the Native Hawaiian governing entity, including any authorities that may be delegated to the Native Hawaiian governing entity by the United States and the State of Hawaii following negotiations authorized in section 8(b)(1) and the enactment of legislation to implement the agreements of the 3 governments;

(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;

(vi) provide for the protection of the civil rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities by the Native Hawaiian governing entity; and

(vii) are consistent with applicable Federal law and the special political and legal relationship between the United States and the indigenous, native people of the United States; provided that the provisions of Public Law 103–454, 25 U.S.C. 479a, shall not apply.

(B) RESUBMISSION IN CASE OF NONCOMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPH (A).—

(i) RESUBMISSION BY THE SECRETARY.—If the Secretary determines that the organic governing documents, or any part of the documents, do not meet all of the requirements set forth in subparagraph (A), the Secretary shall resubmit the organic governing documents to the Council, along with a justification for each of the Secretary's findings as to why the provisions are not in full compliance.

(ii) AMENDMENT AND RESUBMISSION OF ORGANIC GOVERNING DOCUMENTS.—If the organic governing documents are resubmitted to the Council by the Secretary under clause (i), the Council shall—

(I) amend the organic governing documents to ensure that the documents meet all the requirements set forth in subparagraph (A); and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with this paragraph.

(C) CERTIFICATIONS DEEMED MADE.—The certifications under paragraph (4) shall be deemed to have been made if the Secretary has not acted within 90 days after the date on which the Council has submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(5) ELECTIONS.—On completion of the certifications by the Secretary under paragraph (4), the Council may hold elections of the officers of the Native Hawaiian governing entity.

(6) REAFFIRMATION.—Notwithstanding any other provision of law, upon the certifications required under paragraph (4) and the election of the officers of the Native Hawaiian governing entity, the political and legal relationship between the United States and the Native Hawaiian governing entity is hereby reaffirmed and the United States extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people.

SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS; CLAIMS.

(a) REAFFIRMATION.—The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'' approved March 18, 1959 (Public Law 86–3, 73 Stat. 4), is reaffirmed.

(b) NEGOTIATIONS.—

(1) IN GENERAL.—Upon the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity, the United States and the State of Hawaii may enter into negotiations with the Native Hawaiian governing entity designed to lead to an agreement addressing such matters as—

(A) the transfer of lands, natural resources, and other assets, and the protection of existing rights related to such lands or resources;

(B) the exercise of governmental authority over any transferred lands, natural resources, and other assets, including land use;

(C) the exercise of civil and criminal jurisdiction;

(D) the delegation of governmental powers and authorities to the Native Hawaiian governing entity by the United States and the State of Hawaii; and

(E) any residual responsibilities of the United States and the State of Hawaii.

(2) AMENDMENTS TO EXISTING LAWS.—Upon agreement on any matter or matters negotiated with the United States, the State of Hawaii, and the Native Hawaiian governing entity, the parties are authorized to submit—

(A) to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives, recommendations for proposed amendments to Federal law that will enable the implementation of agreements reached between the 3 governments; and

(B) to the Governor and the legislature of the State of Hawaii, recommendations for proposed amendments to State law that will enable the implementation of agreements reached between the 3 governments.

(c) CLAIMS.—

(1) IN GENERAL.—Nothing in this Act serves as a settlement of any claim against the United States.

(2) STATUTE OF LIMITATIONS.—Any claim against the United States arising under Federal law that—

(A) is in existence on the date of enactment of this Act;

(B) is asserted by the Native Hawaiian governing entity on behalf of the Native Hawaiian people; and

(C) relates to the legal and political relationship between the United States and the Native Hawaiian people;

shall be brought in the court of jurisdiction over such claims not later than 20 years after the date on which Federal recognition is extended to the Native Hawaiian governing entity under section 7(c)(6).

SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) INDIAN GAMING REGULATORY ACT.—Nothing in this Act shall be construed to authorize the Native Hawaiian governing entity to conduct gaming activities under the authority of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(b) BUREAU OF INDIAN AFFAIRS.—Nothing contained in this Act provides an authorization for eligibility to participate in any programs and services provided by the Bureau of Indian Affairs for any persons not otherwise eligible for the programs or services.

SEC. 10. SEVERABILITY.

If any section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections or provisions shall continue in full force and effect.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Mr. INOUYE. Mr. President, I am pleased to join my colleague, Senator AKAKA, as a cosponsor of the Native Hawaiian Government Reorganization Act.

Having served on the Indian Affairs Committee for the past 27 years, I know that most of our colleagues are more familiar with conditions and circumstances in Indian country, and naturally, they bring their experience with Indian country to bear in considering this measure, which has been pending in the Senate for the past six years.

Accordingly, Mr. President, I believe it is important that our colleagues understand what this bill seeks to accomplish as well as how it differs from legislation affecting Indian country.

It is a little known fact that beginning in 1910 and since that time, the

Congress has passed and the President has signed into law over 160 Federal laws designed to address the conditions of Native Hawaiians.

Thus, Federal laws which authorize the provision of health care, education, housing, and job training and employment services, as well as programs to provide for the preservation of the Native Hawaiian language, Native language immersion, Native cultural and grave protections and repatriation of Native sacred objects have been in place for decades.

The Native Hawaiian programs do not draw upon funding that is appropriated for American Indians or Alaska Natives—there are separate authorizations for programs that are administered by different Federal agencies—not the Bureau of Indian Affairs or the Indian Health Service, for instance—and the Native Hawaiian program funds are not drawn from the Interior Appropriations Subcommittee account. Thus, they have no impact on the funding that is provided for the other indigenous, native people of the United States.

However, unlike the native people residing on the mainland, Native Hawaiians have not been able to exercise their rights as Native people to self-determination or self-governance because their government was overthrown on January 17, 1893.

This bill would provide a process for the reorganization of the Native Hawaiian government and the resumption of a political and legal relationship between that government and the government of the United States.

Because the Native Hawaiian government is not an Indian tribe, the body of Federal Indian law that would otherwise customarily apply when the United States extends Federal recognition to an Indian tribal group does not apply.

Thus, the bill provides authority for a process of negotiations amongst the United States, the State of Hawaii, and the reorganized Native Hawaiian government to address such matters as the exercise of civil and criminal jurisdiction by the respective governments, the transfer of land and natural resources and other assets, and the exercise of governmental authority over those lands, natural resources and other assets.

Upon reaching agreement, the U.S. Congress and the legislature of State of Hawaii would have to enact legislation implementing the agreements of the three governments, including amendments that will necessarily have to be made to existing Federal law, such as the Hawaii Admissions Act and the Hawaiian Homes Commission Act, and to State law, including amendments to the Hawaii State Constitution, before any of the new governmental relationships and authorities can take effect.

That is why concerns which are premised on the manner in which Federal Indian law provides for the respective governmental authorities of the state governments and Indian tribal governments simply don't apply in Hawaii.

Our state government, both the Governor and the state legislature of Hawaii, fully support enactment of this measure. They will be at the table with the United States and the Native Hawaiian government to shape the relationships amongst governments that will best serve the needs and interests not only of the Native Hawaiian community but those of all of the citizens of Hawaii.

Mr. President, we have every confidence that consistent with the Federal policy of the last 35 years, the restoration of the rights to self-determination and self-governance will enable the Native Hawaiian people, as the direct, lineal descendants of the aboriginal, indigenous native people of what has become our nation's fiftieth state, to take their rightful place in the family of governments that makes up our constitutional system of governance.

By Mr. McCAIN (for himself, Mr. STEVENS, and Mr. DORGAN):

S. 148. A bill to establish a United States Boxing Commission to administer the Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. McCAIN. Mr. President, today I am pleased to be joined by Senators STEVENS and DORGAN in introducing the Professional Boxing Amendments Act of 2005. This legislation is virtually identical to a measure approved unanimously by the Senate last year. I remain committed to moving the Professional Boxing Amendments Act through the Senate and I trust that my colleagues will once again vote favorably on this important legislation. Simply put, this legislation would better protect professional boxing from the fraud, corruption, and ineffective regulation that have plagued the sport for far too many years, and that have devastated physically and financially many of our Nation's professional boxers.

For almost a decade, Congress has made efforts to improve the sport of professional boxing—and for very good reason. With rare exception, professional boxers come from the lowest rung on our economic ladder. They are the least educated and most exploited athletes in our Nation. The Professional Boxing Safety Act of 1996 and the Muhammad Ali Boxing Reform Act of 2000 established uniform health and safety standards for professional boxers, as well as basic protections for boxers against the sometimes coercive, exploitative, and unethical business practices of promoters, managers, and sanctioning organizations. But further action is needed.

The Professional Boxing Amendments Act would strengthen existing Federal boxing law by improving the basic health and safety standards for professional boxers, establishing a centralized medical registry to be used by local commissions to protect boxers, reducing the arbitrary practices of sanctioning organizations, and enhancing the uniformity and basic standards for professional boxing contracts. Most importantly, this legislation would establish a Federal regulatory entity to oversee professional boxing and set basic uniform standards for certain aspects of the sport.

Current Federal boxing law has improved to some extent the state of professional boxing. However, I remain concerned, as do many others, that the sport remains at risk. Some State and tribal boxing commissions still to this day do not comply with Federal boxing law, and there is still a troubling lack of enforcement of the law by both Federal and State officials. Indeed, professional boxing remains the only major sport in the United States that does not have a strong, centralized association, league, or other regulatory body to establish and enforce uniform rules and practices. Because a powerful few benefit greatly from the current system of patchwork compliance and enforcement of Federal boxing law, a national self-regulating organization—though preferable to Federal government oversight—is not a realistic option.

Ineffective and inconsistent oversight of professional boxing has contributed to the continuing scandals, controversies, unethical practices, and unnecessary deaths in the sport. These problems have led many in professional boxing to conclude that the only solution is an effective and accountable Federal boxing commission. The Professional Boxing Amendments Act would create such an entity.

This bill would establish the United States Boxing Commission (USBC or Commission). The Commission would be responsible for protecting the health, safety, and general interests of professional boxers. The USBC would also be responsible for ensuring uniformity, fairness, and integrity in professional boxing. More specifically, the Commission would administer Federal boxing law and coordinate with other Federal regulatory agencies to ensure that this law is enforced; oversee all professional boxing matches in the United States; and work with the boxing industry and local commissions to improve the safety, integrity, and professionalism of professional boxing in the United States.

The USBC would also license boxers, promoters, managers, and sanctioning organizations. The Commission would have the authority to revoke such a license for violations of Federal boxing law, to stop unethical or illegal conduct, to protect the health and safety of a boxer, or if the revocation is otherwise in the public interest.

It is important to state clearly and plainly for the record that the purpose of the USBC is not to interfere with the daily operations of State and tribal boxing commissions. Instead, the Commission would work in consultation

with local commissions, and it would only exercise its authority when reasonable grounds exist for such intervention. In point of fact, the Professional Boxing Amendments Act states explicitly that it would not prohibit any boxing commission from exercising any of its powers, duties, or functions with respect to the regulation or supervision of professional boxing to the extent not inconsistent with the provisions of Federal boxing law.

Let there be no doubt, however, of the very basic and pressing need in professional boxing for a Federal boxing commission. The establishment of the USBC would address that need.

The problems that plague the sport of professional boxing undermine the credibility of the sport in the eyes of the public—and more importantly—compromise the safety of boxers. The Professional Boxing Amendments Act provides an effective approach to curbing these problems. I again urge my colleagues to support this legislation.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 148

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Professional Boxing Amendments Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Amendment of Professional Boxing Safety Act of 1996.
Sec. 3. Definitions.
Sec. 4. Purposes.
Sec. 5. United States Boxing Commission approval, or ABC or commission sanction, required for matches.
Sec. 6. Safety standards.
Sec. 7. Registration.
Sec. 8. Review.
Sec. 9. Reporting.
Sec. 10. Contract requirements.
Sec. 11. Coercive contracts.
Sec. 12. Sanctioning organizations.
Sec. 13. Required disclosures by sanctioning organizations.
Sec. 14. Required disclosures by promoters and broadcasters.
Sec. 15. Judges and referees.
Sec. 16. Medical registry.
Sec. 17. Conflicts of interest.
Sec. 18. Enforcement.
Sec. 19. Repeal of deadwood.
Sec. 20. Recognition of tribal law.
Sec. 21. Establishment of United States Boxing Commission.
Sec. 22. Study and report on definition of promoter.
Sec. 23. Effective date.

SEC. 2. AMENDMENT OF PROFESSIONAL BOXING SAFETY ACT OF 1996.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Professional Boxing Safety Act of 1996 (15 U.S.C. 6301 et seq.).

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—Section 2 (15 U.S.C. 6301) is amended to read as follows:

''SEC. 2. DEFINITIONS.

''In this Act:

''(1) COMMISSION.—The term 'Commission' means the United States Boxing Commission.

''(2) BOUT AGREEMENT.—The term 'bout agreement' means a contract between a promoter and a boxer that requires the boxer to participate in a professional boxing match for a particular date.

''(3) BOXER.—The term 'boxer' means an individual who fights in a professional boxing match.

''(4) BOXING COMMISSION.—The term 'boxing commission' means an entity authorized under State or tribal law to regulate professional boxing matches.

''(5) BOXER REGISTRY.—The term 'boxer registry' means any entity certified by the Commission for the purposes of maintaining records and identification of boxers.

''(6) BOXING SERVICE PROVIDER.—The term 'boxing service provider' means a promoter, manager, sanctioning body, licensee, or matchmaker.

''(7) CONTRACT PROVISION.—The term 'contract provision' means any legal obligation between a boxer and a boxing service provider.

''(8) INDIAN LANDS; INDIAN TRIBE.—The terms 'Indian lands' and 'Indian tribe' have the meanings given those terms by paragraphs (4) and (5), respectively, of section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703).

''(9) LICENSEE.—The term 'licensee' means an individual who serves as a trainer, corner man, second, or cut man for a boxer.

''(10) MANAGER.—The term 'manager' means a person other than a promoter who, under contract, agreement, or other arrangement with a boxer, undertakes to control or administer, directly or indirectly, a boxing-related matter on behalf of that boxer, including a person who is a booking agent for a boxer.

''(11) MATCHMAKER.—The term 'matchmaker' means a person that proposes, selects, and arranges for boxers to participate in a professional boxing match.

''(12) PHYSICIAN.—The term 'physician' means a doctor of medicine legally authorized to practice medicine by the State in which the physician performs such function or action and who has training and experience in dealing with sports injuries, particularly head trauma.

''(13) PROFESSIONAL BOXING MATCH.—The term 'professional boxing match' means a boxing contest held in the United States between individuals for financial compensation. The term 'professional boxing match' does not include a boxing contest that is regulated by a duly recognized amateur sports organization, as approved by the Commission.

''(14) PROMOTER.—The term 'promoter'—

''(A) means the person primarily responsible for organizing, promoting, and producing a professional boxing match; but

''(B) does not include a hotel, casino, resort, or other commercial establishment hosting or sponsoring a professional boxing match unless—

''(i) the hotel, casino, resort, or other commercial establishment is primarily responsible for organizing, promoting, and producing the match; and

''(ii) there is no other person primarily responsible for organizing, promoting, and producing the match.

''(15) PROMOTIONAL AGREEMENT.—The term 'promotional agreement' means a contract, for the acquisition of rights relating to a boxer's participation in a professional boxing match or series of boxing matches (including the right to sell, distribute, exhibit, or license the match or matches), with—

''(A) the boxer who is to participate in the match or matches; or

''(B) the nominee of a boxer who is to participate in the match or matches, or the nominee is an entity that is owned, controlled or held in trust for the boxer unless that nominee or entity is a licensed promoter who is conveying a portion of the rights previously acquired.

''(16) STATE.—The term 'State' means each of the 50 States, Puerto Rico, the District of Columbia, and any territory or possession of the United States, including the Virgin Islands.

''(17) SANCTIONING ORGANIZATION.—The term 'sanctioning organization' means an organization, other than a boxing commission, that sanctions professional boxing matches, ranks professional boxers, or charges a sanctioning fee for professional boxing matches in the United States—

''(A) between boxers who are residents of different States; or

''(B) that are advertised, otherwise promoted, or broadcast (including closed circuit television) in interstate commerce.

''(18) SUSPENSION.—The term 'suspension' includes within its meaning the temporary revocation of a boxing license.

''(19) TRIBAL ORGANIZATION.—The term 'tribal organization' has the same meaning as in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)).''.

(b) CONFORMING AMENDMENT.—Section 21 (15 U.S.C. 6312) is amended to read as follows:

''SEC. 21. PROFESSIONAL BOXING MATCHES CONDUCTED ON INDIAN LANDS.

''(a) IN GENERAL.—Notwithstanding any other provision of law, a tribal organization may establish a boxing commission to regulate professional boxing matches held on Indian land under the jurisdiction of that tribal organization.

''(b) STANDARDS AND LICENSING.—A tribal organization that establishes a boxing commission shall, by tribal ordinance or resolution, establish and provide for the implementation of health and safety standards, licensing requirements, and other requirements relating to the conduct of professional boxing matches that are at least as restrictive as—

''(1) the otherwise applicable requirements of the State in which the Indian land on which the professional boxing match is held is located; or

''(2) the guidelines established by the United States Boxing Commission.

''(c) APPLICATION OF ACT TO BOXING MATCHES ON TRIBAL LANDS.—The provisions of this Act apply to professional boxing matches held on tribal lands to the same extent and in the same way as they apply to professional boxing matches held in any State.''.

SEC. 4. PURPOSES.

Section 3(2) (15 U.S.C. 6302(2)) is amended by striking ''State''.

SEC. 5. UNITED STATES BOXING COMMISSION APPROVAL, OR ABC OR COMMISSION SANCTION, REQUIRED FOR MATCHES.

(a) IN GENERAL.—Section 4 (15 U.S.C. 6303) is amended to read as follows:

''SEC. 4. APPROVAL OR SANCTION REQUIREMENT.

''(a) IN GENERAL.—No person may arrange, promote, organize, produce, or fight in a professional boxing match within the United States unless the match—

''(1) is approved by the Commission; and

''(2) is held in a State, or on tribal land of a tribal organization, that regulates professional boxing matches in accordance with

standards and criteria established by the Commission.

''(b) APPROVAL PRESUMED.—

''(1) IN GENERAL.—For purposes of subsection (a), the Commission shall be presumed to have approved any match other than—

''(A) a match with respect to which the Commission has been informed of an alleged violation of this Act and with respect to which it has notified the supervising boxing commission that it does not approve;

''(B) a match advertised to the public as a championship match;

''(C) a match scheduled for 10 rounds or more; or

''(D) a match in which 1 of the boxers has—

''(i) suffered 10 consecutive defeats in professional boxing matches; or

''(ii) has been knocked out 5 consecutive times in professional boxing matches.

''(2) DELEGATION OF APPROVAL AUTHORITY.—Notwithstanding paragraph (1), the Commission shall be presumed to have approved a match described in subparagraph (B), (C), or (D) of paragraph (1) if—

''(A) the Commission has delegated its approval authority with respect to that match to a boxing commission; and

''(B) the boxing commission has approved the match.

''(3) KNOCKED-OUT DEFINED.—Except as may be otherwise provided by the Commission by rule, in paragraph (1)(D)(ii), the term 'knocked out' means knocked down and unable to continue after a count of 10 by the referee or stopped from continuing because of a technical knockout.''.

(b) CONFORMING AMENDMENT.—Section 19 (15 U.S.C. 6310) is repealed.

SEC. 6. SAFETY STANDARDS.

Section 5 (15 U.S.C. 6304) is amended—

(1) by striking ''requirements or an alternative requirement in effect under regulations of a boxing commission that provides equivalent protection of the health and safety of boxers:'' and inserting ''requirements:'';

(2) by adding at the end of paragraph (1) ''The examination shall include testing for infectious diseases in accordance with standards established by the Commission.'';

(3) by striking paragraph (2) and inserting the following:

''(2) An ambulance continuously present on site.'';

(4) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and inserting after paragraph (2) the following:

''(3) Emergency medical personnel with appropriate resuscitation equipment continuously present on site.''; and

(5) by striking ''match.'' in paragraph (5), as redesignated, and inserting ''match in an amount prescribed by the Commission.''.

SEC. 7. REGISTRATION.

Section 6 (15 U.S.C. 6305) is amended—

(1) by inserting ''or Indian tribe'' after ''State'' the second place it appears in subsection (a)(2);

(2) by striking the first sentence of subsection (c) and inserting ''A boxing commission shall, in accordance with requirements established by the Commission, make a health and safety disclosure to a boxer when issuing an identification card to that boxer.'';

(3) by striking ''should'' in the second sentence of subsection (c) and inserting ''shall, at a minimum,''; and

(4) by adding at the end the following:

''(d) COPY OF REGISTRATION AND IDENTIFICATION CARDS TO BE SENT TO COMMISSION.—A boxing commission shall furnish a copy of each registration received under subsection (a), and each identification card issued under subsection (b), to the Commission.''.

SEC. 8. REVIEW.

Section 7 (15 U.S.C. 6306) is amended—

(1) by striking ''that, except as provided in subsection (b), no'' in subsection (a)(2) and inserting ''that no'';

(2) by striking paragraphs (3) and (4) of subsection (a) and inserting the following:

''(3) Procedures to review a summary suspension when a hearing before the boxing commission is requested by a boxer, licensee, manager, matchmaker, promoter, or other boxing service provider which provides an opportunity for that person to present evidence.'';

(3) by striking subsection (b); and

(4) by striking ''(a) PROCEDURES.—''.

SEC. 9. REPORTING.

Section 8 (15 U.S.C. 6307) is amended—

(1) by striking ''48 business hours'' and inserting ''2 business days'';

(2) by striking ''bxoing'' and inserting ''boxing''; and

(3) by striking ''each boxer registry.'' and inserting ''the Commission.''.

SEC. 10. CONTRACT REQUIREMENTS.

Section 9 (15 U.S.C. 6307a) is amended to read as follows:

''SEC. 9. CONTRACT REQUIREMENTS.

''(a) IN GENERAL.—The Commission, in consultation with the Association of Boxing Commissions, shall develop guidelines for minimum contractual provisions that shall be included in each bout agreement, boxer-manager contract, and promotional agreement. Each boxing commission shall ensure that these minimal contractual provisions are present in any such agreement or contract submitted to it.

''(b) FILING AND APPROVAL REQUIREMENTS.—

''(1) COMMISSION.—A manager or promoter shall submit a copy of each boxer-manager contract and each promotional agreement between that manager or promoter and a boxer to the Commission, and, if requested, to the boxing commission with jurisdiction over the bout.

''(2) BOXING COMMISSION.—A boxing commission may not approve a professional boxing match unless a copy of the bout agreement related to that match has been filed with it and approved by it.

''(c) BOND OR OTHER SURETY.—A boxing commission may not approve a professional boxing match unless the promoter of that match has posted a surety bond, cashier's check, letter of credit, cash, or other security with the boxing commission in an amount acceptable to the boxing commission.''.

SEC. 11. COERCIVE CONTRACTS.

Section 10 (15 U.S.C. 6307b) is amended—

(1) by striking paragraph (3) of subsection (a);

(2) by inserting ''OR ELIMINATION'' after ''MANDATORY'' in the heading of subsection (b); and

(3) by inserting ''or elimination'' after ''mandatory'' in subsection (b).

SEC. 12. SANCTIONING ORGANIZATIONS.

(a) IN GENERAL.—Section 11 (15 U.S.C. 6307c) is amended to read as follows:

''SEC. 11. SANCTIONING ORGANIZATIONS.

''(a) OBJECTIVE CRITERIA.—Within 1 year after the date of enactment of the Professional Boxing Amendments Act of 2005, the Commission shall develop guidelines for objective and consistent written criteria for the rating of professional boxers based on the athletic merits and professional record of the boxers. Within 90 days after the Commission's promulgation of the guidelines, each sanctioning organization shall adopt the guidelines and follow them.

''(b) NOTIFICATION OF CHANGE IN RATING.—A sanctioning organization shall, with respect to a change in the rating of a boxer previously rated by such organization in the top 10 boxers—

''(1) post a copy, within 7 days after the change, on its Internet website or home page, if any, including an explanation of the change, for a period of not less than 30 days;

''(2) provide a copy of the rating change and a thorough explanation in writing under penalty of perjury to the boxer and the Commission;

''(3) provide the boxer an opportunity to appeal the ratings change to the sanctioning organization; and

''(4) apply the objective criteria for ratings required under subsection (a) in considering any such appeal.

''(c) CHALLENGE OF RATING.—If, after disposing with an appeal under subsection (b)(3), a sanctioning organization receives a petition from a boxer challenging that organization's rating of the boxer, it shall (except to the extent otherwise required by the Commission), within 7 days after receiving the petition—

''(1) provide to the boxer a written explanation under penalty of perjury of the organization's rating criteria, its rating of the boxer, and the rationale or basis for its rating (including a response to any specific questions submitted by the boxer); and

''(2) submit a copy of its explanation to the Association of Boxing Commissions and the Commission for their review.''.

(b) CONFORMING AMENDMENTS.—Section 18(e) (15 U.S.C. 6309(e)) is amended—

(1) by striking ''FEDERAL TRADE COMMISSION,'' in the subsection heading and inserting ''UNITED STATES BOXING COMMISSION''; and

(2) by striking ''Federal Trade Commission,'' in paragraph (1) and inserting ''United States Boxing Commission,''.

SEC. 13. REQUIRED DISCLOSURES BY SANCTIONING ORGANIZATIONS.

Section 12 (15 U.S.C. 6307d) is amended—

(1) by striking the matter preceding paragraph (1) and inserting ''Within 7 days after a professional boxing match of 10 rounds or more, the sanctioning organization, if any, for that match shall provide to the Commission, and, if requested, to the boxing commission in the State or on Indian land responsible for regulating the match, a written statement of—'';

(2) by striking ''will assess'' in paragraph (1) and inserting ''has assessed, or will assess,''; and

(3) by striking ''will receive'' in paragraph (2) and inserting ''has received, or will receive,''.

SEC. 14. REQUIRED DISCLOSURES BY PROMOTERS AND BROADCASTERS.

Section 13 (15 U.S.C. 6307e) is amended—

(1) by striking ''**PROMOTERS.**'' in the section caption and inserting ''**PROMOTERS AND BROADCASTERS.**'';

(2) by striking so much of subsection (a) as precedes paragraph (1) and inserting the following:

''(a) DISCLOSURES TO BOXING COMMISSIONS AND THE COMMISSION.—Within 7 days after a professional boxing match of 10 rounds or more, the promoter of any boxer participating in that match shall provide to the Commission, and, if requested, to the boxing commission in the State or on Indian land responsible for regulating the match—'';

(3) by striking ''writing,'' in subsection (a)(1) and inserting ''writing, other than a bout agreement previously provided to the commission,'';

(4) by striking ''all fees, charges, and expenses that will be'' in subsection (a)(3)(A) and inserting ''a written statement of all fees, charges, and expenses that have been, or will be,'';

(5) by inserting ''a written statement of'' before ''all'' in subsection (a)(3)(B);

(6) by inserting ''a statement of'' before ''any'' in subsection (a)(3)(C);

(7) by striking the matter in subsection (b) following ''BOXER.—'' and preceding paragraph (1) and inserting ''Within 7 days after a professional boxing match of 10 rounds or more, the promoter of the match shall provide to each boxer participating in the bout or match with whom the promoter has a bout or promotional agreement a statement of—'';

(8) by striking ''match;'' in subsection (b)(1) and inserting ''match, and that the promoter has paid, or agreed to pay, to any other person in connection with the match;''; and

(9) by adding at the end the following:

''(d) REQUIRED DISCLOSURES BY BROADCASTERS.—

''(1) IN GENERAL.—A broadcaster that owns the television broadcast rights for a professional boxing match of 10 rounds or more shall, within 7 days after that match, provide to the Commission—

''(A) a statement of any advance, guarantee, or license fee paid or owed by the broadcaster to a promoter in connection with that match;

''(B) a copy of any contract executed by or on behalf of the broadcaster with—

''(i) a boxer who participated in that match; or

''(ii) the boxer's manager, promoter, promotional company, or other representative or the owner or representative of the site of the match; and

''(C) a list identifying sources of income received from the broadcast of the match.

''(2) COPY TO BOXING COMMISSION.—Upon request from the boxing commission in the State or Indian land responsible for regulating a match to which paragraph (1) applies, a broadcaster shall provide the information described in paragraph (1) to that boxing commission.

''(3) CONFIDENTIALITY.—The information provided to the Commission or to a boxing commission pursuant to this subsection shall be confidential and not revealed by the Commission or a boxing commission, except that the Commission may publish an analysis of the data in aggregate form or in a manner which does not disclose confidential information about identifiable broadcasters.

''(4) TELEVISION BROADCAST RIGHTS.—In paragraph (1), the term 'television broadcast rights' means the right to broadcast the match, or any part thereof, via a broadcast station, cable service, or multichannel video programming distributor as such terms are defined in section 3(5), 602(6), and 602(13) of the Communications Act of 1934 (47 U.S.C. 153(5), 602(6), and 602(13), respectively).''.

SEC. 15. JUDGES AND REFEREES.

(a) IN GENERAL.—Section 16 (15 U.S.C. 6307h) is amended—

(1) by inserting ''(a) LICENSING AND ASSIGNMENT REQUIREMENT.—'' before ''No person'';

(2) by striking ''certified and approved'' and inserting ''selected'';

(3) by inserting ''or Indian lands'' after ''State''; and

(4) by adding at the end the following:

''(b) CHAMPIONSHIP AND 10-ROUND BOUTS.—In addition to the requirements of subsection (a), no person may arrange, promote, organize, produce, or fight in a professional boxing match advertised to the public as a championship match or in a professional boxing match scheduled for 10 rounds or more unless all referees and judges participating in the match have been licensed by the Commission.

''(c) ROLE OF SANCTIONING ORGANIZATION.—A sanctioning organization may provide a list of judges and referees deemed qualified by that organization to a boxing commission, but the boxing commission shall select, license, and appoint the judges and referees participating in the match.

''(d) ASSIGNMENT OF NONRESIDENT JUDGES AND REFEREES.—A boxing commission may assign judges and referees who reside outside that commission's State or Indian land.

''(e) REQUIRED DISCLOSURE.—A judge or referee shall provide to the boxing commission responsible for regulating a professional boxing match in a State or on Indian land a statement of all consideration, including reimbursement for expenses, that the judge or referee has received, or will receive, from any source for participation in the match. If the match is scheduled for 10 rounds or more, the judge or referee shall also provide such a statement to the Commission.''.

(b) CONFORMING AMENDMENT.—Section 14 (15 U.S.C. 6307f) is repealed.

SEC. 16. MEDICAL REGISTRY.

The Act is amended by inserting after section 13 (15 U.S.C. 6307e) the following:

''SEC. 14. MEDICAL REGISTRY.

''(a) IN GENERAL.—The Commission shall establish and maintain, or certify a third party entity to establish and maintain, a medical registry that contains comprehensive medical records and medical denials or suspensions for every licensed boxer.

''(b) CONTENT; SUBMISSION.—The Commission shall determine—

''(1) the nature of medical records and medical suspensions of a boxer that are to be forwarded to the medical registry; and

''(2) the time within which the medical records and medical suspensions are to be submitted to the medical registry.

''(c) CONFIDENTIALITY.—The Commission shall establish confidentiality standards for the disclosure of personally identifiable information to boxing commissions that will—

''(1) protect the health and safety of boxers by making relevant information available to the boxing commissions for use but not public disclosure; and

''(2) ensure that the privacy of the boxers is protected.''.

SEC. 17. CONFLICTS OF INTEREST.

Section 17 (15 U.S.C. 6308) is amended—

(1) by striking ''enforces State boxing laws,'' in subsection (a) and inserting ''implements State or tribal boxing laws, no officer or employee of the Commission,'';

(2) by striking ''belong to,'' and inserting ''hold office in,'' in subsection (a);

(3) by striking the last sentence of subsection (a);

(4) by striking subsection (b) and inserting the following:

''(b) BOXERS.—A boxer may not own or control, directly or indirectly, an entity that promotes the boxer's bouts if that entity is responsible for—

''(1) executing a bout agreement or promotional agreement with the boxer's opponent; or

''(2) providing any payment or other compensation to—

''(A) the boxer's opponent for participation in a bout with the boxer;

''(B) the boxing commission that will regulate the bout; or

''(C) ring officials who officiate at the bout.''.

SEC. 18. ENFORCEMENT.

Section 18 (15 U.S.C. 6309) is amended—

(1) by striking ''(a) INJUNCTIONS.—'' in subsection (a) and inserting ''(a) ACTIONS BY ATTORNEY GENERAL.—'';

(2) by inserting ''any officer or employee of the Commission,'' after ''laws,'' in subsection (b)(3);

(3) by inserting ''has engaged in or'' after ''organization'' in subsection (c);

(4) by striking ''subsection (b)'' in subsection (c)(3) and inserting ''subsection (b), a civil penalty, or''; and

(5) by striking ''boxer'' in subsection (d) and inserting ''person''.

SEC. 19. REPEAL OF DEADWOOD.

Section 20 (15 U.S.C. 6311) is repealed.

SEC. 20. RECOGNITION OF TRIBAL LAW.

Section 22 (15 U.S.C. 6313) is amended—

(1) by insert ''**OR TRIBAL**'' in the section heading after ''**STATE**''; and

(2) by inserting ''or Indian tribe'' after ''State''.

SEC. 21. ESTABLISHMENT OF UNITED STATES BOXING COMMISSION.

(a) IN GENERAL.—The Act is amended by adding at the end the following:

''TITLE II—UNITED STATES BOXING COMMISSION

''SEC. 201. PURPOSE.

''The purpose of this title is to protect the health, safety, and welfare of boxers and to ensure fairness in the sport of professional boxing.

''SEC. 202. UNITED STATES BOXING COMMISSION.

''(a) IN GENERAL.—The United States Boxing Commission is established as a commission within the Department of Commerce.

''(b) MEMBERS.—

''(1) IN GENERAL.—The Commission shall consist of 3 members appointed by the President, by and with the advice and consent of the Senate.

''(2) QUALIFICATIONS.—

''(A) IN GENERAL.—Each member of the Commission shall be a citizen of the United States who—

''(i) has extensive experience in professional boxing activities or in a field directly related to professional sports;

''(ii) is of outstanding character and recognized integrity; and

''(iii) is selected on the basis of training, experience, and qualifications and without regard to political party affiliation.

''(B) SPECIFIC QUALIFICATIONS FOR CERTAIN MEMBERS.—At least 1 member of the Commission shall be a former member of a local boxing authority. If practicable, at least 1 member of the Commission shall be a physician or other health care professional duly licensed as such.

''(C) DISINTERESTED PERSONS.—No member of the Commission may, while serving as a member of the Commission—

''(i) be engaged as a professional boxer, boxing promoter, agent, fight manager, matchmaker, referee, judge, or in any other capacity in the conduct of the business of professional boxing;

''(ii) have any pecuniary interest in the earnings of any boxer or the proceeds or outcome of any boxing match; or

''(iii) serve as a member of a boxing commission.

''(3) BIPARTISAN MEMBERSHIP.—Not more than 2 members of the Commission may be members of the same political party.

''(4) GEOGRAPHIC BALANCE.—Not more than 2 members of the Commission may be residents of the same geographic region of the United States when appointed to the Commission. For purposes of the preceding sentence, the area of the United States east of the Mississippi River is a geographic region, and the area of the United States west of the Mississippi River is a geographic region.

''(5) TERMS.—

''(A) IN GENERAL.—The term of a member of the Commission shall be 3 years.

''(B) REAPPOINTMENT.—Members of the Commission may be reappointed to the Commission.

''(C) MIDTERM VACANCIES.—A member of the Commission appointed to fill a vacancy in the Commission occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that unexpired term.

''(D) CONTINUATION PENDING REPLACEMENT.—A member of the Commission may

serve after the expiration of that member's term until a successor has taken office.

''(6) REMOVAL.—A member of the Commission may be removed by the President only for cause.

''(c) EXECUTIVE DIRECTOR.—

''(1) IN GENERAL.—The Commission shall employ an Executive Director to perform the administrative functions of the Commission under this Act, and such other functions and duties of the Commission as the Commission shall specify.

''(2) DISCHARGE OF FUNCTIONS.—Subject to the authority, direction, and control of the Commission the Executive Director shall carry out the functions and duties of the Commission under this Act.

''(d) GENERAL COUNSEL.—The Commission shall employ a General Counsel to provide legal counsel and advice to the Executive Director and the Commission in the performance of its functions under this Act, and to carry out such other functions and duties as the Commission shall specify.

''(e) STAFF.—The Commission shall employ such additional staff as the Commission considers appropriate to assist the Executive Director and the General Counsel in carrying out the functions and duties of the Commission under this Act.

''(f) COMPENSATION.—

''(1) MEMBERS OF COMMISSION.—

''(A) IN GENERAL.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

''(B) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

''(2) EXECUTIVE DIRECTOR AND STAFF.—The Commission shall fix the compensation of the Executive Director, the General Counsel, and other personnel of the Commission. The rate of pay for the Executive Director, the General Counsel, and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

"SEC. 203. FUNCTIONS.

''(a) PRIMARY FUNCTIONS.—The primary functions of the Commission are—

''(1) to protect the health, safety, and general interests of boxers consistent with the provisions of this Act; and

''(2) to ensure uniformity, fairness, and integrity in professional boxing.

''(b) SPECIFIC FUNCTIONS.—The Commission shall—

''(1) administer title I of this Act;

''(2) promulgate uniform standards for professional boxing in consultation with the Association of Boxing Commissions;

''(3) except as otherwise determined by the Commission, oversee all professional boxing matches in the United States;

''(4) work with the boxing commissions of the several States and tribal organizations—

''(A) to improve the safety, integrity, and professionalism of professional boxing in the United States;

''(B) to enhance physical, medical, financial, and other safeguards established for the protection of professional boxers; and

''(C) to improve the status and standards of professional boxing in the United States;

''(5) ensure, in cooperation with the Attorney General (who shall represent the Commission in any judicial proceeding under this Act), the chief law enforcement officer of the several States, and other appropriate officers and agencies of Federal, State, and local government, that Federal and State laws applicable to professional boxing matches in the United States are vigorously, effectively, and fairly enforced;

''(6) review boxing commission regulations for professional boxing and provide assistance to such authorities in meeting minimum standards prescribed by the Commission under this title;

''(7) serve as the coordinating body for all efforts in the United States to establish and maintain uniform minimum health and safety standards for professional boxing;

''(8) if the Commission determines it to be appropriate, publish a newspaper, magazine, or other publication and establish and maintain a website consistent with the purposes of the Commission;

''(9) procure the temporary and intermittent services of experts and consultants to the extent authorized by section 3109(b) of title 5, United States Code, at rates the Commission determines to be reasonable; and

''(10) promulgate rules, regulations, and guidance, and take any other action necessary and proper to accomplish the purposes of, and consistent with, the provisions of this title.

''(c) PROHIBITIONS.—The Commission may not—

''(1) promote boxing events or rank professional boxers; or

''(2) provide technical assistance to, or authorize the use of the name of the Commission by, boxing commissions that do not comply with requirements of the Commission.

''(d) USE OF NAME.—The Commission shall have the exclusive right to use the name 'United States Boxing Commission'. Any person who, without the permission of the Commission, uses that name or any other exclusive name, trademark, emblem, symbol, or insignia of the Commission for the purpose of inducing the sale or exchange of any goods or services, or to promote any exhibition, performance, or sporting event, shall be subject to suit in a civil action by the Commission for the remedies provided in the Act of July 5, 1946 (commonly known as the 'Trademark Act of 1946'; 15 U.S.C. 1051 et seq.).

"SEC. 204. LICENSING AND REGISTRATION OF BOXING PERSONNEL.

''(a) LICENSING.—

''(1) REQUIREMENT FOR LICENSE.—No person may compete in a professional boxing match or serve as a boxing manager, boxing promoter, or sanctioning organization for a professional boxing match except as provided in a license granted to that person under this subsection.

''(2) APPLICATION AND TERM.—

''(A) IN GENERAL.—The Commission shall—

''(i) establish application procedures, forms, and fees;

''(ii) establish and publish appropriate standards for licenses granted under this section; and

''(iii) issue a license to any person who, as determined by the Commission, meets the standards established by the Commission under this title.

''(B) DURATION.—A license issued under this section shall be for a renewable—

''(i) 4-year term for a boxer; and

''(ii) 2-year term for any other person.

''(C) PROCEDURE.—The Commission may issue a license under this paragraph through boxing commissions or in a manner determined by the Commission.

''(b) LICENSING FEES.—

''(1) AUTHORITY.—The Commission may prescribe and charge reasonable fees for the licensing of persons under this title. The Commission may set, charge, and adjust varying fees on the basis of classifications of persons, functions, and events determined appropriate by the Commission.

''(2) LIMITATIONS.—In setting and charging fees under paragraph (1), the Commission shall ensure that, to the maximum extent practicable—

''(A) club boxing is not adversely effected;

''(B) sanctioning organizations and promoters pay comparatively the largest portion of the fees; and

''(C) boxers pay as small a portion of the fees as is possible.

''(3) COLLECTION.—Fees established under this subsection may be collected through boxing commissions or by any other means determined appropriate by the Commission.

"SEC. 205. NATIONAL REGISTRY OF BOXING PERSONNEL.

''(a) REQUIREMENT FOR REGISTRY.—The Commission shall establish and maintain (or authorize a third party to establish and maintain) a unified national computerized registry for the collection, storage, and retrieval of information related to the performance of its duties.

''(b) CONTENTS.—The information in the registry shall include the following:

''(1) BOXERS.—A list of professional boxers and data in the medical registry established under section 114 of this Act, which the Commission shall secure from disclosure in accordance with the confidentiality requirements of section 114(c).

''(2) OTHER PERSONNEL.—Information (pertinent to the sport of professional boxing) on boxing promoters, boxing matchmakers, boxing managers, trainers, cut men, referees, boxing judges, physicians, and any other personnel determined by the Commission as performing a professional activity for professional boxing matches.

"SEC. 206. CONSULTATION REQUIREMENTS.

''The Commission shall consult with the Association of Boxing Commissions—

''(1) before prescribing any regulation or establishing any standard under the provisions of this title; and

''(2) not less than once each year regarding matters relating to professional boxing.

"SEC. 207. MISCONDUCT.

''(a) SUSPENSION AND REVOCATION OF LICENSE OR REGISTRATION.—

''(1) AUTHORITY.—The Commission may, after notice and opportunity for a hearing, suspend or revoke any license issued under this title if the Commission finds that—

''(A) the license holder has violated any provision of this Act;

''(B) there are reasonable grounds for belief that a standard prescribed by the Commission under this title is not being met, or that bribery, collusion, intentional losing, racketeering, extortion, or the use of unlawful threats, coercion, or intimidation have occurred in connection with a license; or

''(C) the suspension or revocation is necessary for the protection of health and safety or is otherwise in the public interest.

''(2) PERIOD OF SUSPENSION.—

''(A) IN GENERAL.—A suspension of a license under this section shall be effective for a period determined appropriate by the Commission except as provided in subparagraph (B).

''(B) SUSPENSION FOR MEDICAL REASONS.—In the case of a suspension or denial of the license of a boxer for medical reasons by the Commission, the Commission may terminate the suspension or denial at any time that a physician certifies that the boxer is fit to participate in a professional boxing match. The Commission shall prescribe the standards and procedures for accepting certifications under this subparagraph.

''(3) PERIOD OF REVOCATION.—In the case of a revocation of the license of a boxer, the

revocation shall be for a period of not less than 1 year.

''(b) INVESTIGATIONS AND INJUNCTIONS.—

''(1) AUTHORITY.—The Commission may—

''(A) conduct any investigation that it considers necessary to determine whether any person has violated, or is about to violate, any provision of this Act or any regulation prescribed under this Act;

''(B) require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated;

''(C) in its discretion, publish information concerning any violations; and

''(D) investigate any facts, conditions, practices, or matters to aid in the enforcement of the provisions of this Act, in the prescribing of regulations under this Act, or in securing information to serve as a basis for recommending legislation concerning the matters to which this Act relates.

''(2) POWERS.—

''(A) IN GENERAL.—For the purpose of any investigation under paragraph (1) or any other proceeding under this title—

''(i) any officer designated by the Commission may administer oaths and affirmations, subpena or otherwise compel the attendance of witnesses, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records the Commission considers relevant or material to the inquiry; and

''(ii) the provisions of sections 6002 and 6004 of title 18, United States Code, shall apply.

''(B) WITNESSES AND EVIDENCE.—The attendance of witnesses and the production of any documents under subparagraph (A) may be required from any place in the United States, including Indian land, at any designated place of hearing.

''(3) ENFORCEMENT OF SUBPOENAS.—

''(A) CIVIL ACTION.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may file an action in any district court of the United States within the jurisdiction of which an investigation or proceeding is carried out, or where that person resides or carries on business, to enforce the attendance and testimony of witnesses and the production of books, papers, correspondence, memorandums, and other records. The court may issue an order requiring the person to appear before the Commission to produce records, if so ordered, or to give testimony concerning the matter under investigation or in question.

''(B) FAILURE TO OBEY.—Any failure to obey an order issued by a court under subparagraph (A) may be punished as contempt of that court.

''(C) PROCESS.—All process in any contempt case under subparagraph (A) may be served in the judicial district in which the person is an inhabitant or in which the person may be found.

''(4) EVIDENCE OF CRIMINAL MISCONDUCT.—

''(A) IN GENERAL.—No person may be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records and documents before the Commission, in obedience to the subpoena of the Commission, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate the person or subject the person to a penalty or forfeiture.

''(B) LIMITED IMMUNITY.—No individual may be prosecuted or subject to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning the matter about which that individual is compelled, after having claimed a privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

''(5) INJUNCTIVE RELIEF.—If the Commission determines that any person is engaged or about to engage in any act or practice that constitutes a violation of any provision of this Act, or of any regulation prescribed under this Act, the Commission may bring an action in the appropriate district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin the act or practice, and upon a proper showing, the court shall grant without bond a permanent or temporary injunction or restraining order.

''(6) MANDAMUS.—Upon application of the Commission, the district courts of the United States, the United States District Court for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States, shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this Act or any order of the Commission.

''(c) INTERVENTION IN CIVIL ACTIONS.—

''(1) IN GENERAL.—The Commission, on behalf of the public interest, may intervene of right as provided under rule 24(a) of the Federal Rules of Civil Procedure in any civil action relating to professional boxing filed in a district court of the United States.

''(2) AMICUS FILING.—The Commission may file a brief in any action filed in a court of the United States on behalf of the public interest in any case relating to professional boxing.

''(d) HEARINGS BY COMMISSION.—Hearings conducted by the Commission under this Act shall be public and may be held before any officer of the Commission. The Commission shall keep appropriate records of the hearings.

"SEC. 208. NONINTERFERENCE WITH BOXING COMMISSIONS.

''(a) NONINTERFERENCE.—Nothing in this Act prohibits any boxing commission from exercising any of its powers, duties, or functions with respect to the regulation or supervision of professional boxing or professional boxing matches to the extent not inconsistent with the provisions of this Act.

''(b) MINIMUM STANDARDS.—Nothing in this Act prohibits any boxing commission from enforcing local standards or requirements that exceed the minimum standards or requirements promulgated by the Commission under this Act.

"SEC. 209. ASSISTANCE FROM OTHER AGENCIES.

''Any employee of any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality may be detailed to the Commission, upon the request of the Commission, on a reimbursable or nonreimbursable basis, with the consent of the appropriate authority having jurisdiction over the employee. While so detailed, an employee shall continue to receive the compensation provided pursuant to law for the employee's regular position of employment and shall retain, without interruption, the rights and privileges of that employment.

"SEC. 210. REPORTS.

''(a) ANNUAL REPORT.—The Commission shall submit a report on its activities to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Commerce each year. The annual report shall include—

''(1) a detailed discussion of the activities of the Commission for the year covered by the report; and

''(2) an overview of the licensing and enforcement activities of the State and tribal organization boxing commissions.

''(b) PUBLIC REPORT.—The Commission shall annually issue and publicize a report of the Commission on the progress made at Federal and State levels and on Indian lands in the reform of professional boxing, which shall include comments on issues of continuing concern to the Commission.

''(c) FIRST ANNUAL REPORT ON THE COMMISSION.—The first annual report under this title shall be submitted not later than 2 years after the effective date of this title.

"SEC. 211. INITIAL IMPLEMENTATION.

''(a) TEMPORARY EXEMPTION.—The requirements for licensing under this title do not apply to a person for the performance of an activity as a boxer, boxing judge, or referee, or the performance of any other professional activity in relation to a professional boxing match, if the person is licensed by a boxing commission to perform that activity as of the effective date of this title.

''(b) EXPIRATION.—The exemption under subsection (a) with respect to a license issued by a boxing commission expires on the earlier of—

''(1) the date on which the license expires; or

''(2) the date that is 2 years after the date of the enactment of the Professional Boxing Amendments Act of 2005.

"SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated for the Commission for each fiscal year such sums as may be necessary for the Commission to perform its functions for that fiscal year.

''(b) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, United States Code, any fee collected under this title—

''(1) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

''(2) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

''(3) shall remain available until expended.''.

(b) CONFORMING AMENDMENTS.—

(1) PBSA.—The Professional Boxing Safety Act of 1996, as amended by this Act, is further amended—

(A) by amending section 1 to read as follows:

"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This Act may be cited as the 'Professional Boxing Safety Act'.

''(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

''Sec. 1. Short title; table of contents.
''Sec. 2. Definitions.
''TITLE I—PROFESSIONAL BOXING SAFETY
''Sec. 101. Purposes.
''Sec. 102. Approval or sanction requirement.
''Sec. 103. Safety standards.
''Sec. 104. Registration.
''Sec. 105. Review.
''Sec. 106. Reporting.
''Sec. 107. Contract requirements.
''Sec. 108. Protection from coercive contracts.
''Sec. 109. Sanctioning organizations.
''Sec. 110. Required disclosures to State boxing commissions by sanctioning organizations.
''Sec. 111. Required disclosures by promoters and broadcasters.
''Sec. 112. Medical registry.
''Sec. 113. Confidentiality.
''Sec. 114. Judges and referees.

''Sec. 115. Conflicts of interest.
''Sec. 116. Enforcement.
''Sec. 117. Professional boxing matches conducted on Indian lands.
''Sec. 118. Relationship with State or Tribal law.

''TITLE II—UNITED STATES BOXING COMMISSION

''Sec. 201. Purpose.
''Sec. 202. United States Boxing Commission.
''Sec. 203. Functions.
''Sec. 204. Licensing and registration of boxing personnel.
''Sec. 205. National registry of boxing personnel.
''Sec. 206. Consultation requirements.
''Sec. 207. Misconduct.
''Sec. 208. Noninterference with boxing commissions
''Sec. 209. Assistance from other agencies.
''Sec. 210. Reports.
''Sec. 211. Initial implementation.
''Sec. 212. Authorization of appropriations.'';

(B) by inserting before section 3 the following:

''TITLE I—PROFESSIONAL BOXING SAFETY'';

(C) by redesignating sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, and 22 as sections 101 through 118, respectively;

(D) by striking subsection (a) of section 113, as redesignated, and inserting the following:

''(a) IN GENERAL.—Except to the extent required in a legal, administrative, or judicial proceeding, a boxing commission, an Attorney General, or the Commission may not disclose to the public any matter furnished by a promoter under section 111.'';

(E) by striking ''section 13'' in subsection (b) of section 113, as redesignated, and inserting ''section 111'';

(F) by striking ''9(b), 10, 11, 12, 13, 14, or 16,'' in paragraph (1) of section 116(b), as redesignated, and inserting ''107, 108, 109, 110, 111, or 114,'';

(G) by striking ''9(b), 10, 11, 12, 13, 14, or 16'' in paragraph (2) of section 116(b), as redesignated, and inserting ''107, 108, 109, 110, 111, or 114'';

(H) by striking ''section 17(a)'' in subsection (b)(3) of section 116, as redesignated, and inserting ''section 115(a)'';

(I) by striking ''section 10'' in subsection (e)(3) of section 116, as redesignated, and inserting ''section 108''; and

(J) by striking ''of this Act'' each place it appears in sections 101 through 120, as redesignated, and inserting ''of this title''.

(2) COMPENSATION OF MEMBERS.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Members of the United States Boxing Commission.''.

SEC. 22. STUDY AND REPORT ON DEFINITION OF PROMOTER.

(a) STUDY.—The United States Boxing Commission shall conduct a study on how the term ''promoter'' should be defined for purposes of the Professional Boxing Safety Act.

(b) HEARINGS.—As part of that study, the Commission shall hold hearings and solicit testimony at those hearings from boxers, managers, promoters, premium, cable, and satellite program service providers, hotels, casinos, resorts, and other commercial establishments that host or sponsor professional boxing matches, and other interested parties with respect to the definition of that term as it is used in the Professional Boxing Safety Act.

(c) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study conducted under subsection (a). The report shall—

(1) set forth a proposed definition of the term ''promoter'' for purposes of the Professional Boxing Safety Act; and

(2) describe the findings, conclusions, and rationale of the Commission for the proposed definition, together with any recommendations of the Commission, based on the study.

SEC. 23. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) 1-YEAR DELAY FOR CERTAIN TITLE II PROVISIONS.—Sections 205 through 212 of the Professional Boxing Safety Act of 1996, as added by section 21(a) of this Act, shall take effect 1 year after the date of enactment of this Act.

By Mr. JEFFORDS (for himself, Ms. COLLINS, Mr. LIEBERMAN, Ms. SNOWE, Mr. SCHUMER, Mr. BIDEN, Mrs. BOXER, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. REED, and Mr. SARBANES):

S. 150. A bill to amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes; to the Committee on Environment and Public Works.

Mr. JEFFORDS. Mr. President, I am both sad and happy to re-introduce the Clean Power Act again with Senators LIEBERMAN and COLLINS and the other 16 cosponsors of the legislation from the last Congress. I am happy that they are all still as committed as I am to the fight to reduce pollution and to protect the public's health and to clean up and conserve the environment for future generations.

I am sad that we have not made more progress in this fight to reduce harmful emissions of sulfur dioxides (SO_X), nitrogen oxides (NO_X), mercury, and carbon dioxide from fossil fuel power plants. More than 25,000 people are dying prematurely every year because of fine particulate pollution ($PM_{-2.5}$) that is emitted by power plants in the form of SO_X and NO_X. More than 4,000 people are dying of heart attacks due to ozone exposure, part of which is caused by power plant emissions. And, over 160 million people are living in areas with unhealthy air quality.

Acid rain continues to fall on our forests and lakes stressing ecosystems in the Northeast and the Southeast. Nearly all the States have some kind of fish consumption warning or advisory due to mercury contamination. And, earlier this week, the chairman of the International Panel on Climate Change, who was placed at the request of the Bush Administration, said that he personally believes that the world has ''already reached the level of dangerous concentrations of carbon dioxide in the atmosphere.''

I am sad because there has been zero movement on multi-pollutant legislation in Congress since this legislation was approved by the Senate Committee on Environment and Public Works in June 2002 in basically the same form we are introducing. As Senators may be aware, prior to that Committee action, I and Senator REID before me, sought to engage in a bipartisan dialogue to move four pollutant legislation. Though the President promised to support such legislation while a candidate in 2000, he reversed himself on that pledge in early 2001.

Since early 2001, the Administration refused to negotiate, to consider compromise or even to respond to legitimate requests for information or timely technical assistance. Instead, they have concentrated their efforts on undermining the Clean Air Act with a particularly focus on gutting New Source Review. They have not shown any real interest in legislating in this matter.

I am sad that the Administration's general approach has been to go backward before 1990, to undue President Bush Sr.'s legacy. That is not what the American people want and it is not what they and their children deserve. They deserve better. They deserve the promise of the Clean Air Act which is constant improvement and moving forward to provide safe air for everyone to breathe.

It is long past time that all power plants in this country meet modern emission performance standards. There is simply no excuse in a technologically advanced society like ours to have power plants running on 1930s technology. It should be embarrassing for us all and requires a swift and concerted effort and significantly more funding than the Administration and Congress have appropriated thus far to maximize the use of all of our energy resources, including coal and renewables, in an environmentally friendly way.

Simply letting these old dirty dinosaurs keep chugging along is bad for public health and the environment and bad for innovation and the development of new technologies. It is a stone age response to a modern day problem.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 150

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Clean Power Act of 2005''.

SEC. 2. ELECTRIC ENERGY GENERATION EMISSION REDUCTIONS.

(a) IN GENERAL.—The Clean Air Act (42 U.S.C. 7401 et seq.) is amended by adding at the end the following:

''TITLE VII—ELECTRIC ENERGY GENERATION EMISSION REDUCTIONS

''Sec. 701. Findings.
''Sec. 702. Purposes.
''Sec. 703. Definitions.

''Sec. 704. Emission limitations.
''Sec. 705. Emission allowances.
''Sec. 706. Permitting and trading of emission allowances.
''Sec. 707. Emission allowance allocation.
''Sec. 708. Mercury emission limitations.
''Sec. 709. Other hazardous air pollutants.
''Sec. 710. Effect of failure to promulgate regulations.
''Sec. 711. Prohibitions.
''Sec. 712. Modernization of electricity generating facilities.
''Sec. 713. Relationship to other law.

''SEC. 701. FINDINGS.

''Congress finds that—

''(1) public health and the environment continue to suffer as a result of pollution emitted by powerplants across the United States, despite the success of Public Law 101–549 (commonly known as the 'Clean Air Act Amendments of 1990') (42 U.S.C. 7401 et seq.) in reducing emissions;

''(2) according to the most reliable scientific knowledge, acid rain precursors must be significantly reduced for the ecosystems of the Northeast and Southeast to recover from the ecological harm caused by acid deposition;

''(3) because lakes and sediments across the United States are being contaminated by mercury emitted by powerplants, there is an increasing risk of mercury poisoning of aquatic habitats and fish-consuming human populations;

''(4)(A) electricity generation accounts for approximately 40 percent of the total emissions in the United States of carbon dioxide, a major greenhouse gas causing global warming; and

''(B) the quantity of carbon dioxide in the atmosphere is growing without constraint and well beyond the international commitments of the United States;

''(5) the cumulative impact of powerplant emissions on public and environmental health must be addressed swiftly by reducing those harmful emissions to levels that are less threatening; and

''(6)(A) the atmosphere is a public resource; and

''(B) emission allowances, representing permission to use that resource for disposal of air pollution from electricity generation, should be allocated to promote public purposes, including—

''(i) protecting electricity consumers from adverse economic impacts;

''(ii) providing transition assistance to adversely affected employees, communities, and industries; and

''(iii) promoting clean energy resources and energy efficiency.

''SEC. 702. PURPOSES.

''The purposes of this title are—

''(1) to alleviate the environmental and public health damage caused by emissions of sulfur dioxide, nitrogen oxides, carbon dioxide, and mercury resulting from the combustion of fossil fuels in the generation of electric and thermal energy;

''(2) to reduce by 2010 the annual national emissions from electricity generating facilities to not more than—

''(A) 2,250,000 tons of sulfur dioxide;

''(B) 1,510,000 tons of nitrogen oxides; and

''(C) 2,050,000,000 tons of carbon dioxide;

''(3) to reduce by 2009 the annual national emissions of mercury from electricity generating facilities to not more than 5 tons;

''(4) to effectuate the reductions described in paragraphs (2) and (3) by—

''(A) requiring electricity generating facilities to comply with specified emission limitations by specified deadlines; and

''(B) allowing electricity generating facilities to meet the emission limitations (other than the emission limitation for mercury) through an alternative method of compliance consisting of an emission allowance and transfer system; and

''(5) to encourage energy conservation, use of renewable and clean alternative technologies, and pollution prevention as long-range strategies, consistent with this title, for reducing air pollution and other adverse impacts of energy generation and use.

''SEC. 703. DEFINITIONS.

''In this title:

''(1) COVERED POLLUTANT.—The term 'covered pollutant' means—

''(A) sulfur dioxide;

''(B) any nitrogen oxide;

''(C) carbon dioxide; and

''(D) mercury.

''(2) ELECTRICITY GENERATING FACILITY.—The term 'electricity generating facility' means an electric or thermal electricity generating unit, a combination of such units, or a combination of 1 or more such units and 1 or more combustion devices, that—

''(A) has a nameplate capacity of 15 megawatts or more (or the equivalent in thermal energy generation, determined in accordance with a methodology developed by the Administrator);

''(B) generates electric energy, for sale, through combustion of fossil fuel; and

''(C) emits a covered pollutant into the atmosphere.

''(3) ELECTRICITY INTENSIVE PRODUCT.—The term 'electricity intensive product' means a product with respect to which the cost of electricity consumed in the production of the product represents more than 5 percent of the value of the product.

''(4) EMISSION ALLOWANCE.—The term 'emission allowance' means a limited authorization to emit in accordance with this title—

''(A) 1 ton of sulfur dioxide;

''(B) 1 ton of nitrogen oxides; or

''(C) 1 ton of carbon dioxide.

''(5) ENERGY EFFICIENCY PROJECT.—The term 'energy efficiency project' means any specific action (other than ownership or operation of an energy efficient building) commenced after the date of enactment of this title—

''(A) at a facility (other than an electricity generating facility), that verifiably reduces the annual electricity or natural gas consumption per unit output of the facility, as compared with the annual electricity or natural gas consumption per unit output that would be expected in the absence of an allocation of emission allowances (as determined by the Administrator); or

''(B) by an entity that is primarily engaged in the transmission and distribution of electricity, that significantly improves the efficiency of that type of entity, as compared with standards for efficiency developed by the Administrator, in consultation with the Secretary of Energy, after the date of enactment of this title.

''(6) ENERGY EFFICIENT BUILDING.—The term 'energy efficient building' means a residential building or commercial building completed after the date of enactment of this title for which the projected lifetime consumption of electricity or natural gas for heating, cooling, and ventilation is at least 30 percent less than the lifetime consumption of a typical new residential building or commercial building, as determined by the Administrator (in consultation with the Secretary of Energy)—

''(A) on a State or regional basis; and

''(B) taking into consideration—

''(i) applicable building codes; and

''(ii) consumption levels achieved in practice by new residential buildings or commercial buildings in the absence of an allocation of emission allowances.

''(7) ENERGY EFFICIENT PRODUCT.—The term 'energy efficient product' means a product manufactured after the date of enactment of this title that has an expected lifetime electricity or natural gas consumption that—

''(A) is less than the average lifetime electricity or natural gas consumption for that type of product; and

''(B) does not exceed the lesser of—

''(i) the maximum energy consumption that qualifies for the applicable Energy Star label for that type of product; or

''(ii) the average energy consumption of the most efficient 25 percent of that type of product manufactured in the same year.

''(8) LIFETIME.—The term 'lifetime' means—

''(A) in the case of a residential building that is an energy efficient building, 30 years;

''(B) in the case of a commercial building that is an energy efficient building, 15 years; and

''(C) in the case of an energy efficient product, a period determined by the Administrator to be the average life of that type of energy efficient product.

''(9) MERCURY.—The term 'mercury' includes any mercury compound.

''(10) NEW CLEAN FOSSIL FUEL-FIRED ELECTRICITY GENERATING UNIT.—The term 'new clean fossil fuel-fired electricity generating unit' means a unit that—

''(A) has been in operation for 10 years or less; and

''(B) is—

''(i) a natural gas fired generator that—

''(I) has an energy conversion efficiency of at least 55 percent; and

''(II) uses best available control technology (as defined in section 169);

''(ii) a generator that—

''(I) uses integrated gasification combined cycle technology;

''(II) uses best available control technology (as defined in section 169); and

''(III) has an energy conversion efficiency of at least 45 percent; or

''(iii) a fuel cell operating on fuel derived from a nonrenewable source of energy.

''(11) NONWESTERN REGION.—The term 'nonwestern region' means the area of the States that is not included in the western region.

''(12) RENEWABLE ELECTRICITY GENERATING UNIT.—The term 'renewable electricity generating unit' means a unit that—

''(A) has been in operation for 10 years or less; and

''(B) generates electric energy by means of—

''(i) wind;

''(ii) biomass;

''(iii) landfill gas;

''(iv) a geothermal, solar thermal, or photovoltaic source; or

''(v) a fuel cell operating on fuel derived from a renewable source of energy.

''(13) SMALL ELECTRICITY GENERATING FACILITY.—The term 'small electricity generating facility' means an electric or thermal electricity generating unit, or combination of units, that—

''(A) has a nameplate capacity of less than 15 megawatts (or the equivalent in thermal energy generation, determined in accordance with a methodology developed by the Administrator);

''(B) generates electric energy, for sale, through combustion of fossil fuel; and

''(C) emits a covered pollutant into the atmosphere.

''(14) WESTERN REGION.—The term 'western region' means the area comprising the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

"SEC. 704. EMISSION LIMITATIONS.

''(a) IN GENERAL.—Subject to subsections (b) and (c), the Administrator shall promulgate regulations to ensure that, during 2010 and each year thereafter, the total annual emissions of covered pollutants from all electricity generating facilities located in all States does not exceed—

''(1) in the case of sulfur dioxide—

''(A) 275,000 tons in the western region; or

''(B) 1,975,000 tons in the nonwestern region;

''(2) in the case of nitrogen oxides, 1,510,000 tons;

''(3) in the case of carbon dioxide, 2,050,000,000 tons; or

''(4) in the case of mercury, 5 tons.

''(b) EXCESS EMISSIONS BASED ON UNUSED ALLOWANCES.—The regulations promulgated under subsection (a) shall authorize emissions of covered pollutants in excess of the national emission limitations established under that subsection for a year to the extent that the number of tons of the excess emissions is less than or equal to the number of emission allowances that are—

''(1) used in the year; but

''(2) allocated for any previous year under section 707.

''(c) REDUCTIONS.—For 2010 and each year thereafter, the quantity of emissions specified for each covered pollutant in subsection (a) shall be reduced by the sum of—

''(1) the number of tons of the covered pollutant that were emitted by small electricity generating facilities in the second preceding year; and

''(2) any number of tons of reductions in emissions of the covered pollutant required under section 705(h).

"SEC. 705. EMISSION ALLOWANCES.

''(a) CREATION AND ALLOCATION.—

''(1) IN GENERAL.—For 2010 and each year thereafter, subject to paragraph (2), there are created, and the Administrator shall allocate in accordance with section 707, emission allowances as follows:

''(A) In the case of sulfur dioxide—

''(i) 275,000 emission allowances for each year for use in the western region; and

''(ii) 1,975,000 emission allowances for each year for use in the nonwestern region.

''(B) In the case of nitrogen oxides, 1,510,000 emission allowances for each year.

''(C) In the case of carbon dioxide, 2,050,000,000 emission allowances for each year.

''(2) REDUCTIONS.—For 2010 and each year thereafter, the number of emission allowances specified for each covered pollutant in paragraph (1) shall be reduced by a number equal to the sum of—

''(A) the number of tons of the covered pollutant that were emitted by small electricity generating facilities in the second preceding year; and

''(B) any number of tons of reductions in emissions of the covered pollutant required under subsection (h).

''(b) NATURE OF EMISSION ALLOWANCES.—

''(1) NOT A PROPERTY RIGHT.—An emission allowance allocated by the Administrator under subsection (a) is not a property right.

''(2) NO LIMIT ON AUTHORITY TO TERMINATE OR LIMIT.—Nothing in this title or any other provision of law limits the authority of the United States to terminate or limit an emission allowance.

''(3) TRACKING AND TRANSFER OF EMISSION ALLOWANCES.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish an emission allowance tracking and transfer system for emission allowances of sulfur dioxide, nitrogen oxides, and carbon dioxide.

''(B) REQUIREMENTS.—The emission allowance tracking and transfer system established under subparagraph (A) shall—

''(i) incorporate the requirements of subsections (b) and (d) of section 412 (except that written certification by the transferee shall not be necessary to effect a transfer); and

''(ii) permit any entity—

''(I) to buy, sell, or hold an emission allowance; and

''(II) to permanently retire an unused emission allowance.

''(C) PROCEEDS OF TRANSFERS.—Proceeds from the transfer of emission allowances by any person to which the emission allowances have been allocated—

''(i) shall not constitute funds of the United States; and

''(ii) shall not be available to meet any obligations of the United States.

''(c) IDENTIFICATION AND USE.—

''(1) IN GENERAL.—Each emission allowance allocated by the Administrator shall bear a unique serial number, including—

''(A) an identifier of the covered pollutant to which the emission allowance pertains; and

''(B) the first year for which the allowance may be used.

''(2) SULFUR DIOXIDE EMISSION ALLOWANCES.—In the case of sulfur dioxide emission allowances, the Administrator shall ensure that the emission allowances allocated to electricity generating facilities in the western region are distinguishable from emission allowances allocated to electricity generating facilities in the nonwestern region.

''(3) YEAR OF USE.—Each emission allowance may be used in the year for which the emission allowance is allocated or in any subsequent year.

''(d) ANNUAL SUBMISSION OF EMISSION ALLOWANCES.—

''(1) IN GENERAL.—On or before April 1, 2011, and April 1 of each year thereafter, the owner or operator of each electricity generating facility shall submit to the Administrator 1 emission allowance for the applicable covered pollutant (other than mercury) for each ton of sulfur dioxide, nitrogen oxides, or carbon dioxide emitted by the electricity generating facility during the previous calendar year.

''(2) SPECIAL RULE FOR OZONE EXCEEDANCES.—

''(A) IDENTIFICATION OF FACILITIES CONTRIBUTING TO NONATTAINMENT.—Not later than December 31, 2009, and the end of each 3-year period thereafter, each State, consistent with the obligations of the State under section 110(a)(2)(D), shall identify the electricity generating facilities in the State and in other States that are significantly contributing (as determined based on guidance issued by the Administrator) to nonattainment of the national ambient air quality standard for ozone in the State.

''(B) SUBMISSION OF ADDITIONAL ALLOWANCES.—In 2010 and each year thereafter, on petition from a State or a person demonstrating that the control measures in effect at an electricity generating facility that is identified under subparagraph (A) as significantly contributing to nonattainment of the national ambient air quality standard for ozone in a State during the previous year are inadequate to prevent the significant contribution described in subparagraph (A), the Administrator, if the Administrator determines that the electricity generating facility is inadequately controlled for nitrogen oxides, may require that the electricity generating facility submit 3 nitrogen oxide emission allowances for each ton of nitrogen oxides emitted by the electricity generating facility during any period of an exceedance of the national ambient air quality standard for ozone in the State during the previous year.

''(3) REGIONAL LIMITATIONS FOR SULFUR DIOXIDE.—The Administrator shall not allow—

''(A) the use of sulfur dioxide emission allowances allocated for the western region to meet the obligations under this subsection of electricity generating facilities in the nonwestern region; or

''(B) the use of sulfur dioxide emission allowances allocated for the nonwestern region to meet the obligations under this subsection of electricity generating facilities in the western region.

''(e) EMISSION VERIFICATION, MONITORING, AND RECORDKEEPING.—

''(1) IN GENERAL.—The Administrator shall ensure that Federal regulations, in combination with any applicable State regulations, are adequate to verify, monitor, and document emissions of covered pollutants from electricity generating facilities.

''(2) INVENTORY OF EMISSIONS FROM SMALL ELECTRICITY GENERATING FACILITIES.—On or before July 1, 2006, the Administrator, in cooperation with State agencies, shall complete, and on an annual basis update, a comprehensive inventory of emissions of sulfur dioxide, nitrogen oxides, carbon dioxide, and particulate matter from small electricity generating facilities.

''(3) MONITORING INFORMATION.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this title, the Administrator shall promulgate regulations to require each electricity generating facility to submit to the Administrator—

''(i) not later than April 1 of each year, verifiable information on covered pollutants emitted by the electricity generating facility in the previous year, expressed in—

''(I) tons of covered pollutants; and

''(II) tons of covered pollutants per megawatt hour of energy (or the equivalent thermal energy) generated; and

''(ii) as part of the first submission under clause (i), verifiable information on covered pollutants emitted by the electricity generating facility in 2002, 2003, and 2004, if the electricity generating facility was required to report that information in those years.

''(B) SOURCE OF INFORMATION.—Information submitted under subparagraph (A) shall be obtained using a continuous emission monitoring system (as defined in section 402).

''(C) AVAILABILITY TO THE PUBLIC.—The information described in subparagraph (A) shall be made available to the public—

''(i) in the case of the first year in which the information is required to be submitted under that subparagraph, not later than 18 months after the date of enactment of this title; and

''(ii) in the case of each year thereafter, not later than April 1 of the year.

''(4) AMBIENT AIR QUALITY MONITORING FOR SULFUR DIOXIDE AND HAZARDOUS AIR POLLUTANTS.—

''(A) IN GENERAL.—Beginning January 1, 2006, each coal-fired electricity generating facility with an aggregate generating capacity of 50 megawatts or more shall, in accordance with guidelines issued by the Administrator, commence ambient air quality monitoring within a 30-mile radius of the coal-fired electricity generating facility for the purpose of measuring maximum concentrations of sulfur dioxide and hazardous air pollutants emitted by the coal-fired electricity generating facility.

''(B) LOCATION OF MONITORING POINTS.—Monitoring under subparagraph (A) shall include monitoring at not fewer than 2 points—

''(i) that are at ground level and within 3 miles of the coal-fired electricity generating facility;

''(ii) at which the concentration of pollutants being monitored is expected to be the greatest; and

''(iii) at which the monitoring shall be the most frequent.

''(C) FREQUENCY OF MONITORING OF SULFUR DIOXIDE.—Monitoring of sulfur dioxide under subparagraph (A) shall be carried out on a continuous basis and averaged over 5-minute periods.

''(D) AVAILABILITY TO THE PUBLIC.—The results of the monitoring under subparagraph (A) shall be made available to the public.

''(f) EXCESS EMISSION PENALTY.—

''(1) IN GENERAL.—Subject to paragraph (2), section 411 shall be applicable to an owner or operator of an electricity generating facility.

''(2) CALCULATION OF PENALTY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the penalty for failure to submit emission allowances for covered pollutants as required under subsection (d) shall be equal to 3 times the product obtained by multiplying—

''(i) as applicable—

''(I) the number of tons emitted in excess of the emission limitation requirement applicable to the electricity generating facility; or

''(II) the number of emission allowances that the owner or operator failed to submit; and

''(ii) the average annual market price of emission allowances (as determined by the Administrator).

''(B) MERCURY.—In the case of mercury, the penalty shall be equal to 3 times the product obtained by multiplying—

''(i) the number of grams emitted in excess of the emission limitation requirement for mercury applicable to the electricity generating facility; and

''(ii) the average cost of mercury controls at electricity generating units that have a nameplate capacity of 15 megawatts or more in all States (as determined by the Administrator).

''(g) SIGNIFICANT ADVERSE LOCAL IMPACTS.—

''(1) IN GENERAL.—If the Administrator determines that emissions of an electricity generating facility may reasonably be anticipated to cause or contribute to a significant adverse impact on an area (including endangerment of public health, contribution to acid deposition in a sensitive receptor area, and other degradation of the environment), the Administrator shall limit the emissions of the electricity generating facility as necessary to avoid that impact.

''(2) VIOLATION.—Notwithstanding the availability of emission allowances, it shall be a violation of this Act for any electricity generating facility to exceed any limitation on emissions established under paragraph (1).

''(h) ADDITIONAL REDUCTIONS.—

''(1) PROTECTION OF PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT.—If the Administrator determines that the emission levels necessary to achieve the national emission limitations established under section 704 are not reasonably anticipated to protect public health or welfare or the environment (including protection of children, pregnant women, minority or low-income communities, and other sensitive populations), the Administrator may require reductions in emissions from electricity generating facilities in addition to the reductions required under the other provisions of this title.

''(2) EMISSION ALLOWANCE TRADING.—

''(A) STUDIES.—

''(i) IN GENERAL.—In 2013 and at the end of each 3-year period thereafter, the Administrator shall complete a study of the impacts of the emission allowance trading authorized under this title.

''(ii) REQUIRED ASSESSMENT.—The study shall include an assessment of ambient air quality in areas surrounding electricity generating facilities that participate in emission allowance trading, including a comparison between—

''(I) the ambient air quality in those areas; and

''(II) the national average ambient air quality.

''(B) LIMITATION ON EMISSIONS.—If the Administrator determines, based on the results of a study under subparagraph (A), that adverse local impacts result from emission allowance trading, the Administrator may require reductions in emissions from electricity generating facilities in addition to the reductions required under the other provisions of this title.

''(i) USE OF CERTAIN OTHER EMISSION ALLOWANCES.—

''(1) IN GENERAL.—Subject to paragraph (2), emission allowances or other emission trading instruments created under title I or IV for sulfur dioxide or nitrogen oxides shall not be valid for submission under subsection (d).

''(2) EMISSION ALLOWANCES PLACED IN RESERVE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an emission allowance described in paragraph (1) that was placed in reserve under section 404(a)(2) or 405 or through regulations implementing controls on nitrogen oxides, because an affected unit emitted fewer tons of sulfur dioxide or nitrogen oxides than were permitted under an emission limitation imposed under title I or IV before the date of enactment of this title, shall be considered to be equivalent to ¼ of an emission allowance created by subsection (a) for sulfur dioxide or nitrogen oxides, respectively.

''(B) EMISSION ALLOWANCES RESULTING FROM ACHIEVEMENT OF NEW SOURCE PERFORMANCE STANDARDS.—If an emission allowance described in subparagraph (A) was created and placed in reserve during the period of 2001 through 2009 by the owner or operator of an electricity generating facility through the application of pollution control technology that resulted in the achievement and maintenance by the electricity generating facility of the applicable standards of performance required of new sources under section 111, the emission allowance shall be valid for submission under subsection (d).

''SEC. 706. PERMITTING AND TRADING OF EMISSION ALLOWANCES.

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish a permitting and emission allowance trading compliance program to implement the limitations on emissions of covered pollutants from electricity generating facilities established under section 704.

''(b) EMISSION ALLOWANCE TRADING WITH FACILITIES OTHER THAN ELECTRICITY GENERATING FACILITIES.—

''(1) IN GENERAL.—Subject to paragraph (2) and section 705(i), the regulations promulgated to establish the program under subsection (a) shall prohibit use of emission allowances generated from other emission control programs for the purpose of demonstrating compliance with the limitations on emissions of covered pollutants from electricity generating facilities established under section 704.

''(2) EXCEPTION FOR CERTAIN CARBON DIOXIDE EMISSION CONTROL PROGRAMS.—The prohibition described in paragraph (1) shall not apply in the case of carbon dioxide emission allowances generated from an emission control program that limits total carbon dioxide emissions from the entirety of any industrial sector.

''(c) METHODOLOGY.—The program established under subsection (a) shall clearly identify the methodology for the allocation of emission allowances, including standards for measuring annual electricity generation and energy efficiency as the standards relate to emissions.

''SEC. 707. EMISSION ALLOWANCE ALLOCATION.

''(a) ALLOCATION TO ELECTRICITY CONSUMERS.—

''(1) IN GENERAL.—For 2010 and each year thereafter, after making allocations of emission allowances under subsections (b) through (f), the Administrator shall allocate the remaining emission allowances created by section 705(a) for the year for each covered pollutant other than mercury to households served by electricity.

''(2) ALLOCATION AMONG HOUSEHOLDS.—The allocation to each household shall reflect—

''(A) the number of persons residing in the household; and

''(B) the ratio that—

''(i) the quantity of the residential electricity consumption of the State in which the household is located; bears to

''(ii) the quantity of the residential electricity consumption of all States.

''(3) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations making appropriate arrangements for the allocation of emission allowances to households under this subsection, including as necessary the appointment of 1 or more trustees—

''(A) to receive the emission allowances for the benefit of the households;

''(B) to obtain fair market value for the emission allowances; and

''(C) to distribute the proceeds to the beneficiaries.

''(b) ALLOCATION FOR TRANSITION ASSISTANCE.—

''(1) IN GENERAL.—For 2010 and each year thereafter through 2019, the Administrator shall allocate the percentage specified in paragraph (2) of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury in the following manner:

''(A) 80 percent shall be allocated to provide transition assistance to—

''(i) dislocated workers (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)) whose employment has been terminated or who have been laid off as a result of the emission reductions required by this title; and

''(ii) communities that have experienced disproportionate adverse economic impacts as a result of the emission reductions required by this title.

''(B) 20 percent shall be allocated to producers of electricity intensive products in a number equal to the product obtained by multiplying—

''(i) the ratio that—

''(I) the quantity of each electricity intensive product produced by each producer in the previous year; bears to

''(II) the quantity of the electricity intensive product produced by all producers in the previous year;

''(ii) the average quantity of electricity used in producing the electricity intensive product by producers that use the most energy efficient process for producing the electricity intensive product; and

''(iii) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per megawatt hour of electricity generated by electricity generating facilities in all States.

''(2) SPECIFIED PERCENTAGES.—The percentages referred to in paragraph (1) are—

''(A) in the case of 2010, 6 percent;

''(B) in the case of 2011, 5.5 percent;
''(C) in the case of 2012, 5 percent;
''(D) in the case of 2013, 4.5 percent;
''(E) in the case of 2014, 4 percent;
''(F) in the case of 2015, 3.5 percent;
''(G) in the case of 2016, 3 percent;
''(H) in the case of 2017, 2.5 percent;
''(I) in the case of 2018, 2 percent; and
''(J) in the case of 2019, 1.5 percent.

''(3) REGULATIONS FOR ALLOCATION FOR TRANSITION ASSISTANCE TO DISLOCATED WORKERS AND COMMUNITIES.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations making appropriate arrangements for the distribution of emission allowances under paragraph (1)(A), including as necessary the appointment of 1 or more trustees—

''(i) to receive the emission allowances allocated under paragraph (1)(A) for the benefit of the dislocated workers and communities;

''(ii) to obtain fair market value for the emission allowances; and

''(iii) to apply the proceeds to providing transition assistance to the dislocated workers and communities.

''(B) FORM OF TRANSITION ASSISTANCE.—Transition assistance under paragraph (1)(A) may take the form of—

''(i) grants to employers, employer associations, and representatives of employees—

''(I) to provide training, adjustment assistance, and employment services to dislocated workers; and

''(II) to make income-maintenance and needs-related payments to dislocated workers; and

''(ii) grants to States and local governments to assist communities in attracting new employers or providing essential local government services.

''(c) ALLOCATION TO RENEWABLE ELECTRICITY GENERATING UNITS, EFFICIENCY PROJECTS, AND CLEANER ENERGY SOURCES.—For 2010 and each year thereafter, the Administrator shall allocate not more than 20 percent of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury—

''(1) to owners and operators of renewable electricity generating units, in a number equal to the product obtained by multiplying—

''(A) the number of megawatt hours of electricity generated in the previous year by each renewable electricity generating unit; and

''(B) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per megawatt hour of electricity generated by electricity generating facilities in all States;

''(2) to owners and operators of energy efficient buildings, producers of energy efficient products, and entities that carry out energy efficient projects, in a number equal to the product obtained by multiplying—

''(A) the number of megawatt hours of electricity or cubic feet of natural gas saved in the previous year as a result of each energy efficient building, energy efficient product, or energy efficiency project; and

''(B) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per, as appropriate—

''(i) megawatt hour of electricity generated by electricity generating facilities in all States; or

''(ii) cubic foot of natural gas burned for a purpose other than generation of electricity in all States;

''(3) to owners and operators of new clean fossil fuel-fired electricity generating units, in a number equal to the product obtained by multiplying—

''(A) the number of megawatt hours of electricity generated in the previous year by each new clean fossil fuel-fired electricity generating unit; and

''(B) with respect to the previous year, ½ of the national average quantity (expressed in tons) of emissions of each such pollutant per megawatt hour of electricity generated by electricity generating facilities in all States; and

''(4) to owners and operators of combined heat and power electricity generating facilities, in a number equal to the product obtained by multiplying—

''(A) the number of British thermal units of thermal energy produced and put to productive use in the previous year by each combined heat and power electricity generating facility; and

''(B) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per British thermal unit of thermal energy generated by electricity generating facilities in all States.

''(d) TRANSITION ASSISTANCE TO ELECTRICITY GENERATING FACILITIES.—

''(1) IN GENERAL.—For 2010 and each year thereafter through 2019, the Administrator shall allocate the percentage specified in paragraph (2) of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury to the owners or operators of electricity generating facilities in the ratio that—

''(A) the quantity of electricity generated by each electricity generating facility in 2003; bears to

''(B) the quantity of electricity generated by all electricity generating facilities in 2003.

''(2) SPECIFIED PERCENTAGES.—The percentages referred to in paragraph (1) are—

''(A) in the case of 2010, 10 percent;
''(B) in the case of 2011, 9 percent;
''(C) in the case of 2012, 8 percent;
''(D) in the case of 2013, 7 percent;
''(E) in the case of 2014, 6 percent;
''(F) in the case of 2015, 5 percent;
''(G) in the case of 2016, 4 percent;
''(H) in the case of 2017, 3 percent;
''(I) in the case of 2018, 2 percent; and
''(J) in the case of 2019, 1 percent.

''(e) ALLOCATION TO ENCOURAGE BIOLOGICAL CARBON SEQUESTRATION.—

''(1) IN GENERAL.—For 2010 and each year thereafter, the Administrator shall allocate, on a competitive basis and in accordance with paragraphs (2) and (3), not more than 0.075 percent of the carbon dioxide emission allowances created by section 705(a) for the year for the purposes of—

''(A) carrying out projects to reduce net carbon dioxide emissions through biological carbon dioxide sequestration in the United States that—

''(i) result in benefits to watersheds and fish and wildlife habitats; and

''(ii) are conducted in accordance with project reporting, monitoring, and verification guidelines based on—

''(I) measurement of increases in carbon storage in excess of the carbon storage that would have occurred in the absence of such a project;

''(II) comprehensive carbon accounting that—

''(aa) reflects net increases in carbon reservoirs; and

''(bb) takes into account any carbon emissions resulting from disturbance of carbon reservoirs in existence as of the date of commencement of the project;

''(III) adjustments to account for—

''(aa) emissions of carbon that may result at other locations as a result of the impact of the project on timber supplies; or

''(bb) potential displacement of carbon emissions to other land owned by the entity that carries out the project; and

''(IV) adjustments to reflect the expected carbon storage over various time periods, taking into account the likely duration of the storage of the carbon stored in a carbon reservoir; and

''(B) conducting accurate inventories of carbon sinks.

''(2) CARBON INVENTORY.—The Administrator, in consultation with the Secretary of Agriculture, shall allocate not more than ⅓ of the emission allowances described in paragraph (1) to not more than 5 State or multistate land or forest management agencies or nonprofit entities that—

''(A) have a primary goal of land conservation; and

''(B) submit to the Administrator proposals for projects—

''(i) to demonstrate and assess the potential for the development and use of carbon inventorying and accounting systems;

''(ii) to improve the standards relating to, and the identification of, incremental carbon sequestration in forests, agricultural soil, grassland, or rangeland; or

''(iii) to assist in development of a national biological carbon storage baseline or inventory.

''(3) REVOLVING LOAN PROGRAM.—The Administrator shall allocate not more than ⅔ of the emission allowances described in paragraph (1) to States, based on proposals submitted by States to conduct programs under which each State shall—

''(A) use the value of the emission allowances to establish a State revolving loan fund to provide loans to owners of nonindustrial private forest land in the State to carry out forest and forest soil carbon sequestration activities that will achieve the purposes specified in paragraph (2)(B); and

''(B) for 2011 and each year thereafter, contribute to the program of the State an amount equal to 25 percent of the value of the emission allowances received under this paragraph for the year in cash, in-kind services, or technical assistance.

''(4) USE OF EMISSION ALLOWANCES.—An entity that receives an allocation of emission allowances under this subsection may use the proceeds from the sale or other transfer of the emission allowances only for the purpose of carrying out activities described in this subsection.

''(5) RECOMMENDATIONS CONCERNING CARBON DIOXIDE EMISSION ALLOWANCES.—

''(A) IN GENERAL.—Not later than 4 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of Agriculture, shall submit to Congress recommendations for establishing a system under which entities that receive grants or loans under this section may be allocated carbon dioxide emission allowances created by section 705(a) for incremental carbon sequestration in forests, agricultural soils, rangeland, or grassland.

''(B) GUIDELINES.—The recommendations shall include recommendations for development, reporting, monitoring, and verification guidelines for quantifying net carbon sequestration from land use projects that address the elements specified in paragraph (1)(A).

''(f) ALLOCATION TO ENCOURAGE GEOLOGICAL CARBON SEQUESTRATION.—

''(1) IN GENERAL.—For 2010 and each year thereafter, the Administrator shall allocate not more than 1.5 percent of the carbon dioxide emission allowances created by section 705(a) to entities that carry out geological sequestration of carbon dioxide produced by an electric generating facility in accordance with requirements established by the Administrator—

''(A) to ensure the permanence of the sequestration; and

''(B) to ensure that the sequestration will not cause or contribute to significant adverse effects on the environment.

''(2) NUMBER OF EMISSION ALLOWANCES.—For 2010 and each year thereafter, the Administrator shall allocate to each entity described in paragraph (1) a number of emission allowances that is equal to the number of tons of carbon dioxide produced by the electric generating facility during the previous year that is geologically sequestered as described in paragraph (1).

''(3) USE OF EMISSION ALLOWANCES.—An entity that receives an allocation of emission allowances under this subsection may use the proceeds from the sale or other transfer of the emission allowances only for the purpose of carrying out activities described in this subsection.

''SEC. 708. MERCURY EMISSION LIMITATIONS.

''(a) IN GENERAL.—

''(1) REGULATIONS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish emission limitations for mercury emissions by coal-fired electricity generating facilities.

''(B) NO EXCEEDANCE OF NATIONAL LIMITATION.—The regulations shall ensure that the national limitation for mercury emissions from each coal-fired electricity generating facility established under section 704(a)(4) is not exceeded.

''(C) EMISSION LIMITATIONS FOR 2009 AND THEREAFTER.—In carrying out subparagraph (A), for 2009 and each year thereafter, the Administrator shall not—

''(i) subject to subsections (e) and (f) of section 112, establish limitations on emissions of mercury from coal-fired electricity generating facilities that allow emissions in excess of 2.48 grams of mercury per 1000 megawatt hours; or

''(ii) differentiate between facilities that burn different types of coal.

''(2) ANNUAL REVIEW AND DETERMINATION.—

''(A) IN GENERAL.—Not later than April 1 of each year, the Administrator shall—

''(i) review the total mercury emissions during the 2 previous years from electricity generating facilities located in all States; and

''(ii) determine whether, during the 2 previous years, the total mercury emissions from facilities described in clause (i) exceeded the national limitation for mercury emissions established under section 704(a)(4).

''(B) EXCEEDANCE OF NATIONAL LIMITATION.—If the Administrator determines under subparagraph (A)(ii) that, during the 2 previous years, the total mercury emissions from facilities described in subparagraph (A)(i) exceeded the national limitation for mercury emissions established under section 704(a)(4), the Administrator shall, not later than 1 year after the date of the determination, revise the regulations promulgated under paragraph (1) to reduce the emission rates specified in the regulations as necessary to ensure that the national limitation for mercury emissions is not exceeded in any future year.

''(3) COMPLIANCE FLEXIBILITY.—

''(A) IN GENERAL.—Each coal-fired electricity generating facility subject to an emission limitation under this section shall be in compliance with that limitation if that limitation is greater than or equal to the quotient obtained by dividing—

''(i) the total mercury emissions of the coal-fired electricity generating facility during each 30-day period; by

''(ii) the quantity of electricity generated by the coal-fired electricity generating facility during that period.

''(B) MORE THAN 1 UNIT AT A FACILITY.—In any case in which more than 1 coal-fired electricity generating unit at a coal-fired electricity generating facility subject to an emission limitation under this section was operated in 1999 under common ownership or control, compliance with the emission limitation may be determined by averaging the emission rates of all coal-fired electricity generating units at the electricity generating facility during each 30-day period.

''(b) PREVENTION OF RE-RELEASE.—

''(1) REGULATIONS.—Not later than July 1, 2006, the Administrator shall promulgate regulations to ensure that any mercury captured or recovered by emission controls installed at an electricity generating facility is not re-released into the environment.

''(2) REQUIRED ELEMENTS.—The regulations shall require—

''(A) daily covers on all active waste disposal units, and permanent covers on all inactive waste disposal units, to prevent the release of mercury into the air;

''(B) monitoring of groundwater to ensure that mercury or mercury compounds do not migrate from the waste disposal unit;

''(C) waste disposal siting requirements and cleanup requirements to protect groundwater and surface water resources;

''(D) elimination of agricultural application of coal combustion wastes; and

''(E) appropriate limitations on mercury emissions from sources or processes that reprocess or use coal combustion waste, including manufacturers of wallboard and cement.

''SEC. 709. OTHER HAZARDOUS AIR POLLUTANTS.

''(a) IN GENERAL.—Not later than January 1, 2006, the Administrator shall issue to owners and operators of coal-fired electricity generating facilities requests for information under section 114 that are of sufficient scope to generate data sufficient to support issuance of standards under section 112(d) for hazardous air pollutants other than mercury emitted by coal-fired electricity generating facilities.

''(b) DEADLINE FOR SUBMISSION OF REQUESTED INFORMATION.—The Administrator shall require each recipient of a request for information described in subsection (a) to submit the requested data not later than 180 days after the date of the request.

''(c) PROMULGATION OF EMISSION STANDARDS.—The Administrator shall—

''(1) not later than January 1, 2006, propose emission standards under section 112(d) for hazardous air pollutants other than mercury; and

''(2) not later than January 1, 2007, promulgate emission standards under section 112(d) for hazardous air pollutants other than mercury.

''(d) PROHIBITION ON EXCESS EMISSIONS.—It shall be unlawful for an electricity generating facility subject to standards for hazardous air pollutants other than mercury promulgated under subsection (c) to emit, after December 31, 2008, any such pollutant in excess of the standards.

''(e) EFFECT ON OTHER LAW.—Nothing in this section or section 708 affects any requirement of subsection (e), (f)(2), or (n)(1)(A) of section 112, except that the emission limitations established by regulations promulgated under this section shall be deemed to represent the maximum achievable control technology for mercury emissions from electricity generating units under section 112(d).

''SEC. 710. EFFECT OF FAILURE TO PROMULGATE REGULATIONS.

''If the Administrator fails to promulgate regulations to implement and enforce the limitations specified in section 704—

''(1)(A) each electricity generating facility shall achieve, not later than January 1, 2010, an annual quantity of emissions that is less than or equal to—

''(i) in the case of nitrogen oxides, 15 percent of the annual emissions by a similar electricity generating facility that has no controls for emissions of nitrogen oxides; and

''(ii) in the case of carbon dioxide, 75 percent of the annual emissions by a similar electricity generating facility that has no controls for emissions of carbon dioxide; and

''(B) each electricity generating facility that does not use natural gas as the primary combustion fuel shall achieve, not later than January 1, 2010, an annual quantity of emissions that is less than or equal to—

''(i) in the case of sulfur dioxide, 5 percent of the annual emissions by a similar electricity generating facility that has no controls for emissions of sulfur dioxide; and

''(ii) in the case of mercury, 10 percent of the annual emissions by a similar electricity generating facility that has no controls included specifically for the purpose of controlling emissions of mercury; and

''(2) the applicable permit under this Act for each electricity generating facility shall be deemed to incorporate a requirement for achievement of the reduced levels of emissions specified in paragraph (1).

''SEC. 711. PROHIBITIONS.

''It shall be unlawful—

''(1) for the owner or operator of any electricity generating facility—

''(A) to operate the electricity generating facility in noncompliance with the requirements of this title (including any regulations implementing this title);

''(B) to fail to submit by the required date any emission allowances, or pay any penalty, for which the owner or operator is liable under section 705;

''(C) to fail to provide and comply with any plan to offset excess emissions required under section 705(f); or

''(D) to emit mercury in excess of the emission limitations established under section 708; or

''(2) for any person to hold, use, or transfer any emission allowance allocated under this title except in accordance with regulations promulgated by the Administrator.

''SEC. 712. MODERNIZATION OF ELECTRICITY GENERATING FACILITIES.

''(a) IN GENERAL.—Beginning on the later of January 1, 2014, or the date that is 40 years after the date on which the electricity generating facility commences operation, each electricity generating facility shall be subject to emission limitations reflecting the application of best available control technology on a new major source of a similar size and type (as determined by the Administrator) as determined in accordance with the procedures specified in part C of title I.

''(b) ADDITIONAL REQUIREMENTS.—The requirements of this section shall be in addition to the other requirements of this title.

''SEC. 713. RELATIONSHIP TO OTHER LAW.

''(a) IN GENERAL.—Except as expressly provided in this title, nothing in this title—

''(1) limits or otherwise affects the application of any other provision of this Act; or

''(2) precludes a State from adopting and enforcing any requirement for the control of emissions of air pollutants that is more stringent than the requirements imposed under this title.

''(b) REGIONAL SEASONAL EMISSION CONTROLS.—Nothing in this title affects any regional seasonal emission control for nitrogen oxides established by the Administrator or a State under title I.''.

(b) CONFORMING AMENDMENT.—Section 412(a) of the Clean Air Act (42 U.S.C. 7651k(a)) is amended in the first sentence by

striking ''opacity'' and inserting ''mercury, opacity,''.

SEC. 3. SAVINGS CLAUSE.

Section 193 of the Clean Air Act (42 U.S.C. 7515) is amended by striking ''date of the enactment of the Clean Air Act Amendments of 1990'' each place it appears and inserting ''date of enactment of the Clean Power Act of 2005''.

SEC. 4. ACID PRECIPITATION RESEARCH PROGRAM.

Section 103(j) of the Clean Air Act (42 U.S.C. 7403(j)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (F)(i), by striking ''effects; and'' and inserting ''effects, including an assessment of—

''(I) acid-neutralizing capacity; and

''(II) changes in the number of water bodies in the sensitive ecosystems referred to in subparagraph (G)(ii) with an acid-neutralizing capacity greater than zero; and''; and

(B) by adding at the end the following:

''(G) SENSITIVE ECOSYSTEMS.—

''(i) IN GENERAL.—Beginning in 2006, and every 4 years thereafter, the report under subparagraph (E) shall include—

''(I) an identification of environmental objectives necessary to be achieved (and related indicators to be used in measuring achievement of the objectives) to adequately protect and restore sensitive ecosystems; and

''(II) an assessment of the status and trends of the environmental objectives and indicators identified in previous reports under this paragraph.

''(ii) SENSITIVE ECOSYSTEMS TO BE ADDRESSED.—Sensitive ecosystems to be addressed under clause (i) include—

''(I) the Adirondack Mountains, mid-Appalachian Mountains, Rocky Mountains, and southern Blue Ridge Mountains;

''(II) the Great Lakes, Lake Champlain, Long Island Sound, and the Chesapeake Bay; and

''(III) other sensitive ecosystems, as determined by the Administrator.

''(H) ACID DEPOSITION STANDARDS.—Beginning in 2006, and every 4 years thereafter, the report under subparagraph (E) shall include a revision of the report under section 404 of Public Law 101–549 (42 U.S.C. 7651 note) that includes a reassessment of the health and chemistry of the lakes and streams that were subjects of the original report under that section.''; and

(2) by adding at the end the following:

''(4) PROTECTION OF SENSITIVE ECOSYSTEMS.—

''(A) DETERMINATION.—Not later than December 31, 2012, the Administrator, taking into consideration the findings and recommendations of the report revisions under paragraph (3)(H), shall determine whether emission reductions under titles IV and VII are sufficient to—

''(i) achieve the necessary reductions identified under paragraph (3)(F); and

''(ii) ensure achievement of the environmental objectives identified under paragraph (3)(G).

''(B) REGULATIONS.—

''(i) IN GENERAL.—Not later than 2 years after the Administrator makes a determination under subparagraph (A) that emission reductions are not sufficient, the Administrator shall promulgate regulations to protect the sensitive ecosystems referred to in paragraph (3)(G)(ii).

''(ii) CONTENTS.—Regulations under clause (i) shall include modifications to—

''(I) provisions relating to nitrogen oxide and sulfur dioxide emission reductions;

''(II) provisions relating to allocations of nitrogen oxide and sulfur dioxide allowances; and

''(III) such other provisions as the Administrator determines to be necessary.''.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS FOR DEPOSITION MONITORING.

(a) OPERATIONAL SUPPORT.—In addition to amounts made available under any other law, there are authorized to be appropriated for each of fiscal years 2006 through 2015—

(1) for operational support of the National Atmospheric Deposition Program National Trends Network—

(A) $2,000,000 to the United States Geological Survey;

(B) $600,000 to the Environmental Protection Agency;

(C) $600,000 to the National Park Service; and

(D) $400,000 to the Forest Service;

(2) for operational support of the National Atmospheric Deposition Program Mercury Deposition Network—

(A) $400,000 to the Environmental Protection Agency;

(B) $400,000 to the United States Geological Survey;

(C) $100,000 to the National Oceanic and Atmospheric Administration; and

(D) $100,000 to the National Park Service;

(3) for the National Atmospheric Deposition Program Atmospheric Integrated Research Monitoring Network $1,500,000 to the National Oceanic and Atmospheric Administration;

(4) for the Clean Air Status and Trends Network $5,000,000 to the Environmental Protection Agency; and

(5) for the Temporally Integrated Monitoring of Ecosystems and Long-Term Monitoring Program $2,500,000 to the Environmental Protection Agency.

(b) MODERNIZATION.—In addition to amounts made available under any other law, there are authorized to be appropriated—

(1) for equipment and site modernization of the National Atmospheric Deposition Program National Trends Network $6,000,000 to the Environmental Protection Agency;

(2) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Mercury Deposition Network $2,000,000 to the Environmental Protection Agency;

(3) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Atmospheric Integrated Research Monitoring Network $1,000,000 to the National Oceanic and Atmospheric Administration; and

(4) for equipment and site modernization and network expansion of the Clean Air Status and Trends Network $4,600,000 to the Environmental Protection Agency.

(c) AVAILABILITY OF AMOUNTS.—Each of the amounts appropriated under subsection (b) shall remain available until expended.

SEC. 6. TECHNICAL AMENDMENTS.

Title IV of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7641 et seq.)—

(1) is amended by redesignating sections 401 through 403 as sections 801 through 803, respectively; and

(2) is redesignated as title VIII and moved to appear at the end of that Act.

Ms. COLLINS. Mr. President, I rise today to join Senator JEFFORDS and Senator LIEBERMAN in introducing the Clean Power Act of 2005. This bill closes the loophole that has allowed the dirtiest, most polluting power plants in the Nation to escape significant pollution controls for more than 30 years.

Maine is one of the most beautiful and pristine States in the Nation. It is also one of the most environmentally responsible States in the Nation. Maine has fewer emissions of the pollutants that cause smog and acid rain than all but a handful of States. It also has one of the lowest emissions of carbon dioxide nationwide.

Unfortunately, despite the collective environmental commitment of both its citizens and industries, Maine still suffers from air pollution. Every freshwater lake, river, and stream in Maine is subject to a State mercury advisory that warns pregnant women and young children to limit consumption of fish caught in those waters. Even Acadia National Park, one of our most beautiful national parks, experiences days in which visibility is obscured by smog.

Where does all this pollution come from? A large part of it comes from a relatively small number of mostly coal-fired powerplants that exploit loopholes to escape the provisions of the Clean Air Act. Coal-fired powerplants are the single largest source of air pollution, mercury contamination, and greenhouse gas emissions in the Nation. A single coal-fired powerplant can emit more of the pollutants that cause smog and acid rain than all of the cars, factories, and businesses in Maine combined.

As the easternmost State in the Nation, Maine is downwind of almost all powerplants in the United States. Many of the pollutants emitted by these powerplants—mercury, sulfur dioxide, nitrogen oxides, and carbon dioxide—end up in or over Maine. Airborne mercury falls into our lakes and streams, contaminating freshwater fish and threatening our people's health. Carbon dioxide is causing climate change that threatens to alter Maine's delicate ecological balance. Sulfur dioxide and nitrogen oxides come to Maine in the form of acid rain and smog that damage the health of our people and the health of our environment.

A single powerplant can emit nearly a ton of mercury in a single year. That's equivalent to incinerating over one million mercury thermometers and is enough to contaminate millions of acres of freshwater lakes. In contrast, Maine has zero powerplant emissions of mercury. This bill would reduce mercury emissions from powerplants by 90 percent.

Powerplants are also one of the largest contributors of greenhouse gas emissions in the United States. In fact, powerplants account for 40 percent of our carbon dioxide emissions, which scientists believe are the primary cause of man-made global warming.

I recently had the opportunity to view firsthand some of the dramatic impacts of global warming. In August, I traveled with Senator MCCAIN and several other Senators to the northernmost community in the world. We visited Ny-Alesund on the Norwegian island of Spitsbergen. Located at 79°N, Ny-Alesund lies well north of the Arctic Circle and is much closer to the North Pole than to Oslo, the country's

capital. It has even served as a starting point for several polar expeditions.

Scientists tell us that the global climate is changing more rapidly than at any time since the beginning of civilization. They further state that the region of the globe changing most rapidly is the Arctic. The changes are remarkable and disturbing.

In the last 30 years, the Arctic has lost sea-ice cover over an area 10 times as large as the State of Maine. In the summer, the change is even more dramatic, with twice as much ice loss. The ice that remains is as much as 40% thinner than it was just a few decades ago. In addition to disappearing sea-ice, Arctic glaciers are also rapidly retreating. In Ny-Alesund, Senator MCCAIN and I witnessed massive blocks of ice falling off glaciers that had already retreated well back from the shores where they once rested.

The Clean Power Act takes an important step in addressing global warming by reducing powerplant emissions of carbon dioxide to 2000 levels by the year 2010. Although doing so will not solve the problem of global warming, it is an important first step. In light of the rapid warming in the Arctic and the significance that this warming portends for the rest of the planet, reducing carbon dioxide emissions is a step that we can no longer afford to put off.

I am pleased that the Senate Environment and Public Works Committee will be considering clean air legislation in the 109th Congress. The Jeffords-Collins-Lieberman bill does more to reduce smog, acid rain, mercury pollution, and global warming than any other bill. Our bill provides more public health and environmental benefits than any other serious proposal, and it provides those benefits sooner.

I believe it is time to stop acid rain, free our lakes from mercury pollution, reduce global warming, and eliminate the smog that drifts in to obscure Maine skies and jeopardize our health. I look forward to working with the administration and my colleagues on both sides of the aisle to provide cleaner air.

Ms. SNOWE. Mr. President, I rise today to cosponsor Senator JEFFORDS' bill—as I have in the last three Congresses—because I remain dedicated to reducing power plant emissions that cause some of the Nation's—and Maine's—most serious public health and environmental problems.

For too many years, coal-burning power plants exempt from emissions standards under the Clean Air Act have created massive pollution problems for the Northeast because whatever spews out of their smokestacks in the Midwest, blows into the Northeast, including my State of Maine, giving it the dubious distinction of being at the ''end of the tailpipe'', so to speak.

The Jeffords' legislation calls for reductions of power plant emissions for pollutants that cause smog, soot, respiratory disease; acid rain that kills our forests and may be affecting Atlantic salmon streams; mercury that contaminates our lakes, rivers and streams; and poses health risks to children and the unborn, and climate variabilities from manmade carbon dioxide emissions that cause severe shifts in our weather patterns. Maine currently leads the nation in asthma cases per capita, which is not a surprise, but which it can do little about when nearly 80 percent of the State's dirty air—some days as high as 90 percent—is not of their own making but is transported by winds blowing in from the Midwest and Southeast.

This bill will dramatically cut aggregate power plant emissions by 2010 for the four major power plant pollutants: nitrogen oxides (NO_X), the primary cause of smog, by 71 percent from 2000 levels; sulfur dioxide (SO_2), that causes acid rain and respiratory disease, by 81 percent from 2000 levels; mercury (Hg), which poisons our lakes and rivers, causing fish to be unfit for human consumption, through a 90 percent reduction by 2009; and carbon dioxide (CO_2), the greenhouse gas most directly linked to global climate change, by 21 percent from 2000 levels. Of note, the NO_X, SO_2, and mercury reductions are set at levels that are known to be cost-effective with available technology.

The Clean Power Act will also eliminate the outdated coal-burning power plants that were grandfathered in under the Clean Air Act unless they apply the best available pollution control technology by their 40th birthday or 2014, whichever is later. The thinking for the exemption in the Clean Air Act was based, at the time, on the assumption that the plants would not stay on line much longer. However, as energy has gotten more expensive, companies are keeping these older, dirtier plants up and running.

Furthermore, just as the Clean Air Act already provides tradable allowances for sulfur dioxide that causes acid rain, the Jeffords' legislation also allows for tradable allowances to control emissions for three other pollutants—NO_X, SO_X, and CO_2—by using market-oriented mechanisms to meet emissions reduction requirements.

The tradable allowances would be distributed to five main categories, including 63 percent or more to households; six percent for transition assistance to affected communities and industries, which will decline over time; up to 20 percent to renewable energy generation, efficiency projects and cleaner energy sources, based on avoided pollution; 10 percent to existing electric generating facilities based on 2003 output; and up to 1.5 percent of the carbon dioxide allowances for biological and geological carbon sequestration. Of note, trading will not be allowed if it enables a power plant to pollute at a level that damages public health or the environment.

I am disappointed that the Clear Skies initiative addresses neither carbon dioxide as a pollutant nor anthropogenic emissions reductions for CO_2. While I recognize that the pollutants listed under the Clean Air Act were chosen in order to achieve healthier air for humans by cutting back on smog and soot, and also for mercury contamination, I believe it is long past due that carbon dioxide be recognized as a pollutant that is harming the health of the planet, and indirectly, all of us.

I am supporting the goal of CO_2 emissions reduction in the Jeffords' bill in the hopes that the bill will be a rallying point to further the debate for reducing CO_2 and at the same time, get our air cleaner on a quicker timeframe. In particular, Congress needs to develop a market mechanism approach for CO_2 emissions trading—such as we now have for acid rain—to allow U.S. industries the flexibility and certainty to reduce CO_2 emissions without the threat of higher energy production costs in the future that will be passed on to the consumer. I will continue to work with my colleagues, the White House and representatives from various industry groups, and environmental organizations to achieve this goal.

The bottom line is that we have the opportunity to raise the bar for cleaner domestic energy production in an economically effective manner. Solutions exist in available and developing technologies, and most of all in the entrepreneurial spirit of the American people who want a cleaner and healthier environment, including those in Maine who want to ensure that the State's pristine lakes and coast will remain clean and our forests and fish healthy for generations to come.

My State of Maine is leading the way in attempting to reduce CO_2 emissions as it is the first state in the nation to enact a law setting goals for the reduction of global warming emissions, through An Act to Provide Leadership in Addressing the Threat of Climate Change. The Act requires Maine to develop a climate change action plan to reduce carbon dioxide emissions to 1990 levels by 2010, 10 percent below 1990 levels by 2020, and by as much as 75 to 80 percent over the long term. These are the cuts previously agreed to by the New England Governors and Eastern Canadian Premiers. The State law will also inventory and reduce CO_2 emissions from state-funded programs and facilities, and to spur at least 50 partnerships with businesses and non-profit organizations to reduce CO_2 emissions.

While Maine was the first to put into effect a comprehensive climate change law, other states from the Northeast and around the country have taken, or are currently taking, actions to address climate change at the state or regional level. The Jeffords' legislation calls for Federal leadership as well and sends a powerful message to those who would heavily pollute our air: your days are numbered.

I am optimistic that the Congress can come together with the President, industry and all those who want cleaner, healthier air to create a cohesive

policy that is best suited for our nation, and I urge my colleagues to support the Jeffords' four-pollutant legislation.

By Mr. COLEMAN (for himself and Mr. PRYOR):

S. 151. A bill to amend title 38, United States Code, to require an annual plan on outreach activities of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

Mr. COLEMAN. Mr. President, today I am pleased to introduce the Veterans Benefits Outreach Act of 2005 with my good friend and colleague, Senator MARK PRYOR of Arkansas.

The idea for this legislation emanated from a very troubling story I read in my hometown paper, the Saint Paul Pioneer Press entitled, ''Wounded and Forgotten.''

The article reported that nearly 600,000 veterans are eligible for benefits but not receiving them simply because they don't know they are eligible.

It is clear that we need to do a better job of reaching out to veterans so they get the benefits they have earned. Our bill would do this by requiring the Veterans Administration to develop an annual plan to identify veterans who are eligible for but not receiving their benefits and an outreach plan to enroll them.

Pretty simply really: matching benefits with people who have earned them, and often through a lot of sacrifice for us and the freedoms we enjoy every day.

I hope the Senate will be able to act on this important legislation early this year so my hometown newspaper can report that our veterans are always remembered.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 151

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 ''Veterans Benefits Outreach Act of 2005''.

SEC. 2. ANNUAL PLAN ON OUTREACH ACTIVITIES.

(a) ANNUAL PLAN REQUIRED.—Subchapter II of chapter 5 of title 38, United States Code, is amended by inserting after section 523 the following new section:

''§ 523A. Annual plan on outreach activities

''(a) ANNUAL PLAN REQUIRED.—The Secretary shall prepare each year a plan for the outreach activities of the Department for the following year.

''(b) ELEMENTS.—Each annual plan under subsection (a) shall include the following:

''(1) Plans for efforts to identify veterans who are not enrolled or registered with the Department for benefits or services under the programs administered by the Secretary.

''(2) Plans for informing veterans and their dependents of modifications of the benefits and services under the programs administered by the Secretary, including eligibility for medical and nursing care and services.

''(c) COORDINATION IN DEVELOPMENT.—In developing an annual plan under subsection (a), the Secretary shall consult with the following:

''(1) Directors or other appropriate officials of organizations recognized by the Secretary under section 5902 of this title.

''(2) Directors or other appropriate officials of State and local education and training programs.

''(3) Representatives of non-governmental organizations that carry out veterans outreach programs.

''(4) Representatives of State and local veterans employment organizations.

''(5) Businesses and professional organizations.

''(6) Other individuals and organizations that assist veterans in adjusting to civilian life.

''(d) INCORPORATION OF ASSESSMENT OF PREVIOUS ANNUAL PLANS.—In developing an annual plan under subsection (a), the Secretary shall take into account the lessons learned from the implementation of previous annual plans under such subsection.

''(e) INCORPORATION OF RECOMMENDATIONS TO IMPROVE OUTREACH AND AWARENESS.—In developing an annual plan under subsection (a), the Secretary shall incorporate the recommendations for the improvement of veterans outreach and awareness activities included in the report submitted to Congress by the Secretary pursuant to section 805 of the Veterans Benefits Improvement Act of 2004 (Public Law 108–454).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 523 the following new item:

''523A. Annual plan on outreach activities.''.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 153. A bill to direct the Secretary of the Interior to conduct a resource study of the Rim of the Valley Corridor in the State of California to evaluate alternatives for protecting the resources of the Corridor, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I am pleased to introduce this bill today along with Senator BOXER as cosponsor to direct the Interior Secretary to conduct a study to evaluate the suitability and feasibility of expanding the Santa Monica National Recreation Area to include the Rim of the Valley Corridor.

The Rim of the Valley Corridor encircles the San Fernando Valley, La Crescenta, Simi, Conejo, and Santa Clarita Valleys, consisting of parts of the Santa Monica Mountains, Santa Susanna Mountains, San Gabriel Mountains, Verdugo Mountains, San Rafael Hills and connects to the adjacent Los Padres and San Bernardino National Forests.

This parcel of land is unique because of its rare Mediterranean ecosystem and wildlife corridor that stretches north from the Santa Monicas. With the population growth forecasted to multiply exponentially over the next several decades, the need for parks to balance out the expected population growth has become critical in California.

Since the creation of the Santa Monica Recreation Area in 1978, Federal, State, and local authorities have worked successfully together to create and maintain the highly successful Santa Monica Mountains National Recreation Area, the world's largest urban park, hemmed in on all sides by development.

Park and recreational lands provide people with a vital refuge from urban life while preserving valuable habitat and wildlife. With the passage of this legislation, Congress will hold true to its original commitment to preserve the scenic, natural, and historic setting of the Santa Monica Mountains Recreation Area.

With the inclusion of the Rim of the Valley Corridor in the Santa Monica Mountains Recreation Area, greater ecological health and diversity will be promoted, particularly for larger animals like mountain lions, bobcats, and the golden eagle. By creating a single contiguous Rim of the Valley Trail, people will enjoy greater access to existing trails in the Recreational Area.

After the study called for in this bill is complete, the Secretary of the Interior and Congress will be in a key position to determine whether all or portions of the Rim of the Valley Corridor warrant national park status.

This bill enjoys strong support from local and State officials and I hope that it will have as much strong bipartisan support this Congress, as it did last Congress. Congressman ADAM SCHIFF plans to introduce companion legislation for this bill in the House and I applaud his commitment to this issue.

I urge my colleagues to support this legislation and I ask unanimous consent that the text of this proposed legislation be printed in the RECORD.

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

S. 153

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 ''Rim of the Valley Corridor Study Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CORRIDOR.—

(A) IN GENERAL.—The term ''Corridor'' means the land, water, and interests of the area in the State known as the ''Rim of the Valley Corridor''.

(B) INCLUSIONS.—The term ''Corridor'' includes the mountains surrounding the San Fernando, La Crescenta, Santa Clarita, Simi, and Conejo valleys in the State.

(2) RECREATION AREA.—The term ''Recreation Area'' means the Santa Monica Mountains National Recreation Area in the State.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(4) STATE.—The term ''State'' means the State of California

SEC. 3. RESOURCE STUDY OF THE RIM OF THE VALLEY CORRIDOR, CALIFORNIA.

(a) IN GENERAL.—The Secretary shall conduct a resource study of the Corridor to evaluate various alternatives for protecting the resources of the Corridor, including designating all or a portion of the Corridor as a unit of the Recreation Area.

(b) REQUIREMENTS.—In conducting the study under subsection (a), the Secretary shall—

(1) seek to achieve the objectives of—

(A) protecting wildlife populations in the Recreation Area by preserving habitat linkages and wildlife movement corridors between large blocks of habitat in adjoining regional open space;

(B) establishing connections along the State-designated Rim of the Valley Trail System for the purposes of—

(i) creating a single contiguous Rim of the Valley Trail; and

(ii) encompassing major feeder trails connecting adjoining communities and regional transit to the Rim of the Valley Trail System;

(C) preserving recreational opportunities;

(D) facilitating access to open space for a variety of recreational users;

(E) protecting—

(i) rare, threatened, or endangered plant and animal species; and

(ii) rare or unusual plant communities and habitats;

(F) protecting historically significant landscapes, districts, sites, and structures; and

(G) respecting the needs of communities in, or in the vicinity of, the Corridor;

(2) analyze the potential impact of each alternative on staffing and other potential costs to Federal, State, and local agencies and other organizations; and

(3) analyze the potential impact that designating all or a portion of the Corridor as a unit of the Recreation Area would have on land in or bordering the area that is privately owned as of the date on which the study is conducted.

(c) CONSULTATION.—In conducting the study, the Secretary shall consult with appropriate Federal, State, county, and local government entities.

(d) APPLICABLE LAW.—Section 8(c) of Public Law 91–383 (16 U.S.C. 1a–5(c)) shall apply to the conduct and completion of the study required by subsection (a).

SEC. 4. REPORT.

(a) IN GENERAL.—Not later than 3 years after the date on which funds are first made available for the study, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and to the Committee on Resources of the House of Representatives a report that describes the results of the study conducted under section 3.

(b) INCLUSION.—The report submitted under subsection shall include the concerns of private landowners within the boundaries of the Recreation Area.

By Mrs. FEINSTEIN (for herself, Mr. HATCH, Mr. GRASSLEY, Mr. CORNYN, and Mr. KYL):

S. 155. A bill to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law-abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to reform and facilitate prosecution of juvenile gang members who commit violent crimes, to expand and improve gang prevention programs, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise today to join my good friend and colleague Senator ORRIN HATCH, to introduce the ''Gang Prevention and Effective Deterrence Act of 2005.''

Gangs are spreading across our country, increasing in violence and power in every State. The growth and spread of these gangs illustrate the simple fact that they are no longer a local problem. They are a national problem, and require a national solution. This bill is designed to contribute to that solution by bringing together Federal, State and local law enforcement, equipping them with the right legal tools, and providing authorization for funds to make this partnership effective.

First, let me illustrate the scope of the problem we face: In 2002, there were approximately 731,500 gang members and 21,500 gangs in the United States. Additionally, the FBI report on national crime statistics found that youth-gang homicides had jumped to more than 1,100 in 2002, up from 692 in 1999. According to a report commissioned by a coalition of big city police chiefs, gang-related killings skyrocketed by 50 percent from 1999 to 2002. In 2002, there were a little more than 16,000 homicides in the United States—more than a thousand of those murders were gang-related. In Southern California alone there have been about 3,100 gang-related killings since 1999. 87 percent of U.S. cities with a population of more than 100,000 have reported gang problems, according to the Department of justice.

The bottom line is that this is a major problem.

This legislation before us today squarely addresses these serious issues. Its main point is to create a new type of crime, by defining and criminalizing ''Criminal Street Gangs.'' This recognizes the basic point of a street gang—it is more powerful, and more dangerous, than its individual members. Defeating gangs means recognizing what is so dangerous about them, and then making that conduct against the law.

This bill does exactly that. It makes illegal participation in a criminal street gang a federal crime. A ''criminal street gang'' is defined to mean a formal or informal group, club, organization or association of 3 or more persons who act together to commit gang crimes. This legislation makes it a crime for a member of a criminal street gang to commit, conspire or attempt to commit two or more predicate gang crimes; or to get another individual to commit a gang crime. The term ''gang crime'' is defined to include violent and other serious State and Federal felony crimes such as: murder, maiming, manslaughter, kidnapping, arson, robbery, assault with a dangerous weapon, obstruction of justice, carjacking, distribution of a controlled substance, certain firearms offenses and money laundering. And it criminalizes violent crimes in furtherance or in aid of criminal street gangs.

These two provisions are at the heart of this legislation. Armed with this new law, Federal prosecutors, working in tandem with State and local law enforcement, will be able to take on gangs in much the same way that traditional Mafia families have been systematically destroyed by effective RICO prosecutions. The legislation also recognizes that the core changes, standing alone, are not sufficient.

The Gang Prevention and Effective Deterrence Act is a comprehensive bill to increase gang prosecution and prevention efforts. The bill authorizes approximately $650 million over the next five years to support Federal, State and local law enforcement efforts against violent gangs including the funding of witness protection programs and for intervention and prevention programs for at-risk youth. In support of this effort, the bill increases funding for Federal prosecutors and FBI agents to increase coordinated enforcement efforts against violent gangs.

Witness protection is particularly important—as an example, recent press reports from Boston show that gang members are distributing what is, in essence, a witness intimidation media kit, complete with graphics and CDs that warn potential witnesses that they will be killed—one CD depicts three bodies on its covers. In another incident, a witnesses' grand jury testimony was taped to his home—soon afterward he was killed.

The Act also creates new criminal gang prosecution offenses, enhances existing gang and violent crime penalties to deter and punish illegal street gangs, proposes violent crime reforms needed to effectively prosecute gang members, and proposes a limited reform of the juvenile justice system to facilitate Federal prosecution of 16 and 17 year old gang members who commit serious acts of violence—specifically it:

Makes recruiting minors to join criminal street gangs a Federal crime and requires offenders to pay the costs associated with housing and treating any recruited minor who is prosecuted for their gang activity.

Makes murder and other violent crimes committed in connection with drug trafficking Federal crimes.

Creates a new offense of multiple interstate murders, where an individual crosses State lines and intends to cause the death of two or more people.

Allows for prosecution of gang members who cross State lines to obstruct justice, intimidate or retaliate against witnesses, jurors, informants, or victims.

Creates tougher laws for certain Federal crimes like assault, carjacking, manslaughter, conspiracy, and for specific types of crimes occurring in Indian country.

Requires that someone convicted of hiring another person to commit murder be punished with imprisonment, instead of a fine.

Makes sexual assault a predicate act under RICO and increases the maximum sentences for these RICO crimes.

Allows for detention of persons charged with firearms who have been previously convicted of prior crimes of violence or serious drug offenses. Current law does not allow a prosecutor to

ask that a person be held without bail even if the person has previously been convicted of a crime of violence or a serious drug offense. This bill would allow prosecutors to make that request of a judge but would allow a criminal defendant the right to argue why he or she should not be held.

Makes it clear that in a death penalty case, the case can be tried where the murder, or related conduct, occurred.

Extends the time within which a violent crime case can be charged and tried. For violent crime cases, the time is extended from 5 years to 10 years after the offense occurred or the continuing offense was completed, and from 5 years to 8 years after the date on which the violation was first discovered.

Permits wiretaps to be used for new gang crimes created by this bill.

Allows for a murdered witness's statements to be admitted at trial in cases where the defendant caused the witness's death.

Makes clear where a case can be tried involving retaliation against a witness—in either the district where the case is being tried, or where the intimidation took place.

Increases penalties for criminal use of firearms in crimes of violence and drug trafficking.

Includes modified juvenile provisions. This bill will allow prosecutors to more easily charge 16 and 17 year olds who are charged with serious violent felonies. A judge will review every decision a prosecutor makes to charge a juvenile as an adult.

Creates and provides assistance for ''High Intensity'' Interstate Gang Activity areas. This legislation requires the Attorney General to designate certain locations as ''high intensity interstate gang activity areas'' and provides assistance in the form of criminal street gang enforcement teams made up of local, State and Federal law enforcement authorities to investigate and prosecute criminal street gangs in each high intensity interstate gang activity area.

Authorizes funding of $500 million for 2004 through 2008 to meet the goals of suppression and intervention: $50 million a year will be used to support the criminal gang enforcement teams. $50 million a year will be used to make grants available for community-based programs to provide for crime prevention and intervention services for gang members and at-risk youth in areas designated as high intensity interstate gang activity areas.

Authorizes $150 million over five years to support anti-gang efforts including: Expanding the Project Safe Neighborhood program to require U.S. Attorneys to identify and prosecute significant gangs within their district; coordinating such prosecutions among all local, State, and Federal law enforcement; and coordinating criminal street gang enforcement teams in designated high intensity interstate gang activity areas. Supporting the Federal Bureau of Investigation's Safe Streets Program. Creating and expanding witness protection programs, the hiring of additional State and local prosecutors, funding gang prevention and community prosecution programs and purchasing equipment to increase the accurate identification and prosecution of violent offenders.

The bottom line is that this legislation would provide the tools and the resources to begin that national task of destroying criminal street gangs. It is designed to emphasize and encourage Federal, State and local cooperation. It combines enforcement with prevention. It is a tough, effective and fair approach.

This is not a new bill. I have been working on it for almost ten years. In 1996, I joined Senator HATCH and others to develop the Federal Gang Violence Act, which would have increased criminal penalties for gang members, made recruiting persons into a criminal street gang a crime, and enhanced penalties for transferring a gun to a minor. Many of the provisions of that bill were incorporated into the 1999 Juvenile Justice bill, which was approved overwhelmingly (73–25) by the Senate in the 106th Congress. However, the Juvenile Justice bill stalled in conference, and these provisions were never signed into law.

In the years that followed we kept up our efforts, with Republicans and Democrats working together on this critical issue. In the 108th Congress a version of this bill was introduced, and eventually was co-sponsored by Senators HATCH and others. That bill was the subject of much discussion and debate. Some of my colleagues raised some valuable suggestions and criticisms, many of which were incorporated in the bill last year. The result of that compromise was reported favorably by the Judiciary Committee last Fall, but was never considered by the full Senate.

The legislation today is the same as that which was approved by the Judiciary Committee, and I hope this year we will move quickly to pass it into law. That said, I understand that some of my colleagues are still concerned about certain aspects of the bill. My intention is to continue to negotiate in the weeks ahead. I am open to change, and welcome further discussion and analysis.

We all agree that gangs are a terrible and growing problem. We all agree that something needs to be done. I believe that this legislation is desperately needed, and I look forward to working with my colleagues on both sides of the aisle to take this bill and make it law.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 155

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Gang Prevention and Effective Deterrence Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CRIMINAL STREET GANG ABATEMENT ACT

Sec. 100. Findings.

SUBTITLE A—CRIMINAL LAW REFORMS AND ENHANCED PENALTIES TO DETER AND PUNISH ILLEGAL STREET GANG ACTIVITY

Sec. 101. Solicitation or recruitment of persons in criminal street gang activity.
Sec. 102. Criminal street gangs.
Sec. 103. Violent crimes in furtherance or in aid of criminal street gangs.
Sec. 104. Interstate and foreign travel or transportation in aid of criminal street gangs.
Sec. 105. Amendments relating to violent crime in areas of exclusive Federal jurisdiction.
Sec. 106. Increased penalties for use of interstate commerce facilities in the commission of murder-for-hire and other felony crimes of violence.
Sec. 107. Increased penalties for violent crimes in aid of racketeering activity.
Sec. 108. Murder and other violent crimes committed during and in relation to a drug trafficking crime.

SUBTITLE B—INCREASED FEDERAL RESOURCES TO DETER AND PREVENT AT-RISK YOUTH FROM JOINING ILLEGAL STREET GANGS

Sec. 110. Designation of and assistance for ''high intensity'' interstate gang activity areas.
Sec. 111. Enhancement of project safe neighborhoods initiative to improve enforcement of criminal laws against violent gangs.
Sec. 112. Additional resources needed by the Federal Bureau of Investigation to investigate and prosecute violent criminal street gangs.
Sec. 113. Grants to State and local prosecutors to combat violent crime and to protect witnesses and victims of crimes.
Sec. 114. Reauthorize the gang resistance education and training projects program.

TITLE II—VIOLENT CRIME REFORMS NEEDED TO DETER AND PREVENT ILLEGAL GANG CRIME

Sec. 201. Multiple interstate murder.
Sec. 202. Expansion of rebuttable presumption against release of persons charged with firearms offenses.
Sec. 203. Venue in capital cases.
Sec. 204. Statute of limitations for violent crime.
Sec. 205. Predicate crimes for authorization of interception of wire, oral, and electronic communications.
Sec. 206. Clarification to hearsay exception for forfeiture by wrongdoing.
Sec. 207. Clarification of venue for retaliation against a witness.
Sec. 208. Amendment of sentencing guidelines relating to certain gang and violent crimes.
Sec. 209. Increased penalties for criminal use of firearms in crimes of violence and drug trafficking.

Sec. 210. Possession of firearms by dangerous felons.
Sec. 211. Conforming amendment.
TITLE III—JUVENILE CRIME REFORM FOR VIOLENT OFFENDERS
Sec. 301. Treatment of Federal juvenile offenders.
Sec. 302. Notification after arrest.
Sec. 303. Release and detention prior to disposition.
Sec. 304. Speedy trial.
Sec. 305. Federal sentencing guidelines.

TITLE I—CRIMINAL STREET GANG ABATEMENT ACT

SEC. 100. FINDINGS.

Congress finds that—

(1) violent crime and drug trafficking are pervasive problems at the national, State, and local level;

(2) the crime rate is exacerbated by the association of persons in gangs to commit acts of violence and drug offenses;

(3) according to the most recent National Drug Threat Assessment, criminal street gangs are responsible for the distribution of much of the cocaine, methamphetamine, heroin, and other illegal drugs being distributed in rural and urban communities throughout the United States;

(4) gangs commit acts of violence or drug offenses for numerous motives, such as membership in or loyalty to the gang, for protecting gang territory, and for profit;

(5) gang presence has a pernicious effect on the free flow of commerce in local businesses and directly affects the freedom and security of communities plagued by gang activity;

(6) gangs often recruit and utilize minors to engage in acts of violence and other serious offenses out of a belief that the criminal justice systems are more lenient on juvenile offenders;

(7) gangs often intimidate and threaten witnesses to prevent successful prosecutions;

(8) gang recruitment can be deterred through increased vigilance, strong criminal penalties, equal partnerships with State and local law enforcement, and proactive intervention efforts, particularly targeted at juveniles, prior to gang involvement;

(9) State and local prosecutors, in hearings before the Committee on the Judiciary of the Senate, enlisted the help of Congress in the prevention, investigation, and prosecution of gang crimes and in the protection of witnesses and victims of gang crimes; and

(10) because State and local prosecutors and law enforcement have the expertise, experience, and connection to the community that is needed to combat gang violence, consultation and coordination between Federal, State, and local law enforcement is critical to the successful prosecutions of criminal street gangs.

Subtitle A—Criminal Law Reforms and Enhanced Penalties To Deter and Punish Illegal Street Gang Activity

SEC. 101. SOLICITATION OR RECRUITMENT OF PERSONS IN CRIMINAL STREET GANG ACTIVITY.

Chapter 26 of title 18, United States Code, is amended by adding at the end the following:

"§ 522. Recruitment of persons to participate in a criminal street gang

''(a) PROHIBITED ACTS.—It shall be unlawful for any person to recruit, employ, solicit, induce, command, or cause another person to be or remain as a member of a criminal street gang, or conspire to do so, with the intent to cause that person to participate in an offense described in section 521(a).

''(b) DEFINITION.—In this section:

''(1) CRIMINAL STREET GANG.—The term 'criminal street gang' shall have the same meaning as in section 521(a) of this title.

''(2) MINOR.—The term 'minor' means a person who is less than 18 years of age.

''(c) PENALTIES.—Any person who violates subsection (a) shall—

''(1) be imprisoned not more than 5 years, fined under this title, or both; or

''(2) if the person recruited, solicited, induced, commanded, or caused to participate or remain in a criminal street gang is under the age of 18—

''(A) be imprisoned for not more than 10 years, fined under this title, or both; and

''(B) at the discretion of the sentencing judge, be liable for any costs incurred by the Federal Government, or by any State or local government, for housing, maintaining, and treating the person until the person attains the age of 18 years.''.

SEC. 102. CRIMINAL STREET GANGS.

(a) CRIMINAL STREET GANG PROSECUTIONS.—Section 521 of title 18, United States Code, is amended to read as follows:

"§ 521. Criminal street gang prosecutions

''(a) DEFINITIONS.—As used in this chapter:

''(1) CRIMINAL STREET GANG.—The term 'criminal street gang' means a formal or informal group, club, organization, or association of 3 or more individuals, who individually, jointly, or in combination, have committed or attempted to commit for the direct or indirect benefit of, at the direction of, in furtherance of, or in association with the group, club organization, or association at least 2 separate acts, each of which is a predicate gang crime, 1 of which occurs after the date of enactment of the Gang Prevention and Effective Deterrence Act of 2004 and the last of which occurs not later than 10 years (excluding any period of imprisonment) after the commission of a prior predicate gang crime, and 1 predicate gang crime is a crime of violence or involves manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemicals (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) provided that the activities of the criminal street gang affect interstate or foreign commerce, or involve the use of any facility of, or travel in, interstate or foreign commerce.

''(2) PREDICATE GANG CRIME.—The term 'predicate gang crime' means—

''(A) any act, threat, conspiracy, or attempted act, which is chargeable under Federal or State law and punishable by imprisonment for more than 1 year involving—

''(i) murder;

''(ii) manslaughter;

''(iii) maiming;

''(iv) assault with a dangerous weapon;

''(v) assault resulting in serious bodily injury;

''(vi) gambling;

''(vii) kidnapping;

''(viii) robbery;

''(ix) extortion;

''(x) arson;

''(xi) obstruction of justice;

''(xii) tampering with or retaliating against a witness, victim, or informant;

''(xiii) burglary;

''(xiv) sexual assault (which means any offense that involves conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction);

''(xv) carjacking; or

''(xvi) manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemicals (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(B) any act punishable by imprisonment for more than 1 year under—

''(i) section 844 (relating to explosive materials);

''(ii) section 922(g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of this title) or is a serious drug offense (as defined in section 924(e)(2)(A) of this title));

''(iii) subsection (a)(2), (b), (c), (g), or (h) of section 924 (relating to receipt, possession, and transfer of firearms);

''(iv) sections 1028 and 1029 (relating to fraud and related activity in connection with identification documents or access devices);

''(v) section 1503 (relating to obstruction of justice);

''(vi) section 1510 (relating to obstruction of criminal investigations);

''(vii) section 1512 (relating to tampering with a witness, victim, or informant), or section 1513 (relating to retaliating against a witness, victim, or informant);

''(viii) section 1708 (relating to theft of stolen mail matter);

''(ix) section 1951 (relating to interference with commerce, robbery or extortion);

''(x) section 1952 (relating to racketeering);

''(xi) section 1956 (relating to the laundering of monetary instruments);

''(xii) section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity);

''(xiii) section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire); or

''(xiv) sections 2312 through 2315 (relating to interstate transportation of stolen motor vehicles or stolen property); or

''(C) any act involving the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose).

''(3) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

''(b) PARTICIPATION IN CRIMINAL STREET GANGS.—It shall be unlawful—

''(1) to commit, or conspire or attempt to commit a predicate crime—

''(A) in furtherance or in aid of the activities of a criminal street gang;

''(B) for the purpose of gaining entrance to or maintaining or increasing position in such a gang; or

''(C) for the direct or indirect benefit of the criminal street gang, or in association with the criminal street gang; or

''(2) to employ, use, command, counsel, persuade, induce, entice, or coerce any individual to commit, cause to commit, or facilitate the commission of, a predicate gang crime—

''(A) in furtherance or in aid of the activities of a criminal street gang;

''(B) for the purpose of gaining entrance to or maintaining or increasing position in such a gang; or

''(C) for the direct or indirect benefit or the criminal street gang, or in association with the criminal street gang.

''(c) PENALTIES.—Whoever violates paragraph (1) or (2) of subsection (b)—

''(1) shall be fined under this title, imprisoned for not more than 30 years, or both; and

''(2) if the violation is based on a predicate gang crime for which the maximum penalty includes life imprisonment, shall be fined under this title, imprisoned for any term of years or for life, or both.

''(d) FORFEITURE.—

''(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

''(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

''(B) any property used or intended to be used, in any manner or part, to commit or to facilitate the commission of such violation.

''(2) CRIMINAL PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

''(3) CIVIL PROCEDURES.—Property subject to forfeiture under paragraph (1) may be forfeited in a civil case pursuant to the procedures set forth in chapter 46 of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 26 of title 18, United States Code, is amended to read as follows:

''521. Criminal street gang prosecutions.''.

SEC. 103. VIOLENT CRIMES IN FURTHERANCE OR IN AID OF CRIMINAL STREET GANGS.

(a) VIOLENT CRIMES AND CRIMINAL STREET GANG RECRUITMENT.—Chapter 26 of title 18, United States Code, as amended by section 101, is amended by adding at the end the following:

''§ 523. Violent crimes in furtherance or in aid of a criminal street gang

''(a) Any person who, for the purpose of gaining entrance to or maintaining or increasing position in, or in furtherance or in aid of, or for the direct or indirect benefit of, or in association with a criminal street gang, or as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value to or from a criminal street gang, murders, kidnaps, sexually assaults (which means any offense that involved conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction), maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, commits any other crime of violence or threatens to commit a crime of violence against any individual, or attempts or conspires to do so, shall be punished, in addition and consecutive to the punishment provided for any other violation of this chapter—

''(1) for murder, by death or imprisonment for any term of years or for life, a fine under this title, or both;

''(2) for kidnapping or sexual assault, by imprisonment for any term of years or for life, a fine under this title, or both;

''(3) for maiming, by imprisonment for any term of years or for life, a fine under this title, or both;

''(4) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years, a fine under this title, or both;

''(5) for any other crime of violence, by imprisonment for not more than 20 years, a fine under this title, or both;

''(6) for threatening to commit a crime of violence specified in paragraphs (1) through (4), by imprisonment for not more than 10 years, a fine under this title, or both;

''(7) for attempting or conspiring to commit murder, kidnapping, maiming, or sexual assault, by imprisonment for not more than 30 years, a fine under this title, or both; and

''(8) for attempting or conspiring to commit a crime involving assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 20 years, a fine under this title, or both.

''(b) DEFINITION.—In this section, the term 'criminal street gang' has the same meaning as in section 521 of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 26 of title 18, United States Code, is amended by adding at the end the following:

''522. Recruitment of persons to participate in a criminal street gang.

''523. Violent crimes in furtherance of a criminal street gang.''.

SEC. 104. INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF RACKETEERING ENTERPRISES AND CRIMINAL STREET GANGS.

Section 1952 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''and thereafter performs or attempts to perform'' and inserting ''and thereafter performs, or attempts or conspires to perform'';

(B) by striking ''5 years'' and inserting ''10 years''; and

(C) by inserting ''punished by death or'' after ''if death results shall be'';

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

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

''(b) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with the intent to kill, assault, bribe, force, intimidate, or threaten any person, to delay or influence the testimony of, or prevent from testifying, a witness in a State criminal proceeding and thereafter performs, or attempts or conspires to perform, an act described in this subsection, shall—

''(1) be fined under this title, imprisoned for any term of years, or both; and

''(2) if death results, be punished by death or imprisonment for any term of years or for life.''; and

(4) in subsection (c)(2), as redesignated under subparagraph (B), by inserting ''intimidation of, or retaliation against, a witness, victim, juror, or informant,'' after ''extortion, bribery,''.

SEC. 105. AMENDMENTS RELATING TO VIOLENT CRIME IN AREAS OF EXCLUSIVE FEDERAL JURISDICTION.

(a) ASSAULT WITHIN MARITIME AND TERRITORIAL JURISDICTION OF UNITED STATES.—Section 113(a)(3) of title 18, United States Code, is amended by striking ''with intent to do bodily harm, and without just cause or excuse,''.

(b) MANSLAUGHTER.—Section 1112(b) of title 18, United States Code, is amended by—

(1) striking ''ten years'' and inserting ''20 years''; and

(2) striking ''six years'' and inserting ''10 years''.

(c) OFFENSES COMMITTED WITHIN INDIAN COUNTRY.—Section 1153(a) of title 18, United States Code, is amended by inserting ''an offense for which the maximum statutory term of imprisonment under section 1363 is greater than 5 years,'' after ''a felony under chapter 109A,''.

(d) RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS.—Section 1961(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by inserting '', or would have been so chargeable if the act or threat (other than lawful forms of gambling) had not been committed in Indian country (as defined in section 1151) or in any other area of exclusive Federal jurisdiction,'' after ''chargeable under State law''; and

(2) in subparagraph (B), by inserting ''section 1123 (relating to multiple interstate murder),'' after ''section 1084 (relating to the transmission of wagering information),''.

(e) CARJACKING.—Section 2119 of title 18, United States Code, is amended by striking '', with the intent to cause death or serious bodily harm''.

(f) CLARIFICATION OF ILLEGAL GUN TRANSFERS TO COMMIT DRUG TRAFFICKING CRIME OR CRIMES OF VIOLENCE.—Section 924(h) of title 18, United States Code, is amended to read as follows:

''(h) ILLEGAL TRANSFERS.—Whoever knowingly transfers a firearm, knowing that the firearm will be used to commit, or possessed in furtherance of, a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)), shall be imprisoned for not more than 10 years, fined under this title, or both.''.

(g) AMENDMENT OF SPECIAL SENTENCING PROVISION.—Section 3582(d) of title 18, United States Code, is amended—

(1) by striking ''chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title'' and inserting ''section 521 (criminal street gangs) or 522 (violent crimes in furtherance or in aid of criminal street gangs), in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations),''; and

(2) by inserting ''a criminal street gang or'' before ''an illegal enterprise''.

(h) CONFORMING AMENDMENT RELATING TO ORDERS FOR RESTITUTION.—Section 3663(c)(4) of title 18, United States Code, is amended by striking ''chapter 46 or chapter 96 of this title'' and inserting ''section 521, under chapter 46 or 96,''.

(i) SPECIAL PROVISION FOR INDIAN COUNTRY.—No person subject to the criminal jurisdiction of an Indian tribal government shall be subject to section 3559(e) of title 18, United States Code, for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in section 1151 of such title 18) and which occurs within the boundaries of such Indian country unless the governing body of such Indian tribe elects to subject the persons under the criminal jurisdiction of the tribe to section 3559(e) of such title 18.

SEC. 106. INCREASED PENALTIES FOR USE OF INTERSTATE COMMERCE FACILITIES IN THE COMMISSION OF MURDER-FOR-HIRE AND OTHER FELONY CRIMES OF VIOLENCE.

Section 1958 of title 18, United States Code, is amended—

(1) by striking the header and inserting the following:

''§ 1958. Use of interstate commerce facilities in the Commission of murder-for-hire and other felony crimes of violence''

; and

(2) by amending subsection (a) to read as follows:

''(a) Any person who travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility in interstate or foreign commerce, with intent that a murder or other felony crime of violence be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so—

''(1) may be fined under this title and shall be imprisoned not more than 20 years;

''(2) if personal injury results, may be fined under this title and shall be imprisoned for not more than 30 years; and

''(3) if death results, may be fined not more than $250,000, and shall be punished by death or imprisoned for any term of years or for life, or both.''.

SEC. 107. INCREASED PENALTIES FOR VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Section 1959(a) of title 18, United States Code, is amended to read as follows:

''(a) Any person who, as consideration for the receipt of, or as consideration for a

promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, or in furtherance or in aid of an enterprise engaged in racketeering activity, murders, kidnaps, sexually assaults (which means any offense that involved conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction), maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires to do so, shall be punished, in addition and consecutive to the punishment provided for any other violation of this chapter—

''(1) for murder, by death or imprisonment for any term of years or for life, a fine under this title, or both;

''(2) for kidnapping or sexual assault, by imprisonment for any term of years or for life, a fine under this title, or both;

''(3) for maiming, by imprisonment for any term of years or for life, a fine under this title, or both;

''(4) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years, a fine under this title, or both;

''(5) for threatening to commit a crime of violence, by imprisonment for not more than 10 years, a fine under this title, or both;

''(6) for attempting or conspiring to commit murder, kidnapping, maiming, or sexual assault, by imprisonment for not more than 30 years, a fine under this title, or both; and

''(7) for attempting or conspiring to commit assault with a dangerous weapon or assault which would result in serious bodily injury, by imprisonment for not more than 20 years, a fine under this title, or both.''.

SEC. 108. MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME.

(a) IN GENERAL.—Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end the following:

''MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME.

''SEC. 424. (a) IN GENERAL.—Any person who, during and in relation to any drug trafficking crime, murders, kidnaps, sexually assaults (which means any offense that involved conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction), maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, commits any other crime of violence or threatens to commit a crime of violence against, any individual, or attempts or conspires to do so, shall be punished, in addition and consecutive to the punishment provided for the drug trafficking crime—

''(1) in the case of murder, by death or imprisonment for any term of years or for life, a fine under title 18, United States Code, or both;

''(2) in the case of kidnapping or sexual assault by imprisonment for any term of years or for life, a fine under such title 18, or both;

''(3) in the case of maiming, by imprisonment for any term of years or for life, a fine under such title 18, or both;

''(4) in the case of assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment not more than 30 years, a fine under such title 18, or both;

''(5) in the case of committing any other crime of violence, by imprisonment for not more than 20 years, a fine under this title, or both;

''(6) in the case of threatening to commit a crime of violence specified in paragraphs (1) through (4), by imprisonment for not more than 10 years, a fine under such title 18, or both;

''(7) in the case of attempting or conspiring to commit murder, kidnapping, maiming, or sexual assault, by imprisonment for not more than 30 years, a fine under such title 18, or both; and

''(8) in the case of attempting or conspiring to commit a crime involving assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 20 years, a fine under such title 18, or both.

''(b) VENUE.—A prosecution for a violation of this section may be brought in—

''(1) the judicial district in which the murder or other crime of violence occurred; or

''(2) any judicial district in which the drug trafficking crime may be prosecuted.

''(c) APPLICABLE DEATH PENALTY PROCEDURES.—A defendant who has been found guilty of an offense under this section for which a sentence of death is provided shall be subject to the provisions of chapter 228 of title 18, United States Code.

''(d) DEFINITIONS.—As used in this section—

''(1) the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code; and

''(2) the term 'drug trafficking crime' has the meaning given that term in section 924(c)(2) of title 18, United States Code.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Controlled Substances Act is amended by inserting after the item relating to section 423, the following:

''Sec. 424. Murder and other violent crimes committed during and in relation to a drug trafficking crime.''.

Subtitle B—Increased Federal Resources To Suppress, Deter, and Prevent At-Risk Youth From Joining Illegal Street Gangs

SEC. 110. DESIGNATION OF AND ASSISTANCE FOR "HIGH INTENSITY" INTERSTATE GANG ACTIVITY AREAS.

(a) DEFINITIONS.—In this section the following definitions shall apply:

(1) GOVERNOR.—The term ''Governor'' means a Governor of a State or the Mayor of the District of Columbia.

(2) HIGH INTENSITY INTERSTATE GANG ACTIVITY AREA.—The term ''high intensity interstate gang activity area'' means an area within a State that is designated as a high intensity interstate gang activity area under subsection (b)(1).

(3) STATE.—The term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States. The term ''State'' shall include an ''Indian tribe'', as defined by section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

(b) HIGH INTENSITY INTERSTATE GANG ACTIVITY AREAS.—

(1) DESIGNATION.—The Attorney General, after consultation with the Governors of appropriate States, may designate as high intensity interstate gang activity areas, specific areas that are located within 1 or more States. To the extent that the goals of a high intensity interstate gang activity area (HIIGAA) overlap with the goals of a high intensity drug trafficking area (HIDTA), the Attorney General may merge the 2 areas to serve as a dual-purpose entity. The Attorney General may not make the final designation of a high intensity interstate gang activity area without first consulting with and receiving comment from local elected officials representing communities within the State of the proposed designation.

(2) ASSISTANCE.—In order to provide Federal assistance to high intensity interstate gang activity areas, the Attorney General shall—

(A) establish criminal street gang enforcement teams, consisting of Federal, State, and local law enforcement authorities, for the coordinated investigation, disruption, apprehension, and prosecution of criminal street gangs and offenders in each high intensity interstate gang activity area;

(B) direct the reassignment or detailing from any Federal department or agency (subject to the approval of the head of that department or agency, in the case of a department or agency other than the Department of Justice) of personnel to each criminal street gang enforcement team; and

(C) provide all necessary funding for the operation of the criminal street gang enforcement team in each high intensity interstate gang activity area.

(3) COMPOSITION OF CRIMINAL STREET GANG ENFORCEMENT TEAM.—The team established pursuant to paragraph (2)(A) shall consist of agents and officers, where feasible, from—

(A) the Bureau of Alcohol, Tobacco, Firearms, and Explosives;

(B) the Department of Homeland Security;

(C) the Department of Housing and Urban Development;

(D) the Drug Enforcement Administration;

(E) the Internal Revenue Service;

(F) the Federal Bureau of Investigation;

(G) the United States Marshal's Service;

(H) the United States Postal Service;

(I) State and local law enforcement; and

(J) Federal, State and local prosecutors.

(4) CRITERIA FOR DESIGNATION.—In considering an area for designation as a high intensity interstate gang activity area under this section, the Attorney General shall consider—

(A) the current and predicted levels of gang crime activity in the area;

(B) the extent to which violent crime in the area appears to be related to criminal street gang activity, such as drug trafficking, murder, robbery, assaults, carjacking, arson, kidnapping, extortion, and other criminal activity;

(C) the extent to which State and local law enforcement agencies have committed resources to—

(i) respond to the gang crime problem; and

(ii) participate in a gang enforcement team;

(D) the extent to which a significant increase in the allocation of Federal resources would enhance local response to the gang crime activities in the area; and

(E) any other criteria that the Attorney General considers to be appropriate.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated $100,000,000 for each of the fiscal years 2005 to 2009 to carry out this section.

(2) USE OF FUNDS.—Of amounts made available under paragraph (1) in each fiscal year—

(A) 50 percent shall be used to carry out subsection (b)(2); and

(B) 50 percent shall be used to make grants available for community-based programs to provide crime prevention, research, and intervention services that are designed for gang members and at-risk youth in areas designated pursuant to this section as high intensity interstate gang activity areas.

(3) REPORTING REQUIREMENTS.—By February 1st of each year, the Attorney General shall provide a report to Congress which describes, for each designated high intensity interstate gang activity area—

(A) the specific long-term and short-term goals and objectives;

(B) the measurements used to evaluate the performance of the high intensity interstate gang activity area in achieving the long-term and short-term goals;

(C) the age, composition, and membership of ''gangs'';

(D) the number and nature of crimes committed by ''gangs''; and

(E) the definition of the term ''gang'' used to compile this report.

SEC. 111. ENHANCEMENT OF PROJECT SAFE NEIGHBORHOODS INITIATIVE TO IMPROVE ENFORCEMENT OF CRIMINAL LAWS AGAINST VIOLENT GANGS.

(a) IN GENERAL.—While maintaining the focus of Project Safe Neighborhoods as a comprehensive, strategic approach to reducing gun violence in America, the Attorney General is authorized to expand the Project Safe Neighborhoods program to require each United States attorney to—

(1) identify, investigate, and prosecute significant criminal street gangs operating within their district;

(2) coordinate the identification, investigation, and prosecution of criminal street gangs among Federal, State, and local law enforcement agencies; and

(3) coordinate and establish criminal street gang enforcement teams, established under section 110(b), in high intensity interstate gang activity areas within a United States attorney's district.

(b) ADDITIONAL STAFF FOR PROJECT SAFE NEIGHBORHOODS.—

(1) IN GENERAL.—The Attorney General may hire Assistant United States attorneys, non-attorney coordinators, or paralegals to carry out the provisions of this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $7,500,000 for each of the fiscal years 2005 through 2009 to carry out this section.

SEC. 112. ADDITIONAL RESOURCES NEEDED BY THE FEDERAL BUREAU OF INVESTIGATION TO INVESTIGATE AND PROSECUTE VIOLENT CRIMINAL STREET GANGS.

(a) RESPONSIBILITIES OF ATTORNEY GENERAL.—The Attorney General is authorized to require the Federal Bureau of Investigation to—

(1) increase funding for the Safe Streets Program; and

(2) support the criminal street gang enforcement teams, established under section 110(b), in designated high intensity interstate gang activity areas.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—In addition to amounts otherwise authorized, there are authorized to be appropriated to the Attorney General $5,000,000 for each of the fiscal years 2005 through 2009 to carry out the Safe Streets Program.

(2) AVAILABILITY.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 113. GRANTS TO PROSECUTORS AND LAW ENFORCEMENT TO COMBAT VIOLENT CRIME AND TO PROTECT WITNESSES AND VICTIMS OF CRIMES.

(a) IN GENERAL.—Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(5) to hire additional prosecutors to—

''(A) allow more cases to be prosecuted; and

''(B) reduce backlogs;

''(6) to fund technology, equipment, and training for prosecutors and law enforcement in order to increase accurate identification of gang members and violent offenders, and to maintain databases with such information to facilitate coordination among law enforcement and prosecutors; and

''(7) to create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

''SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated $20,000,000 for each of the fiscal years 2005 through 2009 to carry out this subtitle.

''(b) USE OF FUNDS.—Of the amounts made available under subsection (a), in each fiscal year 60 percent shall be used to carry out section 31702(7) to create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.''.

SEC. 114. REAUTHORIZE THE GANG RESISTANCE EDUCATION AND TRAINING PROJECTS PROGRAM.

Section 32401(b) of the Violent Crime Control Act of 1994 (42 U.S.C. 13921(b)) is amended by striking paragraphs (1) through (6) and inserting the following:

''(1) $20,000,000 for fiscal year 2005;

''(2) $20,000,000 for fiscal year 2006;

''(3) $20,000,000 for fiscal year 2007;

''(4) $20,000,000 for fiscal year 2008; and

''(5) $20,000,000 for fiscal year 2009.''.

TITLE II—VIOLENT CRIME REFORMS NEEDED TO DETER AND PREVENT ILLEGAL GANG CRIME

SEC. 201. MULTIPLE INTERSTATE MURDER.

Chapter 51 of title 18, United States Code, is amended by adding at the end of the new section:

''§ 1123. Multiple murders in furtherance of common scheme of purpose

''(a) IN GENERAL.—Whoever, having committed murder in violation of the laws of any State or the United States, moves or travels in interstate or foreign commerce with the intent to commit one or more murders in violation of the laws of any State or the United States, and thereafter commits one or more murders in violation of the laws of any State or the United States in furtherance of a common scheme or purpose, or who conspires to do so—

''(1) shall be fined under this title, imprisoned for not more than 30 years, or both, for each murder; and

''(2) if death results, may be fined not more than $250,000 under this title, and shall be punished by death or imprisoned for any term of years or for life for each murder.

''(b) DEFINITION.—The term 'State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''.

SEC. 202. EXPANSION OF REBUTTABLE PRESUMPTION AGAINST RELEASE OF PERSONS CHARGED WITH FIREARMS OFFENSES.

Section 3142 of title 18, United States Code, is amended—

(1) in subsection (e), in the matter following paragraph (3)—

(A) by inserting ''an offense under section 922(g)(1) where the underlying conviction is a serious drug offense as defined in section 924(e)(2)(A) of title 18, United States Code, for which a period of not more than 10 years has elapsed since the date of the conviction or the release of the person from imprisonment, whichever is later, or is a serious violent felony as defined in section 3559(c)(2)(F) of title 18, United States Code,'' after ''that the person committed''; and

(B) by inserting ''or'' before ''the Maritime'';

(2) in subsection (f)(1)—

(A) in subparagraph (C), by striking ''or'' at the end; and

(B) by adding at the end the following:

''(E) an offense under section 922(g); or''; and

(3) in subsection (g), by amending paragraph (1) to read as follows:

''(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, or involves a drug, firearm, explosive, or destructive devise;''.

SEC. 203. VENUE IN CAPITAL CASES.

Section 3235 of title 18, United States Code, is amended to read as follows:

''§ 3235. Venue in capital cases

''(a) The trial for any offense punishable by death shall be held in the district where the offense was committed or in any district in which the offense began, continued, or was completed.

''(b) If the offense, or related conduct, under subsection (a) involves activities which affect interstate or foreign commerce, or the importation of an object or person into the United States, such offense may be prosecuted in any district in which those activities occurred.''.

SEC. 204. STATUTE OF LIMITATIONS FOR VIOLENT CRIME.

(a) IN GENERAL.—Chapter 214 of title 18, United States Code, is amended by adding at the end the following:

''§ 3297. Violent crime offenses

''Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any noncapital felony, crime of violence (as defined in section 16), including any racketeering activity or gang crime which involves any violent crime, unless the indictment is found or the information is instituted by the later of—

''(1) 10 years after the date on which the alleged violation occurred;

''(2) 10 years after the date on which the continuing offense was completed; or

''(3) 8 years after the date on which the alleged violation was first discovered.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 214 of title 18, United States Code, is amended by adding at the end the following:

''3296. Violent crime offenses.''.

SEC. 205. PREDICATE CRIMES FOR AUTHORIZATION OF INTERCEPTION OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) in paragraph (q), by striking ''or'.'';

(2) by redesignating paragraph (r) as paragraph (u); and

(3) by inserting after paragraph (q) the following:

''(r) any violation of section 424 of the Controlled Substances Act (relating to murder and other violent crimes in furtherance of a drug trafficking crime);

''(s) any violation of 1123 of title 18, United States Code (relating to multiple interstate murder);

''(t) any violation of section 521, 522, or 523 (relating to criminal street gangs); or''.

SEC. 206. CLARIFICATION TO HEARSAY EXCEPTION FOR FORFEITURE BY WRONGDOING.

Rule 804(b)(6) of the Federal Rules of Evidence is amended to read as follows:

''(6) FORFEITURE BY WRONGDOING. A statement offered against a party that has engaged, acquiesced, or conspired, in wrongdoing that was intended to, and did, procure

the unavailability of the declarant as a witness.''.

SEC. 207. CLARIFICATION OF VENUE FOR RETALIATION AGAINST A WITNESS.

Section 1513 of title 18, United States Code, is amended by—

(1) redesignating subsection (e) beginning with ''Whoever conspires'' as subsection (f); and

(2) adding at the end the following:

''(g) A prosecution under this section may be brought in the district in which the official proceeding (whether or not pending, about to be instituted or was completed) was intended to be affected or was completed, or in which the conduct constituting the alleged offense occurred.''.

SEC. 208. AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN GANG AND VIOLENT CRIMES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements to conform to the provisions of title I and this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) establish new guidelines and policy statements, as warranted, in order to implement new or revised criminal offenses created under this title;

(2) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious gang and violent crimes, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(3) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for gang and violent crimes—

(i) are sufficient to deter and punish such offenses; and

(ii) are adequate in view of the statutory increases in penalties contained in the Act; and

(B) whether any existing or new specific offense characteristics should be added to reflect congressional intent to increase gang and violent crime penalties, punish offenders, and deter gang and violent crime;

(4) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(5) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(6) make any necessary conforming changes to the sentencing guidelines; and

(7) assure that the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.

SEC. 209. INCREASED PENALTIES FOR CRIMINAL USE OF FIREARMS IN CRIMES OF VIOLENCE AND DRUG TRAFFICKING.

(a) IN GENERAL.—Section 924(c)(1)(A) of title 18, United States Code, is amended—

(1) by striking ''shall'' and inserting ''or conspires to commit any of the above acts, shall, for each instance in which the firearm is used, carried, or possessed'';

(2) in clause (i), by striking ''5 years'' and inserting ''7 years''; and

(3) by striking clause (ii).

(b) CONFORMING AMENDMENTS.—Section 924 of title 18, United States Code, is amended—

(1) in subsection (c), by striking paragraph (4); and

(2) by striking subsection (o).

SEC. 210. POSSESSION OF FIREARMS BY DANGEROUS FELONS.

(a) IN GENERAL.—Section 924(e) of title 18, United States Code, is amended to read as follows:

''(e)(1) In the case of a person who violates section 922(g) of this title and has previously been convicted by any court referred to in section 922(g)(1) for a violent felony or a serious drug offense shall—

''(A) in the case of 1 such prior conviction, where a period of not more than 10 years has elapsed since the date of conviction or release of the person from imprisonment for that conviction, be subject to imprisonment for not more than 15 years, a fine under this title, or both;

''(B) in the case of 2 such prior convictions, committed on occasions different from one another, and where a period of not more than 10 years has elapsed since the date of conviction or release of the person from imprisonment for that conviction, be subject to imprisonment for not more than 20 years, a fine under this title, or both; and

''(C) in the case of 3 such prior convictions, committed on occasions different from one another, be subject to imprisonment for not less than 15 years, a fine under this title, or both, and notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

''(2) As used in this subsection—

''(A) the term 'serious drug offense' means—

''(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), punishable by a maximum term of imprisonment of not less than 10 years; or

''(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), punishable by a maximum term of imprisonment of not less than 10 years;

''(B) the term 'violent felony' means any crime punishable by a term of imprisonment exceeding 1 year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by a maximum term of imprisonment for such term if committed by an adult, that—

''(i) has, as an element of the crime or act, the use, attempted use, or threatened use of physical force against the person of another; or

''(ii) is burglary, arson, or extortion, involves the use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

''(C) the term 'conviction' includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.''.

(b) AMENDMENT TO SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal Sentencing Guidelines to provide for an appropriate increase in the offense level for violations of section 922(g) of title 18, United States Code, in accordance with section 924(e) of such title 18, as amended by subsection (a).

SEC. 211. CONFORMING AMENDMENT.

The matter before paragraph (1) in section 922(d) of title 18, United States Code, is amended by inserting '', transfer,'' after ''sell''.

TITLE III—JUVENILE CRIME REFORM FOR VIOLENT OFFENDERS

SEC. 301. TREATMENT OF FEDERAL JUVENILE OFFENDERS.

(a) IN GENERAL.—Section 5032 of title 18, United States Code, is amended to read as follows:

''§ 5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for criminal prosecution

''(a) DELINQUENCY PROCEEDINGS IN DISTRICT COURTS.—

''(1) IN GENERAL.—A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed 6 months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that—

''(A) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over that juvenile with respect to such alleged act of juvenile delinquency;

''(B) the State does not have available programs and services adequate for the needs of juveniles; or

''(C) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), section 1002(a), 1003, 1005, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b) (1), (2), (3)), section 922(x), or section 924 (b), (g), or (h) of this title, and there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

''(2) FAILURE TO CERTIFY.—If the Attorney General does not certify under paragraph (1), the juvenile shall be surrendered to the appropriate legal authorities of such State.

''(3) FEDERAL PROCEEDINGS.—If an alleged juvenile delinquent is not surrendered to the authorities of a State pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information or as authorized under section 3401(g) of this title, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

''(b) TRANSFER FOR FEDERAL CRIMINAL PROSECUTION.—

''(1) IN GENERAL.—A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless—

''(A) the juvenile has requested in writing upon advice of counsel to be proceeded against as an adult;

''(B) with respect to a juvenile 15 years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959), or section 922(x) of this title, or in section 924 (b), (g), or (h) of this title, the Attorney General makes a motion to transfer the criminal prosecution on the basis of the alleged act in the appropriate district court of the United States and the court finds, after hearing, such transfer would be in the interest of justice as provided in paragraph (2); or

''(C) with respect to a juvenile 13 years and older alleged to have committed an act after his thirteenth birthday which if committed by an adult would be a felony that is the crime of violence under section 113 (a), (b), (c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, an offense under section 2111, 2113, 2241(a), or 2241(c), the Attorney General makes a motion to transfer the criminal prosecution on the basis of the alleged act in the appropriate district court of the United States and the court finds, after hearing, such transfer would be in the interest of justice as provided in paragraph (2).

Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to subparagraph (C) for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151), and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to its criminal jurisdiction.

''(2) FACTORS.—

''(A) IN GENERAL.—Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer under subparagraph (B) or (C) of paragraph (1), and paragraph (4) of subsection (d), would be in the interest of justice:

''(i) The age and social background of the juvenile.

''(ii) The nature of the alleged offense, including the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities.

''(iii) Whether prosecution of the juvenile as an adult would protect public safety.

''(iv) The extent and nature of the juvenile's prior delinquency record.

''(v) The juvenile's present intellectual development and psychological maturity.

''(vi) The nature of past treatment efforts and the juvenile's response to such efforts.

''(vii) The availability of programs designed to treat the juvenile's behavioral problems.

''(B) NATURE OF THE OFFENSE.—In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.

''(C) NOTICE.—Reasonable notice of the transfer hearing under subparagraph (B) or (C) of paragraph (1) shall be given to the juvenile, the juvenile's parents, guardian, or custodian and to the juvenile's counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

''(c) MANDATORY TRANSFER OF JUVENILE 16 OR OLDER.—A juvenile who is alleged to have committed an act on or after his sixteenth birthday, which if committed by an adult would be a felony offense, that has an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another, may be used in committing the offense or would be an offense described in section 32, 81, or 2275 or subsection (d), (e), (f), (h), or (i) of section 844 of this title, subsection (d) or (e) or subparagraphs (A), (B), (C), (D), or (E) of subsection (b)(1) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, or 1009, or paragraphs (1), (2), or (3) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), and (3)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this subsection or subsection (b), or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred, upon notification by the United States, to the appropriate district court of the United States for criminal prosecution.

''(d) SIXTEEN AND SEVENTEEN YEAR OLDS CHARGED WITH THE MOST SERIOUS VIOLENT FELONIES.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a juvenile may be prosecuted as an adult if the juvenile is alleged to have committed, conspired, solicited or attempted to commit, on or after the day the juvenile attains the age of 16 any offense involving—

''(A) murder;

''(B) manslaughter;

''(C) assault with intent to commit murder;

''(D) sexual assault (which means any offense that involves conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction);

''(E) robbery (as described in section 2111, 2113, or 2118);

''(F) carjacking with a dangerous weapon;

''(G) extortion;

''(H) arson;

''(I) firearms use;

''(J) firearms possession (as described in section 924(c);

''(K) drive-by shooting;

''(L) kidnapping;

''(M) maiming;

''(N) assault resulting in serious bodily injury; or

''(O) obstruction of justice (as described in 1512(a)(1)) on or after the day the juvenile attains the age of 16.

''(2) OTHER OFFENSES.—In a prosecution under this subsection the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted as an adult of a lesser included offense.

''(3) REVIEWABILITY.—Except as otherwise provided by this subsection, a determination to approve or not to approve, or to institute or not to institute, a prosecution under this subsection shall not be reviewable in any court.

''(4) PROSECUTION.—(A) In any prosecution of a juvenile under this subsection, upon motion of the defendant, the court in which the criminal charges have been filed shall after a hearing determine whether to issue an order that the defendant should be transferred to juvenile status.

''(B) A motion by a defendant under this paragraph shall not be considered unless filed no later than 30 days after the date on which the defendant initially appears through counsel or expressly waives the right to counsel and elects to proceed pro se.

''(C) The court shall not order the transfer of a defendant to juvenile status under this paragraph unless the defendant establishes by clear and convincing evidence that removal to juvenile status would be in the interest of justice. In making a determination under this paragraph, the court shall consider the factors specified in subsection (b)(2) of this section.

''(5) ORDER.—An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this subsection shall not be a final order for the purpose of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court removing a defendant to juvenile status. Upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous, and the court of appeals shall review de novo the district court's application of the law to the facts.

''(e) SIXTEEN AND SEVENTEEN YEAR OLDS CHARGED WITH OTHER SERIOUS VIOLENT FELONIES.—

''(1) IN GENERAL.—Except as provided by subsection (d), a juvenile may be prosecuted as an adult if the juvenile is alleged to have committed an act on or after the day the juvenile attains the age of 16 which is committed by an adult would be a serious violent felony as described in paragraphs (2) and (3) of section 3559(a).

''(2) OTHER OFFENSES.—In a prosecution under this subsection the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted as an adult of a lesser included offense.

''(3) REVIEWABILITY.—Except as otherwise provided by this subsection, a determination to approve or not to approve, or to institute or not to institute, a prosecution under this subsection shall not be reviewable in any court.

''(4) PROSECUTION.—(A) In any prosecution of a juvenile under this subsection, upon motion of the defendant, the court in which the criminal charges have been filed shall after a hearing determine whether to issue an order that the defendant should be transferred to juvenile status.

''(B) A motion by a defendant under this paragraph shall not be considered unless filed no later than 30 days after the date on which the defendant initially appears through counsel or expressly waives the right to counsel and elects to proceed pro se.

''(C) The court shall not order the transfer of a defendant to juvenile status under this paragraph unless the defendant establishes by clear and convincing evidence that removal to juvenile status would be in the interest of justice. In making a determination under this paragraph, the court shall consider the factors specified in subsection (b)(2) of this section.

''(5) ORDER.—An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this subsection shall be a final order for the purpose of enabling an appeal. Upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous, and the court of appeals shall review de novo the district court's application of the law to the facts.

''(f) PROCEEDINGS.—

''(1) SUBSEQUENT PROCEEDING BARRED.—Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect

to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

''(2) STATEMENTS.—Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions except for impeachment purposes or in a prosecution for perjury or making a false statement.

''(3) FURTHER PROCEEDINGS.—Whenever a juvenile transferred to district court under subsection (b) or (c) is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

''(4) RECEIPT OF RECORDS.—A juvenile shall not be transferred to adult prosecution under subsection (b) nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

''(5) SPECIFIC ACTS DESCRIBED.—Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

''(g) STATE.—For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 403 of title 18, United States Code, is amended by striking the item relating to section 5032 and inserting the following:

''5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for criminal prosecution.''.

SEC. 302. NOTIFICATION AFTER ARREST.

Section 5033 of title 18, United States Code, is amended in the first sentence, by striking ''immediately notify the Attorney General and'' and inserting ''immediately, or as soon as practicable thereafter, notify the Attorney General and shall promptly take reasonable steps to notify''.

SEC. 303. RELEASE AND DETENTION PRIOR TO DISPOSITION.

(a) DUTIES OF MAGISTRATE JUDGE.—Section 5034 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph, by striking ''The magistrate judge shall insure'' and inserting the following:

''(a) IN GENERAL.—

''(1) REPRESENTATION BY COUNSEL.—The magistrate judge shall ensure'';

(2) in the second undesignated paragraph, by striking ''The magistrate judge may appoint'' and inserting the following:

''(2) GUARDIAN AD LITEM.—The magistrate judge may appoint'';

(3) in the third undesignated paragraph, by striking ''If the juvenile'' and inserting the following:

''(b) RELEASE PRIOR TO DISPOSITION.—Except as provided in subsection (c), if the juvenile''; and

(4) by adding at the end the following:

''(c) RELEASE OF CERTAIN JUVENILES.—

''(1) IN GENERAL.—A juvenile, who is to be tried as an adult under section 5032, shall be released pending trial in accordance with the applicable provisions of chapter 207.

''(2) CONDITIONS.—A release under paragraph (1) shall be conducted in the same manner, and shall be subject to the same terms, conditions, and sanctions for violation of a release condition, as provided for an adult under chapter 207.

''(d) PENALTY FOR AN OFFENSE COMMITTED WHILE ON RELEASE.—

''(1) IN GENERAL.—A juvenile alleged to have committed, while on release under this section, an offense that, if committed by an adult, would be a Federal criminal offense, shall be subject to prosecution under section 5032.

''(2) APPLICABILITY OF CERTAIN PENALTIES.—Section 3147 shall apply to a juvenile who is to be tried as an adult under section 5032 for an offense committed while on release under this section.''.

(b) DETENTION PRIOR TO DISPOSITION.—Section 5035 of title 18, United States Code, is amended—

(1) by striking ''A juvenile'' and inserting the following:

''(a) IN GENERAL.—Except as provided in subsection (b), a juvenile''; and

(2) by adding at the end the following:

''(b) DETENTION OF CERTAIN JUVENILES.—A juvenile who is to be tried as an adult under section 5032 shall be subject to detention in accordance with chapter 207.''.

SEC. 304. SPEEDY TRIAL.

Section 5036 of title 18, United States Code, is amended to read as follows:

''§ 5036. Speedy trial

''(a) IN GENERAL.—If an alleged delinquent, who is to be proceeded against as a juvenile pursuant to section 5032 and who is in detention pending trial, is not brought to trial within 70 days from the date upon which such detention began, the information shall be dismissed on motion of the alleged delinquent or at the direction of the court.

''(b) PERIODS OF EXCLUSION.—The periods of exclusion under section 3161(h) shall apply to this section.

''(c) JUDICIAL CONSIDERATIONS.—In determining whether an information should be dismissed with or without prejudice, the court shall consider—

''(1) the seriousness of the alleged act of juvenile delinquency;

''(2) the facts and circumstances of the case that led to the dismissal; and

''(3) the impact of a reprosecution on the administration of justice.''.

SEC. 305. FEDERAL SENTENCING GUIDELINES.

(a) APPLICATION OF GUIDELINES TO CERTAIN JUVENILE DEFENDANTS.—Section 994(h) of title 28, United States Code, is amended by inserting '', or in which the defendant is a juvenile who is tried as an adult,'' after ''old or older''.

(b) GUIDELINES FOR JUVENILE CASES.—Section 994 of title 28, United States Code, is amended by adding at the end the following:

''(z) GUIDELINES FOR JUVENILE CASES.—Not later than May 1, 2006, the Commission, pursuant to its rules and regulations and consistent with all pertinent provisions of any Federal statute, shall promulgate and distribute, to all courts of the United States and to the United States Probation System, guidelines, as described in this section, for use by a sentencing court in determining the sentence to be imposed in a criminal case if the defendant committed the offense as a juvenile, and is tried as an adult pursuant to section 5032 of title 18.''.

Mr. HATCH. Mr. President, I rise today to introduce with my colleagues, Senators FEINSTEIN, GRASSLEY, KYL, and CORNYN, a comprehensive bipartisan bill to increase gang prosecution and prevention efforts. The bill I introduce today is identical to S. 1735 that was favorably reported by the Senate Judiciary Committee in the 108th Congress.

This legislation, ''The Gang Prevention and Effective Deterrence Act of 2005,'' authorizes approximately $650 million over the next five years to support law enforcement and efforts to prevent youngsters from joining gangs. Of that, $450 million would be used to support Federal, State and local law enforcement efforts against violent gangs, and $200 million would be used for intervention and prevention programs for at-risk youth. The bill increases funding for the Federal prosecutors and Federal Bureau of Investigation (FBI) agents needed to conduct coordinated enforcement efforts against violent gangs.

This bill also creates new criminal gang prosecution offenses, enhances existing gang and violent crime penalties to deter and punish illegal street gangs, enacts violent crime reforms needed to prosecute effectively gang members, and implements a limited reform of the juvenile justice system to facilitate Federal prosecution of 16- and 17-year-old gang members who commit serious violent felonies.

The problem of gang violence in America is not a new one, nor is it a problem that is limited to major urban areas. Once thought to be only a problem in our Nation's largest cities, gangs have invaded smaller communities. Gangs in Salt Lake County result in significant measure from the influence of gangs existing in Los Angeles and Chicago, but with local mutations.

Constituents frequently mention to me their extreme concern about gang violence in Utah. According to the Salt Lake Area Gang Project, a multi-jurisdictional task force created in 1989 to fight gang crime in the Salt Lake area, there are at least 250 identified gangs in Utah with over 3,500 members. In Utah, there are street gangs that are ethnically oriented, such as Hispanic gangs, as well as those affiliated with gangs from other cities, such as the Crips and Bloods, Folks and People, motorcycle gangs, Straight Edge gangs, Animal Liberation Front, Skinheads, Varrio Loco Town, Oquirrh Shadow Boys, Salt Lake Posse, and the list goes on. Some of these gangs are racist; some are extremist.

And what I find particularly troubling is that over one-third of the total gang membership is made up of juveniles. Thus, these crimes have a particular impact on youths.

Gangs now resemble organized crime syndicates which readily engage in gun violence, illegal gun trafficking, illegal drug trafficking and other serious crimes. All too often we read in the headlines about gruesome and tragic stories of rival gang members gunned down, innocent bystanders—adults, teenagers and children—caught in the cross fire of gangland shootings, and family members crying out in grief as they lose loved ones to the gang wars plaguing our communities.

Recent studies confirm that gang violence is an increasing problem in all of our communities. Based on the latest available National Youth Gang Survey, it is now estimated that there are more than 25,000 gangs, and over 750,000 gang members who are active in more than 3,000 jurisdictions across the United States. The most current reports indicate that in 2002 alone, after five years of decline, gang membership has spiked nationwide.

I have been—and remain—committed to supporting Federal, State and local task forces as a model for effective gang enforcement strategies. Working together, these task forces have demonstrated that they can make a difference in the community. In Salt Lake City, the Metro Gang Multi-Jurisdiction Task Force stands out as a critical player in fighting gang violence in Salt Lake City. We need to reassure outstanding organizations like this that there will be adequate resources available to expand and fund these critical task force operations to fight gang violence.

In my study of this problem, it has become clear that the government needs to work with communities to meet this problem head-on and defeat it. If we really want to reduce gang violence, we must ensure that law enforcement has adequate resources and legal tools, and that our communities have the ability to implement proven intervention and prevention strategies, so that gang members who are removed from the community are not simply replaced by the next generation of new gang members.

In closing, I want to commend my colleagues—Senators FEINSTEIN, GRASSLEY, KYL and CORNYN. They have worked very closely with me as we considered these issues last Congress and I look forward to working with them and others as we proceed this year. I urge my colleagues to join with us in promptly passing this important legislation.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 156. A bill to designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I am proud to introduce the ''Ojito Wilderness Act''. This bill was passed in various forms by both the Senate and the House of Representatives in the 108th Congress. I am pleased that the senior Senator from New Mexico, Mr. DOMENICI, is cosponsoring this bill.

The support for this proposal truly is impressive. It has been formally endorsed by the Governor of New Mexico; the local Sandoval County Commission and the neighboring Bernalillo County Commission; the Albuquerque City Council; New Mexico House of Representatives Energy and Natural Resources Committee Chairman James Roger Madalena; the Governors of the Pueblos of Zia, Santa Ana, Santo Domingo, Cochiti, Tesuque, San Ildefonso, Pojoaque, Nambe, Santa Clara, San Juan, Sandia, Laguna, Acoma, Isleta, Picuris, and Taos; the National Congress of American Indians; the Hopi Tribe; The Wilderness Society; the New Mexico Wilderness Alliance; the Coalition for New Mexico Wilderness, on behalf of more than 375 businesses and organizations; the Rio Grande Chapter of the Sierra Club; the National Parks Conservation Association; the Albuquerque Convention and Visitors Bureau; 1000 Friends of New Mexico; and numerous individuals.

The Ojito provides a unique wilderness area that is important not only to its local stewards, but also to the nearby residents of Albuquerque and Santa Fe, as well as visitors from across the country. It is an outdoor geology laboratory, offering a spectacular and unique opportunity to view from a single location the juxtaposition of the southwestern margin of the Rocky Mountains, the Colorado Plateau, and the Rio Grande Rift, along with the volcanic necks of the Rio Puerco Fault. Its rugged terrain offers a rewarding challenge to hikers, backpackers, and photographers. It shelters ancient Puebloan ruins and an endemic endangered plant, solitude and inspiration. Designating Ojito as a wilderness area ensures that the beauty of this special place will be protected and enjoyed for years to come.

I have made a number of changes to this bill in order clarify a number of issues and to facilitate its enactment, and I hope that it will be enacted quickly.

I ask unanimous consent that the text of the bill I have introduced today be printed in RECORD.

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

S. 156

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 ''Ojito Wilderness Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MAP.—The term ''map'' means the map entitled ''Ojito Wilderness Act'' and dated October 1, 2004.

(2) PUEBLO.—The term ''Pueblo'' means the Pueblo of Zia.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(4) STATE.—The term ''State'' means the State of New Mexico.

SEC. 3. DESIGNATION OF THE OJITO WILDERNESS.

(a) IN GENERAL.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), there is hereby designated as wilderness, and, therefore, as a component of the National Wilderness Preservation System, certain land in the Albuquerque District-Bureau of Land Management, New Mexico, which comprise approximately 11,183 acres, as generally depicted on the map, and which shall be known as the ''Ojito Wilderness''.

(b) MAP AND LEGAL DESCRIPTION.—The map and a legal description of the wilderness area designated by this Act shall—

(1) be filed by the Secretary with the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives as soon as practicable after the date of enactment of this Act;

(2) have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in the legal description and map; and

(3) be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(c) MANAGEMENT OF WILDERNESS.—Subject to valid existing rights, the wilderness area designated by this Act shall be managed by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that, with respect to the wilderness area designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(d) MANAGEMENT OF NEWLY ACQUIRED LAND.—If acquired by the United States, the following land shall become part of the wilderness area designated by this Act and shall be managed in accordance with this Act and other applicable law:

(1) Section 12 of township 15 north, range 01 west, New Mexico Principal Meridian.

(2) Any land within the boundaries of the wilderness area designated by this Act.

(e) MANAGEMENT OF LANDS TO BE ADDED.—The lands generally depicted on the map as ''Lands to be Added'' shall become part of the wilderness area designated by this Act if the United States acquires, or alternative adequate access is available to, section 12 of township 15 north, range 01 west.

(f) RELEASE.—The Congress hereby finds and directs that the lands generally depicted on the map as ''Lands to be Released'' have been adequately studied for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782) and no longer are subject to the requirement of section 603(c) of such Act (43 U.S.C. 1782(c)) pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

(g) GRAZING.—Grazing of livestock in the wilderness area designated by this Act, where established before the date of enactment of this Act, shall be administered in accordance with the provisions of section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)) and the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101–405).

(h) FISH AND WILDLIFE.—As provided in section 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)), nothing in this section shall be construed as affecting the jurisdiction or responsibilities of the State with respect to fish and wildlife in the State.

(i) WATER RIGHTS.—

(1) FINDINGS.—Congress finds that—

(A) the land designated as wilderness by this Act is arid in nature and is generally not suitable for use or development of new water resource facilities; and

(B) because of the unique nature and hydrology of the desert land designated as wilderness by this Act, it is possible to provide for proper management and protection of the wilderness and other values of lands in ways different from those used in other legislation.

(2) STATUTORY CONSTRUCTION.—Nothing in this Act—

(A) shall constitute or be construed to constitute either an express or implied reservation by the United States of any water or water rights with respect to the land designated as wilderness by this Act;

(B) shall affect any water rights in the State existing on the date of enactment of this Act, including any water rights held by the United States;

(C) shall be construed as establishing a precedent with regard to any future wilderness designations;

(D) shall affect the interpretation of, or any designation made pursuant to, any other Act; or

(E) shall be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that apportion water among and between the State and other States.

(3) STATE WATER LAW.—The Secretary shall follow the procedural and substantive requirements of the law of the State in order to obtain and hold any water rights not in existence on the date of enactment of this Act with respect to the wilderness area designated by this Act.

(4) NEW PROJECTS.—

(A) WATER RESOURCE FACILITY.—As used in this subsection, the term ''water resource facility''—

(i) means irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures; and

(ii) does not include wildlife guzzlers.

(B) RESTRICTION ON NEW WATER RESOURCE FACILITIES.—Except as otherwise provided in this Act, on and after the date of enactment of this Act, neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for the development of any new water resource facility within the wilderness area designated by this Act.

(j) WITHDRAWAL.—Subject to valid existing rights, the wilderness area designated by this Act, the lands to be added under subsection (e), and lands identified on the map as the ''BLM Lands Authorized to be Acquired by the Pueblo of Zia'' are withdrawn from—

(1) all forms of entry, appropriation, and disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(k) EXCHANGE.—Not later than 3 years after the date of enactment of this Act, the Secretary shall seek to complete an exchange for State land within the boundaries of the wilderness area designated by this Act.

SEC. 4. LAND HELD IN TRUST.

(a) IN GENERAL.—Subject to valid existing rights and the conditions under subsection (d), all right, title, and interest of the United States in and to the lands (including improvements, appurtenances, and mineral rights to the lands) generally depicted on the map as ''BLM Lands Authorized to be Acquired by the Pueblo of Zia'' shall, on receipt of consideration under subsection (c) and adoption and approval of regulations under subsection (d), be declared by the Secretary to be held in trust by the United States for the Pueblo and shall be part of the Pueblo's Reservation.

(b) DESCRIPTION OF LANDS.—The boundary of the lands authorized by this section for acquisition by the Pueblo where generally depicted on the map as immediately adjacent to CR906, CR923, and Cucho Arroyo Road shall be 100 feet from the center line of the road.

(c) CONSIDERATION.—

(1) IN GENERAL.—In consideration for the conveyance authorized under subsection (a), the Pueblo shall pay to the Secretary the amount that is equal to the fair market value of the land conveyed, as subject to the terms and conditions in subsection (d), as determined by an independent appraisal.

(2) APPRAISAL.—To determine the fair market value, the Secretary shall conduct an appraisal paid for by the Pueblo that is performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

(3) AVAILABILITY.—Any amounts paid under paragraph (1) shall be available to the Secretary, without further appropriation and until expended, for the acquisition from willing sellers of land or interests in land in the State.

(d) PUBLIC ACCESS.—

(1) IN GENERAL.—Subject to paragraph (2), the declaration of trust and conveyance under subsection (a) shall be subject to the continuing right of the public to access the land for recreational, scenic, scientific, educational, paleontological, and conservation uses, subject to any regulations for land management and the preservation, protection, and enjoyment of the natural characteristics of the land that are adopted by the Pueblo and approved by the Secretary; *Provided* that the Secretary shall ensure that the rights provided for in this paragraph are protected and that a process for resolving any complaints by an aggrieved party is established.

(2) CONDITIONS.—Except as provided in subsection (f)—

(A) the land conveyed under subsection (a) shall be maintained as open space and the natural characteristics of the land shall be preserved in perpetuity; and

(B) the use of motorized vehicles (except on existing roads or as is necessary for the maintenance and repair of facilities used in connection with grazing operations), mineral extraction, housing, gaming, and other commercial enterprises shall be prohibited within the boundaries of the land conveyed under subsection (a).

(e) RIGHTS OF WAY.—

(1) EXISTING RIGHTS OF WAY.—Nothing in this section shall affect—

(A) any validly issued right-of-way or the renewal thereof; or

(B) the access for customary construction, operation, maintenance, repair, and replacement activities in any right-of-way issued, granted, or permitted by the Secretary.

(2) NEW RIGHTS OF WAY AND RENEWALS.—

(A) IN GENERAL.—The Pueblo shall grant any reasonable request for rights-of-way for utilities and pipelines over the land acquired under subsection (a) that is designated as the ''Rights-of-Way corridor #1'' in the Rio Puerco Resource Management Plan that is in effect on the date of the grant.

(B) ADMINISTRATION.—Any right-of-way issued or renewed after the date of enactment of this Act located on land authorized to be acquired under this section shall be administered in accordance with the rules, regulations, and fee payment schedules of the Department of the Interior, including the Rio Puerco Resources Management Plan that is in effect on the date of issuance or renewal of the right-of-way.

(f) JUDICIAL RELIEF.—

(1) IN GENERAL.—To enforce subsection (d), any person may bring a civil action in the United States District Court for the District of New Mexico seeking declaratory or injunctive relief.

(2) SOVEREIGN IMMUNITY.—The Pueblo shall not assert sovereign immunity as a defense or bar to a civil action brought under paragraph (1).

(3) EFFECT.—Nothing in this section—

(A) authorizes a civil action against the Pueblo for money damages, costs, or attorneys fees; or

(B) except as provided in paragraph (2), abrogates the sovereign immunity of the Pueblo.

By Mr. KOHL:

S. 157. A bill to amend the Internal Revenue Code of 1986 to permit interest on Federally guaranteed water, wastewater, and essential community facilities loans to be tax exempt; to the Committee on Finance.

Mr. KOHL. Mr. President, I'm introducing a bill today that is aimed at helping rural communities build or improve essential community facilities such as shelters, nursing homes, hospitals, medical clinics, and fire and rescue-type projects. My bill would make it possible for project sponsors to accept certain USDA loan guarantees without risking the tax exempt status that enables them to finance these initiatives.

Clarification of existing tax rules, as proposed in this bill, will provide certainty for project sponsors, help lower project costs for rural communities, and help deal with a backlog of loan applications for small communities.

The needs are great in many rural communities. This measure will help communities help themselves and I look forward to working with the Senate Finance Committee on this important topic.

I ask unanimous consent that the text of the measure be printed in the RECORD.

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

S. 157

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

SECTION 1. TAX-EXEMPT INTEREST ON FEDERALLY GUARANTEED WATER, WASTEWATER, AND FEDERALLY GUARANTEED ESSENTIAL COMMUNITY FACILITIES LOANS.

(a) IN GENERAL.—Section 149(b)(3)(A) of the Internal Revenue Code 1986 (relating to certain insurance programs) is amended by striking ''or'' at the end of clause (ii), by striking period at the end of clause (iii) and inserting '', or'', and by adding at the end the following new clause:

''(iv) any guarantee by the Secretary of Agriculture pursuant to section 306(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(1)) to finance water, wastewater, and essential community facilities.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

By Mr. LIEBERMAN (for himself, Mrs. CLINTON, Mr. DODD, and Mr. SCHUMER):

S. 158. A bill to establish the Long Island Sound Stewardship Initiative; to the Committee on Environment and Public Works.

Mr. LIEBERMAN. Mr. President, I rise today to re-introduce legislation that would establish a new system to preserve the environmental quality of Long Island Sound by identifying, protecting, and enhancing sites within the Long Island Sound ecosystem that have significant ecological, educational, open space, public access, or recreational value.

With this legislation, we hope to preserve the natural beauty and ecological wonder of the majestic waterway between New York and Connecticut, which my New York and Connecticut colleagues and I have worked hard together to improve. We have come a long way in restoring the Sound and its rich biodiversity over the past several decades, but our progress may be in jeopardy if we do not take measures now to protect remaining sites of biological diversity. Despite our best efforts, we are continuing to lose unprotected open sites along the shore. That is why this Act is so important.

One of the important features of the Stewardship Act I am introducing is that it will use new approaches to address an old problem, the proper conservation of our resources. The legislation includes novel conservation techniques that are designed to accomplish their goals at the least cost. First, it involves purchasing property or property rights or entering into binding legal agreements with property owners, but does so through a process that is voluntary and that explicitly respects the interests and rights of private property owners. It also uses established scientific methods for identifying potential coastal sites. Finally, it incorporates a flexible management system that institutionalizes learning and ensures efficiency in the identification and acquisition of conservation and recreation sites.

The value of this legislation, which passed the Senate by unanimous consent during the last Congress, is clear. I look forward to working with my cosponsors from Connecticut and New York, Senators DODD, CLINTON, and SCHUMER, and a bipartisan group of our Connecticut and New York House colleagues to enact this legislation and ensure that we can take necessary common-sense steps to protect and preserve Long Island Sound for generations to come.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 158

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 ''Long Island Sound Stewardship Act of 2005''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) Long Island Sound is a national treasure of great cultural, environmental, and ecological importance;

(2) 8,000,000 people live within the Long Island Sound watershed and 28,000,000 people (approximately 10 percent of the population of the United States) live within 50 miles of Long Island Sound;

(3) activities that depend on the environmental health of Long Island Sound contribute more than $5,000,000,000 each year to the regional economy;

(4) the portion of the shoreline of Long Island Sound that is accessible to the general public (estimated at less than 20 percent of the total shoreline) is not adequate to serve the needs of the people living in the area;

(5) existing shoreline facilities are in many cases overburdened and underfunded;

(6) large parcels of open space already in public ownership are strained by the effort to balance the demand for recreation with the needs of sensitive natural resources;

(7) approximately ⅓ of the tidal marshes of Long Island Sound have been filled, and much of the remaining marshes have been ditched, dyked, or impounded, reducing the ecological value of the marshes; and

(8) much of the remaining exemplary natural landscape is vulnerable to further development.

(b) PURPOSE.—The purpose of this Act is to establish the Long Island Sound Stewardship Initiative to identify, protect, and enhance sites within the Long Island Sound ecosystem with significant ecological, educational, open space, public access, or recreational value through a bi-State network of sites best exemplifying these values.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADAPTIVE MANAGEMENT.—The term ''adaptive management'' means a scientific process—

(A) for—

(i) developing predictive models;

(ii) making management policy decisions based upon the model outputs;

(iii) revising the management policies as data become available with which to evaluate the policies; and

(iv) acknowledging uncertainty, complexity, and variance in the spatial and temporal aspects of natural systems; and

(B) that requires that management be viewed as experimental.

(2) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(3) COMMITTEE.—The term ''Committee'' means the Long Island Sound Stewardship Advisory Committee established by section 5(a).

(4) REGION.—The term ''Region'' means the Long Island Sound Stewardship Initiative Region established by section 4(a).

(5) STATES.—The term ''States'' means the States of Connecticut and New York.

(6) STEWARDSHIP SITE.—The term ''stewardship site'' means a site that—

(A) qualifies for identification by the Committee under section 8; and

(B) is an area of land or water or a combination of land and water—

(i) that is in the Region; and

(ii) that is—

(I) Federal, State, local, or tribal land or water;

(II) land or water owned by a nonprofit organization; or

(III) privately owned land or water.

(7) SYSTEMATIC SITE SELECTION.—The term ''systematic site selection'' means a process of selecting stewardship sites that—

(A) has explicit goals, methods, and criteria;

(B) produces feasible, repeatable, and defensible results;

(C) provides for consideration of natural, physical, and biological patterns,

(D) addresses reserve size, replication, connectivity, species viability, location, and public recreation values;

(E) uses geographic information systems technology and algorithms to integrate selection criteria; and

(F) will result in achieving the goals of stewardship site selection at the lowest cost.

(8) THREAT.—The term ''threat'' means a threat that is likely to destroy or seriously degrade a conservation target or a recreation area.

SEC. 4. LONG ISLAND SOUND STEWARDSHIP INITIATIVE REGION.

(a) ESTABLISHMENT.—There is established in the States the Long Island Sound Stewardship Initiative Region.

(b) BOUNDARIES.—The Region shall encompass the immediate coastal upland and underwater areas along Long Island Sound, including—

(1) those portions of the Sound with coastally influenced vegetation, as described on the map entitled the ''Long Island Sound Stewardship Region'' and dated April 21, 2004; and

(2) the Peconic Estuary, as described on the map entitled ''Peconic Estuary Program Study Area Boundaries'', included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

SEC. 5. LONG ISLAND SOUND STEWARDSHIP ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established a committee to be known as the ''Long Island Sound Stewardship Advisory Committee''.

(b) CHAIRPERSON.—The Chairperson of the Committee shall be the Director of the Long Island Sound Office of the Environmental Protection Agency, or a designee of the Director.

(c) MEMBERSHIP.—

(1) COMPOSITION.—

(A) APPOINTMENT OF MEMBERS.—

(i) IN GENERAL.—The Chairperson shall appoint the members of the Committee in accordance with this subsection and section 320(c) of the Federal Water Pollution Control Act (33 U.S.C. 1330(c)).

(ii) ADDITIONAL MEMBERS.—In addition to the requirements described in clause (i), the Committee shall include—

(I) a representative from the Regional Plan Association;

(II) a representative of the marine trade organizations; and

(III) a representative of private landowner interests.

(B) REPRESENTATION.—In appointing members to the Committee, the Chairperson shall consider—

(i) Federal, State, and local government interests;

(ii) the interests of nongovernmental organizations;

(iii) academic interests; and

(iv) private interests.

(2) DATE OF APPOINTMENTS.—Not later than 180 days after the date of enactment of this Act, the appointment of all members of the Committee shall be made.

(d) TERM; VACANCIES.—

(1) TERM.—

(A) IN GENERAL.—A member shall be appointed for a term of 4 years.

(B) MULTIPLE TERMS.—A person may be appointed as a member of the Committee for more than 1 term.

(2) VACANCIES.—A vacancy on the Committee shall—

(A) be filled not later than 90 days after the vacancy occurs;

(B) not affect the powers of the Committee; and

(C) be filled in the same manner as the original appointment was made.

(3) STAFF.—

(A) IN GENERAL.—The Chairperson of the Committee may appoint and terminate personnel as necessary to enable the Committee to perform the duties of the Committee.

(B) PERSONNEL AS FEDERAL EMPLOYEES.—

(i) IN GENERAL.—Any personnel of the Committee who are employees of the Committee shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(ii) MEMBERS OF COMMITTEE.—Clause (i) does not apply to members of the Committee.

(e) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Committee have been appointed, the Committee shall hold the initial meeting of the Committee.

(f) MEETINGS.—The Committee shall meet at the call of the Chairperson, but no fewer than 4 times each year.

(g) QUORUM.—A majority of the members of the Committee shall constitute a quorum, but a lesser number of members may hold hearings.

SEC. 6. DUTIES OF THE COMMITTEE.

The Committee shall—

(1) consistent with the guidelines described in section 8—

(A) evaluate applications from government or nonprofit organizations qualified to hold conservation easements for funds to purchase land or development rights for stewardship sites;

(B) evaluate applications to develop and implement management plans to address threats;

(C) evaluate applications to act on opportunities to protect and enhance stewardship sites; and

(D) recommend that the Administrator award grants to qualified applicants;

(2) recommend guidelines, criteria, schedules, and due dates for evaluating information to identify stewardship sites;

(3) publish a list of sites that further the purposes of this Act, provided that owners of sites shall be—

(A) notified prior to the publication of the list; and

(B) allowed to decline inclusion on the list;

(4) raise awareness of the values of and threats to these sites; and

(5) leverage additional resources for improved stewardship of the Region.

SEC. 7. POWERS OF THE COMMITTEE.

(a) HEARINGS.—The Committee may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Committee considers advisable to carry out this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Committee may secure directly from a Federal agency such information as the Committee considers necessary to carry out this Act.

(2) PROVISION OF INFORMATION.—

(A) IN GENERAL.—Subject to subparagraph (C), on request of the Chairperson of the Committee, the head of a Federal agency shall provide the information requested by the Chairperson to the Committee.

(B) ADMINISTRATION.—The furnishing of information by a Federal agency to the Committee shall not be considered a waiver of any exemption available to the agency under section 552 of title 5, United States Code.

(C) INFORMATION TO BE KEPT CONFIDENTIAL.—

(i) IN GENERAL.—For purposes of section 1905 of title 18, United States Code—

(I) the Committee shall be considered an agency of the Federal Government; and

(II) any individual employed by an individual, entity, or organization that is a party to a contract with the Committee under this Act shall be considered an employee of the Committee.

(ii) PROHIBITION ON DISCLOSURE.—Information obtained by the Committee, other than information that is available to the public, shall not be disclosed to any person in any manner except to an employee of the Committee as described in clause (i) for the purpose of receiving, reviewing, or processing the information.

(c) POSTAL SERVICES.—The Committee may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

(d) DONATIONS.—The Committee may accept, use, and dispose of donations of services or property that advance the goals of the Long Island Sound Stewardship Initiative.

SEC. 8. STEWARDSHIP SITES.

(a) INITIAL SITES.—

(1) IDENTIFICATION.—

(A) IN GENERAL.—The Committee shall identify 20 initial Long Island Sound stewardship sites that the Committee has determined—

(i)(I) are natural resource-based recreation areas; or

(II) are exemplary natural areas with ecological value; and

(ii) best promote the purposes of this Act.

(B) EXEMPTION.—Sites described in subparagraph (A) are not subject to the site identification process described in subsection (d).

(2) EQUITABLE DISTRIBUTION OF FUNDS FOR INITIAL SITES.—In identifying initial sites under paragraph (1), the Committee shall exert due diligence to recommend an equitable distribution of funds between the States for the initial sites.

(b) APPLICATION FOR IDENTIFICATION AS A STEWARDSHIP SITE.—Subsequent to the identification of the initial stewardship sites under subsection (a), owners of sites may submit applications to the Committee in accordance with subsection (c) to have the sites identified as stewardship sites.

(c) IDENTIFICATION.—The Committee shall review applications submitted by owners of potential stewardship sites to determine whether the sites should be identified as exhibiting values consistent with the purposes of this Act.

(d) SITE IDENTIFICATION PROCESS.—

(1) NATURAL RESOURCE-BASED RECREATION AREAS.—The Committee shall identify additional recreation areas with potential as stewardship sites using a selection technique that includes—

(A) public access;

(B) community support;

(C) areas with high population density;

(D) environmental justice (as defined in section 385.3 of title 33, Code of Federal Regulations (or successor regulations));

(E) connectivity to existing protected areas and open spaces;

(F) cultural, historic, and scenic areas; and

(G) other criteria developed by the Committee.

(2) NATURAL AREAS WITH ECOLOGICAL VALUE.—The Committee shall identify additional natural areas with ecological value and potential as stewardship sites—

(A) based on measurable conservation targets for the Region; and

(B) following a process for prioritizing new sites using systematic site selection, which shall include—

(i) ecological uniqueness;

(ii) species viability;

(iii) habitat heterogeneity;

(iv) size;

(v) quality;

(vi) connectivity to existing protected areas and open spaces;

(vii) land cover;

(viii) scientific, research, or educational value;

(ix) threats; and

(x) other criteria developed by the Committee.

(3) PUBLICATION OF LIST.—After completion of the site identification process, the Committee shall—

(A) publish in the Federal Register a list of sites that further the purposes of this Act; and

(B) prior to publication of the list, provide to owners of the sites to be published—

(i) a notification of publication; and

(ii) an opportunity to decline inclusion of the site of the owner on the list.

(4) DEVIATION FROM PROCESS.—

(A) IN GENERAL.—The Committee may identify as a potential stewardship site, a site that does not meet the criteria in paragraph (1) or (2), or reject a site selected under paragraph (1) or (2), if the Committee—

(i) selects a site that makes significant ecological or recreational contributions to the Region;

(ii) publishes the reasons that the Committee decided to deviate from the systematic site selection process; and

(iii) before identifying or rejecting the potential stewardship site, provides to the owners of the site the notification of publication, and the opportunity to decline inclusion of the site on the list published under paragraph (3)(A), described in paragraph (3)(B).

(5) PUBLIC COMMENT.—In identifying potential stewardship sites, the Committee shall consider public comments.

(e) GENERAL GUIDELINES FOR MANAGEMENT.—

(1) IN GENERAL.—The Committee shall use an adaptive management framework to identify the best policy initiatives and actions through—

(A) definition of strategic goals;

(B) definition of policy options for methods to achieve strategic goals;

(C) establishment of measures of success;

(D) identification of uncertainties;

(E) development of informative models of policy implementation;

(F) separation of the landscape into geographic units;

(G) monitoring key responses at different spatial and temporal scales; and

(H) evaluation of outcomes and incorporation into management strategies.

(2) APPLICATION OF ADAPTIVE MANAGEMENT FRAMEWORK.—The Committee shall apply the adaptive management framework to the process for updating the list of recommended stewardship sites.

SEC. 9. REPORTS.

(a) IN GENERAL.—For each of fiscal years 2006 through 2013, the Committee shall submit to the Administrator an annual report that contains—

(1) a detailed statement of the findings and conclusions of the Committee since the last report;

(2) a description of all sites recommended by the Committee to be approved as stewardship sites;

(3) the recommendations of the Committee for such legislation and administrative actions as the Committee considers appropriate; and

(4) in accordance with subsection (b), the recommendations of the Committee for the awarding of grants.

(b) GENERAL GUIDELINES FOR RECOMMENDATIONS.—

(1) IN GENERAL.—The Committee shall recommend that the Administrator award

grants to qualified applicants to help to secure and improve the open space, public access, or ecological values of stewardship sites, through—

(A) purchase of the property of the site;

(B) purchase of relevant property rights of the site; or

(C) entering into any other binding legal arrangement that ensures that the values of the site are sustained, including entering into an arrangement with a land manager or owner to develop or implement an approved management plan that is necessary for the conservation of natural resources.

(2) EQUITABLE DISTRIBUTION OF FUNDS.—The Committee shall exert due diligence to recommend an equitable distribution of funds between the States.

(c) ACTION BY THE ADMINISTRATOR.—

(1) IN GENERAL.—Not later than 90 days after receiving a report under subsection (a), the Administrator shall—

(A) review the recommendations of the Committee; and

(B) take actions consistent with the recommendations of the Committee, including the approval of identified stewardship sites and the award of grants, unless the Administrator makes a finding that any recommendation is unwarranted by the facts.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator shall develop and publish a report that—

(A) assesses the current resources of and threats to Long Island Sound;

(B) assesses the role of the Long Island Sound Stewardship Initiative in protecting Long Island Sound;

(C) establishes guidelines, criteria, schedules, and due dates for evaluating information to identify stewardship sites;

(D) includes information about any grants that are available for the purchase of land or property rights to protect stewardship sites;

(E) accounts for funds received and expended during the previous fiscal year;

(F) shall be made available to the public on the Internet and in hardcopy form; and

(G) shall be updated at least every other year, except that information on funding and any new stewardship sites identified shall be published more frequently.

SEC. 10. PRIVATE PROPERTY PROTECTION.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act—

(1) requires any private property owner to allow public access (including Federal, State, or local government access) to the private property; or

(2) modifies any provision of Federal, State, or local law with regard to public access to or use of private property, except as entered into by voluntary agreement of the owner or custodian of the property.

(b) LIABILITY.—Approval of the Long Island Sound Stewardship Initiative Region does not create any liability, or have any effect on any liability under any other law, of any private property owner with respect to any person injured on the private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act modifies the authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS IN THE LONG ISLAND SOUND STEWARDSHIP INITIATIVE REGION.—Nothing in this Act requires the owner of any private property located within the boundaries of the Region to participate in or be associated with the Initiative.

(e) EFFECT OF ESTABLISHMENT.—

(1) IN GENERAL.—The boundaries approved for the Region represent the area within which Federal funds appropriated for the purpose of this Act may be expended.

(2) REGULATORY AUTHORITY.—The establishment of the Region and the boundaries of the Region does not provide any regulatory authority not in existence on the date of enactment of this Act on land use in the Region by any management entity, except for such property rights as may be purchased from or donated by the owner of the property (including the Federal Government or a State or local government, if applicable).

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $25,000,000 for each of fiscal years 2006 through 2013.

(b) USE OF FUNDS.—For each fiscal year, funds made available under subsection (a) shall be used by the Administrator, after reviewing the recommendations of the Committee submitted under section 9, for—

(1) acquisition of land and interests in land;

(2) development and implementation of site management plans;

(3) site enhancements to reduce threats or promote stewardship; and

(4) administrative expenses of the Committee.

(c) FEDERAL SHARE.—The Federal share of the cost of an activity carried out using any assistance or grant under this Act shall not exceed 75 percent of the total cost of the activity.

SEC. 12. LONG ISLAND SOUND AUTHORIZATION OF APPROPRIATIONS.

Section 119(f) of the Federal Water Pollution Control Act (33 U.S.C. 1269(f)) is amended by striking ''2005'' each place it appears and inserting ''2009''.

SEC. 13. TERMINATION OF COMMITTEE.

The Committee shall terminate on December 31, 2013.

By Mr. MCCAIN (for himself and Mr. KYL):

S. 161. A bill to provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership; to the Committee on Energy and Natural Resources.

Mr. MCCAIN. Mr. President, I am pleased to join with Senator KYL in introducing the Northern Arizona Forest Lands Exchange and Verde River Basin Partnership Act of 2005. The Senate passed by unanimous consent a nearly identical measure late last year. Unfortunately, the House did not have the time to pass the bill before the 108th Congress adjourned. It is my hope that this compromise bill will pass quickly in both Houses and become law in the near future.

This legislation is the product of many years of negotiation and compromise. It provides a sound framework for a fair and equal value exchange of 50,000 acres of private and public land in Northern Arizona. The bill also addresses water issues associated with the exchange of lands located within the Verde River Basin watershed by limiting water usage on certain exchanged lands and supporting the development of a collaborative science-based water resource planning and management entity for the Verde River Basin watershed.

After countless hours of deliberation and discussion by all parties, I believe that the compromise reached on the bill is both balanced and foresighted in addressing the various issues raised by the exchange. I want to thank Senator KYL and his staff, as well as Senators DOMENICI and BINGAMAN, and their staffs on the Senate Energy and Natural Resources Committee, for their tireless efforts in reaching this agreement at the end of the last session. I also want to recognize the work of Congressmen RENZI and HAYWORTH who have championed this legislation in the House of Representatives. Representative RENZI plans to introduce a companion bill in the House this week.

The Arizona delegation is strongly supportive of the legislation because it will offer significant benefits for all parties. Benefits will accrue to the U.S. Forest Service and the public with the consolidation of checkerboard lands and the protection and enhanced management of extensive forest and grasslands. The communities of Flagstaff, Williams, and Camp Verde will also benefit in terms of economic development opportunities, water supply, and other important purposes.

While facilitating the exchange of public and private lands is a very important objective of this legislation, and indeed, was the original purpose when we began working on it several years ago, I now consider the provisions concerning water management even more crucial. Since introducing the original legislation in April 2003, I have heard from hundreds of Arizonans and learned first-hand of the significant water issues raised by the transfer of Federal land into private ownership. We have modified the bill to take into account many of the concerns raised during meetings held in Northern Arizona by limiting water usage on exchanged lands and removing certain lands entirely from the exchange.

There is growing recognition throughout Arizona of the need to face the crucial challenge of wise management of limited water supplies, particularly with the extended drought coupled with rapid population growth. Earlier this month, I had the opportunity to participate in an Arizona Water Conservation Forum which was attended by educators, business leaders, and State and local officials. I think the majority of us came away more aware of the management measures needed to provide for a more secure water future.

This bill promotes an important opportunity to encourage sound water management in Northern Arizona by supporting the creation of a collaborative, science-based decision-making body to advance essential planning and management at the State and local level. To be successful, this effort will require the involvement of all the stakeholders with water supply responsibilities and interests and a solid foundation of knowledge about available resources and existing demands. We are fortunate to have an existing model of collaborative science-based water resource planning and management with the Upper San Pedro Partnership in

the Sierra Vista subwatershed of Arizona. In my view, the establishment of a similar, cooperative body in the Verde Basin will be a vital step in assuring the wise use of our limited water resources.

I look forward to the expeditious passage of this legislation in this Congress and again thank all of the parties involved with this effort during the past several years. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 161

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Northern Arizona Land Exchange and Verde River Basin Partnership Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—NORTHERN ARIZONA LAND EXCHANGE

Sec. 101. Definitions.
Sec. 102. Land exchange.
Sec. 103. Description of non-Federal land.
Sec. 104. Description of Federal land.
Sec. 105. Status and management of land after exchange.
Sec. 106. Miscellaneous provisions.
Sec. 107. Conveyance of additional land.

TITLE II—VERDE RIVER BASIN PARTNERSHIP

Sec. 201. Purpose.
Sec. 202. Definitions.
Sec. 203. Verde River Basin Partnership.
Sec. 204. Verde River Basin studies.
Sec. 205. Verde River Basin Partnership final report.
Sec. 206. Memorandum of understanding.
Sec. 207. Effect.

TITLE I—NORTHERN ARIZONA LAND EXCHANGE

SEC. 101. DEFINITIONS.

In this title:

(1) CAMP.—The term ''camp'' means Camp Pearlstein, Friendly Pines, Patterdale Pines, Pine Summit, Sky Y, and Young Life Lost Canyon camps in the State of Arizona.

(2) CITIES.—The term ''cities'' means the cities of Flagstaff, Williams, and Camp Verde, Arizona.

(3) FEDERAL LAND.—The term ''Federal land'' means the land described in section 104.

(4) NON-FEDERAL LAND.—The term ''non-Federal land'' means the land described in section 103.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(6) YAVAPAI RANCH.—The term ''Yavapai Ranch'' means the Yavapai Ranch Limited Partnership, an Arizona Limited Partnership, and the Northern Yavapai, L.L.C., an Arizona Limited Liability Company.

SEC. 102. LAND EXCHANGE.

(a) IN GENERAL.—(1) Upon the conveyance by Yavapai Ranch of title to the non-Federal land identified in section 103, the Secretary shall simultaneously convey to Yavapai Ranch title to the Federal land identified in section 104.

(2) Title to the lands to be exchanged shall be in a form acceptable to the Secretary and Yavapai Ranch.

(3) The Federal and non-Federal lands to be exchanged under this title may be modified prior to the exchange as provided in this title.

(4)(A) By mutual agreement, the Secretary and Yavapai Ranch may make minor and technical corrections to the maps and legal descriptions of the lands and interests therein exchanged or retained under this title, including changes, if necessary to conform to surveys approved by the Bureau of Land Management.

(B) In the case of any discrepancy between a map and legal description, the map shall prevail unless the Secretary and Yavapai Ranch agree otherwise.

(b) EXCHANGE PROCESS.—(1) Except as otherwise provided in this title, the land exchange under subsection (a) shall be undertaken in accordance with section 206 of the Federal Land Policy and Management Act (43 U.S.C. 1716).

(2) Before completing the land exchange under this title, the Secretary shall perform any necessary land surveys and pre-exchange inventories, clearances, reviews, and approvals, including those relating to hazardous materials, threatened and endangered species, cultural and historic resources, and wetlands and flood plains.

(c) EQUAL VALUE EXCHANGE.—(1) The value of the Federal land and the non-Federal land shall be equal, or equalized by the Secretary by adjusting the acreage of the Federal land in accordance with paragraph (2).

(2) If the final appraised value of the Federal land exceeds the final appraised value of the non-Federal land, prior to making other adjustments, the Federal lands shall be adjusted by deleting all or part of the parcels or portions of the parcels in the following order:

(A) A portion of the Camp Verde parcel described in section 104(a)(4), comprising approximately 316 acres, located in the Prescott National Forest, and more particularly described as lots 1, 5, and 6 of section 26, the NE¼NE¼ portion of section 26 and the N½N½ portion of section 27, Township 14 North, Range 4 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(B) A portion of the Camp Verde parcel described in section 104(a)(4), comprising approximately 314 acres, located in the Prescott National Forest, and more particularly described as lots 2, 7, 8, and 9 of section 26, the SE¼NE¼ portion of section 26, and the S½N½ of section 27, Township 14 North, Range 4 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(C) Beginning at the south boundary of section 31, Township 20 North, Range 5 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, and sections 33 and 35, Township 20 North, Range 6 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, by adding to the non-Federal land to be conveyed to the United States in ⅛-section increments (E-W 64th line) while deleting from the conveyance to Yavapai Ranch Federal land in the same incremental portions of section 32, Township 20 North, Range 5 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, and sections 32, 34, and 36 in Township 20 North, Range 6 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, to establish a linear and continuous boundary that runs east-to-west across the sections.

(D) Any other parcels, or portions thereof, agreed to by the Secretary and Yavapai Ranch.

(3) If any parcel of Federal land or non-Federal land is not conveyed because of any reason, that parcel of land, or portion thereof, shall be excluded from the exchange and the remaining lands shall be adjusted as provided in this subsection.

(4) If the value of the Federal land exceeds the value of the non-Federal land by more than $50,000, the Secretary and Yavapai Ranch shall, by mutual agreement, delete additional Federal land from the exchange until the value of the Federal land and non-Federal land is, to the maximum extent practicable, equal.

(d) APPRAISALS.—(1) The value of the Federal land and non-Federal land shall be determined by appraisals prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

(2)(A) After the Secretary has reviewed and approved the final appraised values of the Federal land and non-Federal land to be exchanged, the Secretary shall not be required to reappraise or update the final appraised values before the completion of the land exchange.

(B) This paragraph shall apply during the three-year period following the approval by the Secretary of the final appraised values of the Federal land and non-Federal land unless the Secretary and Yavapai Ranch have entered into an agreement to implement the exchange.

(3) During the appraisal process, the appraiser shall determine the value of each parcel of Federal land and non-Federal land (including the contributory value of each individual section of the intermingled Federal and non-Federal land of the property described in sections 103(a) and 104(a)(1)) as an assembled transaction.

(4)(A) To ensure the timely and full disclosure to the public of the final appraised values of the Federal land and non-Federal land, the Secretary shall provide public notice of any appraisals approved by the Secretary and copies of such appraisals shall be available for public inspection in appropriate offices of the Prescott, Coconino, and Kaibab National Forests.

(B) The Secretary shall also provide copies of any approved appraisals to the cities and the owners of the camps described in section 101(1).

(e) CONTRACTING.—(1) If the Secretary lacks adequate staff or resources to complete the exchange by the date specified in section 106(c), Yavapai Ranch, subject to the agreement of the Secretary, may contract with independent third-party contractors to carry out any work necessary to complete the exchange by that date.

(2) If, in accordance with this subsection, Yavapai Ranch contracts with an independent third-party contractor to carry out any work that would otherwise be performed by the Secretary, the Secretary shall reimburse Yavapai Ranch for the costs for the third-party contractors.

(f) EASEMENTS.—(1) The exchange of non-Federal and Federal land under this title shall be subject to any easements, rights-of-way, utility lines, and any other valid encumbrances in existence on the date of enactment of this Act, including acquired easements for water pipelines as generally depicted on the map entitled ''Yavapai Ranch Land Exchange, YRLP Acquired Easements for Water Lines'' dated August 2004, and any other reservations that may be agreed to by the Secretary and Yavapai Ranch.

(2) Upon completion of the land exchange under this title, the Secretary and Yavapai Ranch shall grant each other at no charge reciprocal easements for access and utilities across, over, and through—

(A) the routes depicted on the map entitled ''Yavapai Ranch Land Exchange, Road and Trail Easements, Yavapai Ranch Area'' dated August 2004; and

(B) any relocated routes that are agreed to by the Secretary and Yavapai Ranch.

(3) An easement described in paragraph (2) shall be unrestricted and non-exclusive in nature and shall run with and benefit the land.

(g) CONVEYANCE OF FEDERAL LAND TO CITIES AND CAMPS.—(1) Prior to the completion of the land exchange between Yavapai Ranch and the Secretary, the cities and the owners of the camps may enter into agreements with Yavapai Ranch whereby Yavapai Ranch, upon completion of the land exchange, will convey to the cities or the owners of the camps the applicable parcel of Federal land or portion thereof.

(2) If Yavapai Ranch and the cities or camp owners have not entered into agreements in accordance with paragraph (1), the Secretary shall, on notification by the cities or owners of the camps no later than 30 days after the date the relevant approved appraisal is made publicly available, delete the applicable parcel or portion thereof from the land exchange between Yavapai Ranch and the United States as follows:

(A) Upon request of the City of Flagstaff, Arizona, the parcels, or portion thereof, described in section 104(a)(2).

(B) Upon request of the City of Williams, Arizona, the parcels, or portion thereof, described in section 104(a)(3).

(C) Upon request of the City of Camp Verde, Arizona, a portion of the parcel described in section 104(a)(4), comprising approximately 514 acres located southeast of the southeastern boundary of the I–17 right-of-way, and more particularly described as the SE¼ portion of the southeast quarter of section 26, the E½ and the E½W½ portions of section 35, and lots 5 through 7 of section 36, Township 14 North, Range 4 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(D) Upon request of the owners of the Younglife Lost Canyon camp, the parcel described in section 104(a)(5).

(E) Upon request of the owner of Friendly Pines Camp, Patterdale Pines Camp, Camp Pearlstein, Pine Summit, or Sky Y Camp, as applicable, the corresponding parcel described in section 104(a)(6).

(3)(A) Upon request of the specific city or camp referenced in paragraph (2), the Secretary shall convey to such city or camp all right, title, and interest of the United States in and to the applicable parcel of Federal land or portion thereof, upon payment of the fair market value of the parcel and subject to any terms and conditions the Secretary may require.

(B) A conveyance under this paragraph shall not require new administrative or environmental analyses or appraisals beyond those prepared for the land exchange.

(4) A city or owner of a camp purchasing land under this subsection shall reimburse Yavapai Ranch for any costs incurred which are directly associated with surveys and appraisals of the specific property conveyed.

(5) A conveyance of land under this subsection shall not affect the timing of the land exchange.

(6) Nothing in this subsection limits the authority of the Secretary or Yavapai Ranch to delete any of the parcels referenced in this subsection from the land exchange.

(7)(A) The Secretary shall deposit the proceeds of any sale under paragraph (2) in a special account in the fund established under Public Law 90–171 (commonly known as the ''Sisk Act'') (16 U.S.C. 484a).

(B) Amounts deposited under subparagraph (A) shall be available to the Secretary, without further appropriation, to be used for the acquisition of land in the State of Arizona for addition to the National Forest System, including the land to be exchanged under this title.

SEC. 103. DESCRIPTION OF NON-FEDERAL LAND.

(a) IN GENERAL.—The non-Federal land referred to in this title consists of approximately 35,000 acres of privately-owned land within the boundaries of the Prescott National Forest, as generally depicted on the map entitled ''Yavapai Ranch Land Exchange, Non-Federal Lands'', dated August 2004.

(b) EASEMENTS.—(1) The conveyance of non-Federal land to the United States under section 102 shall be subject to the reservation of—

(A) water rights and perpetual easements that run with and benefit the land retained by Yavapai Ranch for—

(i) the operation, maintenance, repair, improvement, development, and replacement of not more than 3 wells in existence on the date of enactment of this Act;

(ii) related storage tanks, valves, pumps, and hardware; and

(iii) pipelines to point of use; and

(B) easements for reasonable access to accomplish the purposes of the easements described in subparagraph (A).

(2) Each easement for an existing well referred to in paragraph (1) shall be 40 acres in area, and to the maximum extent practicable, centered on the existing well.

(3) The United States shall be entitled to one-half the production of each existing or replacement well, not to exceed a total of 3,100,000 gallons of water annually for National Forest System purposes.

(4) The locations of the easements and wells shall be as generally depicted on the map entitled ''Yavapai Ranch Land Exchange, Reserved Easements for Water Lines and Wells'', dated August 2004.

SEC. 104. DESCRIPTION OF FEDERAL LAND.

(a) IN GENERAL.—The Federal land referred to in this title consists of the following:

(1) Certain land comprising approximately 15,300 acres located in the Prescott National Forest, as generally depicted on the map entitled ''Yavapai Ranch Land Exchange, Yavapai Ranch Area Federal Lands'', dated August 2004.

(2) Certain land located in the Coconino National Forest—

(A) comprising approximately 1,500 acres as generally depicted on the map entitled ''Yavapai Ranch Land Exchange, Flagstaff Federal Lands Airport Parcel'', dated August 2004; and

(B) comprising approximately 28.26 acres in two separate parcels, as generally depicted on the map entitled ''Yavapai Ranch Land Exchange, Flagstaff Federal Lands Wetzel School and Mt. Elden Parcels'', dated August 2004.

(3) Certain land located in the Kaibab National Forest, and referred to as the Williams Airport, Williams golf course, Williams Sewer, Buckskinner Park, Williams Railroad, and Well parcels number 2, 3, and 4, cumulatively comprising approximately 950 acres, as generally depicted on the map entitled ''Yavapai Ranch Land Exchange, Williams Federal Lands'', dated August 2004.

(4) Certain land located in the Prescott National Forest, comprising approximately 2,200 acres, as generally depicted on the map entitled ''Yavapai Ranch Land Exchange, Camp Verde Federal Land General Crook Parcel'', dated August 2004.

(5) Certain land located in the Kaibab National Forest, comprising approximately 237.5 acres, as generally depicted on the map entitled ''Yavapai Ranch Land Exchange, Younglife Lost Canyon'', dated August 2004.

(6) Certain land located in the Prescott National Forest, including the ''Friendly Pines'', ''Patterdale Pines'', ''Camp Pearlstein'', ''Pine Summit'', and ''Sky Y'' camps, cumulatively comprising approximately 200 acres, as generally depicted on the map entitled ''Yavapai Ranch Land Exchange, Prescott Federal Lands, Summer Youth Camp Parcels'', dated August 2004.

(b) CONDITION OF CONVEYANCE OF CAMP VERDE PARCEL.—(1) To conserve water in the Verde Valley, Arizona, and to minimize the adverse impacts from future development of the Camp Verde General Crook parcel described in subsection (a)(4) on current and future holders of water rights in existence of the date of enactment of this Act and the Verde River and National Forest System lands retained by the United States, the United States shall limit in perpetuity the use of water on the parcel by reserving conservation easements that—

(A) run with the land;

(B) prohibit golf course development on the parcel;

(C) require that any public park or greenbelt on the parcel be watered with treated wastewater;

(D) limit total post-exchange water use on the parcel to not more than 300 acre-feet of water per year;

(E) provide that any water supplied by municipalities or private water companies shall count towards the post-exchange water use limitation described in subparagraph (D); and

(F) except for water supplied to the parcel by municipal water service providers or private water companies, require that any water used for the parcel not be withdrawn from wells perforated in the saturated Holocene alluvium of the Verde River.

(2) If Yavapai Ranch conveys the Camp Verde parcel described in subsection (a)(4), or any portion thereof, the terms of conveyance shall include a recorded and binding agreement of the quantity of water available for use on the land conveyed, as determined by Yavapai Ranch, except that total water use on the Camp Verde parcel may not exceed the amount specified in paragraph (1)(D).

(3) The Secretary may enter into a memorandum of understanding with the State or political subdivision of the State to enforce the terms of the conservation easement.

SEC. 105. STATUS AND MANAGEMENT OF LAND AFTER EXCHANGE.

(a) IN GENERAL.—Land acquired by the United States under this title shall become part of the Prescott National Forest and shall be administered by the Secretary in accordance with this title and the laws applicable to the National Forest System.

(b) GRAZING.—Where grazing on non-Federal land acquired by the Secretary under this title occurs prior to the date of enactment of this Act, the Secretary may manage the land to allow for continued grazing use, in accordance with the laws generally applicable to domestic livestock grazing on National Forest System land.

(c) TIMBER HARVESTING.—(1) After completion of the land exchange under this title, except as provided in paragraph (2), commercial timber harvesting shall be prohibited on the non-Federal land acquired by the United States.

(2) Timber harvesting may be conducted on the non-Federal land acquired under this title if the Secretary determines that such harvesting is necessary—

(A) to prevent or control fires, insects, and disease through forest thinning or other forest management techniques;

(B) to protect or enhance grassland habitat, watershed values, native plants and wildlife species; or

(C) to improve forest health.

SEC. 106. MISCELLANEOUS PROVISIONS.

(a) REVOCATION OF ORDERS.—Any public orders withdrawing any of the Federal land

from appropriation or disposal under the public land laws are revoked to the extent necessary to permit disposal of the Federal land.

(b) WITHDRAWAL OF FEDERAL LAND.—Subject to valid existing rights, the Federal land is withdrawn from all forms of entry and appropriation under the public land laws; location, entry, and patent under the mining laws; and operation of the mineral leasing and geothermal leasing laws, until the date on which the land exchange is completed.

(c) COMPLETION OF EXCHANGE.—It is the intent of Congress that the land exchange authorized and directed under this title be completed not later than 18 months after the date of enactment of this Act.

SEC. 107. CONVEYANCE OF ADDITIONAL LAND.

(a) IN GENERAL.—The Secretary shall convey to a person that represents the majority of landowners with encroachments on the lot by quitclaim deed the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is lot 8 in section 11, T. 21 N., R. 7 E., Gila and Salt River Base and Meridian, Coconino County, Arizona.

(c) AMOUNT OF CONSIDERATION.—In exchange for the land described in subsection (b), the person acquiring the land shall pay to the Secretary consideration in the amount of—

(1) $2500; plus

(2) any costs of re-monumenting the boundary of land.

(d) TIMING.—(1) Not later than 90 days after the date on which the Secretary receives a power of attorney executed by the person acquiring the land, the Secretary shall convey to the person the land described in subsection (b).

(2) If, by the date that is 270 days after the date of enactment of this Act, the Secretary does not receive the power of attorney described in paragraph (1)—

(A) the authority provided under this section shall terminate; and

(B) any conveyance of the land shall be made under Public Law 97–465 (16 U.S.C. 521c et seq.).

TITLE II—VERDE RIVER BASIN PARTNERSHIP

SEC. 201. PURPOSE.

The purpose of this title is to authorize assistance for a collaborative and science-based water resource planning and management partnership for the Verde River Basin in the State of Arizona, consisting of members that represent—

(1) Federal, State, and local agencies; and

(2) economic, environmental, and community water interests in the Verde River Basin.

SEC. 202. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term ''Director'' means the Director of the Arizona Department of Water Resources.

(2) PARTNERSHIP.—The term ''Partnership'' means the Verde River Basin Partnership.

(3) PLAN.—The term ''plan'' means the plan for the Verde River Basin required by section 204(a)(1).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(5) STATE.—The term ''State'' means the State of Arizona.

(6) VERDE RIVER BASIN.—The term ''Verde River Basin'' means the land area designated by the Arizona Department of Water Resources as encompassing surface water and groundwater resources, including drainage and recharge areas with a hydrologic connection to the Verde River.

(7) WATER BUDGET.—The term ''water budget'' means the accounting of—

(A) the quantities of water leaving the Verde River Basin—

(i) as discharge to the Verde River and tributaries;

(ii) as subsurface outflow;

(iii) as evapotranspiration by riparian vegetation;

(iv) as surface evaporation;

(v) for agricultural use; and

(vi) for human consumption; and

(B) the quantities of water replenishing the Verde River Basin by precipitation, infiltration, and subsurface inflows.

SEC. 203. VERDE RIVER BASIN PARTNERSHIP.

(a) IN GENERAL.—The Secretary may participate in the establishment of a partnership, to be known as the ''Verde River Basin Partnership'', made up of Federal, State, local governments, and other entities with responsibilities and expertise in water to coordinate and cooperate in the identification and implementation of comprehensive science-based policies, projects, and management activities relating to the Verde River Basin.

(b) AUTHORIZATION OF APPROPRIATIONS.—On establishment of the Partnership, there are authorized to be appropriated to the Secretary and the Secretary of the Interior such sums as are necessary to carry out the activities of the Partnership for each of fiscal years 2006 through 2010.

SEC. 204. VERDE RIVER BASIN STUDIES.

(a) STUDIES.—

(1) IN GENERAL.—The Partnership shall prepare a plan for conducting water resource studies in the Verde River Basin that identifies—

(A) the primary study objectives to fulfill water resource planning and management needs for the Verde River Basin; and

(B) the water resource studies, hydrologic models, surface and groundwater monitoring networks, and other analytical tools helpful in the identification of long-term water supply management options within the Verde River Basin.

(2) REQUIREMENTS.—At a minimum, the plan shall—

(A) include a list of specific studies and analyses that are needed to support Partnership planning and management decisions;

(B) identify any ongoing or completed water resource or riparian studies that are relevant to water resource planning and management for the Verde River Basin;

(C) describe the estimated cost and duration of the proposed studies and analyses; and

(D) designate as a study priority the compilation of a water budget analysis for the Verde Valley.

(b) VERDE VALLEY WATER BUDGET ANALYSIS.—

(1) IN GENERAL.—Subject to the availability of appropriations, not later than 14 months after the date of enactment of this Act, the Director of the U.S. Geological Survey, in cooperation with the Director, shall prepare and submit to the Partnership a report that provides a water budget analysis of the portion of the Verde River Basin within the Verde Valley.

(2) COMPONENTS.—The report submitted under paragraph (1) shall include—

(A) a summary of the information available on the hydrologic flow regime for the portion of the Middle Verde River from the Clarkdale streamgauging station to the city of Camp Verde at United States Geological Survey Stream Gauge 09506000;

(B) with respect to the portion of the Middle Verde River described in subparagraph (A), estimates of—

(i) the inflow and outflow of surface water and groundwater;

(ii) annual consumptive water use; and

(iii) changes in groundwater storage; and

(C) an analysis of the potential long-term consequences of various water use scenarios on groundwater levels and Verde River flows.

(c) PRELIMINARY REPORT AND RECOMMENDATIONS.—.

(1) IN GENERAL.—Not later than 16 months after the date of enactment of this Act, using the information provided in the report submitted under subsection (b) and any other relevant information, the Partnership shall submit to the Secretary, the Governor of Arizona, and representatives of the Verde Valley communities, a preliminary report that sets forth the findings and recommendations of the Partnership regarding the long-term available water supply within the Verde Valley.

(2) CONSIDERATION OF RECOMMENDATIONS.—The Secretary may take into account the recommendations included in the report submitted under paragraph (1) with respect to decisions affecting land under the jurisdiction of the Secretary, including any future sales or exchanges of Federal land in the Verde River Basin after the date of enactment of this Act.

(3) EFFECT.—Any recommendations included in the report submitted under paragraph (1) shall not affect the land exchange process or the appraisals of the Federal land and non-Federal land conducted under sections 103 and 104.

SEC. 205. VERDE RIVER BASIN PARTNERSHIP FINAL REPORT.

Not later than 4 years after the date of enactment of this Act, the Partnership shall submit to the Secretary and the Governor of Arizona a final report that—

(1) includes a summary of the results of any water resource assessments conducted under this title in the Verde River Basin;

(2) identifies any areas in the Verde River Basin that are determined to have groundwater deficits or other current or potential water supply problems;

(3) identifies long-term water supply management options for communities and water resources within the Verde River Basin; and

(4) identifies water resource analyses and monitoring needed to support the implementation of management options.

SEC. 206. MEMORANDUM OF UNDERSTANDING.

The Secretary (acting through the Chief of the Forest Service) and the Secretary of the Interior, shall enter into a memorandum of understanding authorizing the United States Geological Survey to access Forest Service land (including stream gauges, weather stations, wells, or other points of data collection on the Forest Service land) to carry out this title.

SEC. 207. EFFECT.

Nothing in this title diminishes or expands State or local jurisdiction, responsibilities, or rights with respect to water resource management or control.

Mr. KYL. Mr. President, today, I am pleased to join with Senator MCCAIN to introduce the Northern Arizona Land Exchange and Verde River Basin Partnership Act of 2005. This bill facilitates a large and complex land exchange of over 50,000 acres of Federal and private land in Arizona to consolidate the largest remaining checkerboard ownership in the State. It also encourages the formation of a partnership between Federal, State, and local stakeholders to facilitate sound water resource planning and management in the Verde River Basin. This bill is the product of two years of discussions and compromise between the Arizona delegation, United States Forest Service,

community groups, local officials, and other stakeholders. The bill passed the Senate last session, but unfortunately was not enacted before adjournment. I am introducing this legislation with the hope that the Senate will act quickly to pass it early in this Congress.

The bill is divided into two titles. Title I provides the framework for the land exchange between Yavapai Ranch Limited Partnership and the United States Forest Service. Title II outlines the key aspects of the Verde River Basin Partnership. The land exchange outlined in Title I is a fair and equitable exchange that will yield many environmental benefits to the citizens of Arizona. It will place approximately 35,000 acres of private land in federal ownership for public use. This acreage is important ecologically because it contains such key features as old growth ponderosa pine, and high quality grassland that serves as excellent habitat for pronghorn antelope and is critical to the preservation of the watershed. In addition, it consolidates under Forest Service ownership a 110-square mile area in the Prescott National Forest near the existing Juniper Mesa Wilderness, to preserve the area in its natural state. Without this land exchange, these private tracts would be open to future development. I am pleased that this bill will preserve them for future generations.

The land exchange also significantly improves the management of the Prescott National Forest. The existing checkboard ownership pattern makes management and access difficult. By consolidating this land, the exchange will enable the Forest Service will be able to effectively apply forest restoration treatments to reduce the fire risk and improve the overall health of the forest. I cannot emphasize enough how crucial this is, given the history of devastating forest fires in the state.

In addition to protecting Arizona's natural resources, Title I of the bill allows several Northern Arizona communities to accommodate future growth and economic development, and to meet other municipal needs. This exchange will allow the cities of Flagstaff and Williams to expand their airports, meet their water-treatment needs, and develop town parks and recreation areas. The town of Camp Verde will have an opportunity to acquire land to build an emergency center and protect its viewshed. Several youth organizations will be able to acquire land for their camps.

This bill addresses one of the most crucial challenges facing Arizona: sound management of water resources. I have heard from many state and local officials, and the constituents affected by the land exchange, that we needed to do more in this bill to address water issues. I note in response that this bill has two key features: First, it establishes a conservation easement on the Camp Verde General Crook parcel, which limits water use after private acquisition to just 300 acre feet a year. This limitation was strengthened from the previous versions of the bill which included a use restriction of 700 acre feet a year. This provision sets an important precedent for responsible water use in the Verde Valley and across the state. Second, and most recently, Senator McCAIN and I added Title II to the bill. This title facilitates and encourages the creation of the Verde River Basin Partnership to examine water issues in the long term. Such a collaborative, multi-stakeholder group would be authorized to receive federal assistance to develop the scientific and technical data needed to make sound water-management decisions.

Finally, this bill saves significant taxpayer dollars. It obviates the administrative route for a land exchange; doing an exchange of this size administratively would require considerable financial and personnel resources from the Forest Service. The agency estimates that using legislation instead will cost half as much as the administrative alternative—resulting in potential savings to the taxpayers in excess of $500,000.

This land exchange is a unique opportunity to protect Arizona's natural resources, accommodate the state's tremendous growth, and plan for the future. I intend to work with my colleagues to ensure that we pass this important legislation this year.

By Mr. ROCKEFELLER:

S. 162. A bill to amend chapter 99 of the Internal Revenue code of 1986 to clarify that certain coal industry health benefits may not be modified or terminated; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, today I am introducing legislation to make very clear that Congress fully protected the health insurance benefits of miners and their families when we passed the Coal Act in 1992. This legislation is identical to S. 3004 which I introduced in the 108th Congress. Unfortunately, it is necessary, because we have recently seen bankruptcy courts disregard the Coal Act and absolve companies of their obligations to provide health benefits for workers and retirees. This is unacceptable. And the bill I am introducing today reiterates that the bankruptcy code does not supersede the Coal Act.

Last fall, another company abandoned promises it made to workers and retirees in West Virginia. Horizon Natural Resources sought and received a court ruling that released it from its contracts with union miners and allowed it to avoid honoring health care benefit obligations for over 2,300 retired miners. This is a morally bankrupt corporate strategy, and is inconsistent with the Coal Act passed by Congress in 1992.

The Coal Act was needed in 1992 to prevent some companies from walking away from their clear contractual obligations and agreements with their workers. One of the provisions of that bill was written especially with the intent of not allowing companies to simply reorganize as a way to get out of their obligations to their workers. Unfortunately, too many companies are increasingly using bankruptcy courts to achieve the same results.

It should not be necessary for me to introduce this bill today. Congress has already spoken on this subject. The law is clear: Coal Act retirees are entitled to full benefits provided under the statute. No judge should rewrite the law to take those benefits away. However, because judges are legislating from the bench, it will be helpful for Congress to reiterate our intention to protect the health benefits of coal miners and their families.

This issue is extremely important to all of those who are being victimized by the bankruptcy courts. I hope that my colleagues will join me in this effort to protect the miners, retired miners, and families who are simply seeking the benefits they were promised in exchange for years of hard work.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 162

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

SECTION 1. PROTECTION OF COAL INDUSTRY HEALTH BENEFITS.

Section 9711(g) of the Internal Revenue Code of 1986 (relating to rules applicable to this part and part II) is amended by adding at the end the following new paragraph:

''(3) PROHIBITION ON TERMINATION AND MODIFICATION OF BENEFITS.—Except as provided in subsection (d), the benefits required to be provided by a last signatory operator under this chapter may not be terminated or modified by any court in a proceeding under title 11 of the United States Code or by agreement at any time when such operator is participating in such a proceeding.''.

By Mr. BENNETT:

S. 163. A bill to establish the National Mormon Pioneer Heritage Area in the State of Utah, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BENNETT. Mr. President, I rise today to re-introduce the National Mormon Pioneer Heritage Area Act.

The story behind and about the Mormon pioneers' 1,400-mile trek from Illinois to the Great Salt Lake Valley is one of the most compelling and captivating in our Nation's history. This legislation would designate as a National Heritage Area an area that spans some 250 miles along Highway 89 and encompasses outstanding examples of historical, cultural, and natural resources that demonstrate the colonization of the western United States, and the experience and influence of the Mormon pioneers in furthering that colonization.

The landscape, architecture, artisan skills, and events along Highway 89

convey in a very real way the legacy of the Mormon pioneers' achievements. The community of Panquitch for example, has an annual Quilt Day celebration to commemorate the sacrifice and fortitude of its pioneers whose efforts saved the community from starvation in 1864. The celebration is in remembrance of the Quilt Walk, a walk in which a group of men from Panquitch used quilts to form a path that would bear their weight across the snow. This quilt walk enabled these men to cross over the mountains to procure food for their community, which was facing starvation as it experienced its first winter in Utah.

Another example of the tenacity of pioneers can be seen today at the Hole-in-the-Rock. Here, in 1880, a group of 250 people, 80 wagons, and 1,000 head of cattle upon the Colorado River Gorge. Finding no pathways down to the river, the pioneers decided to use a narrow crevice leading down to the bottom of the gorge. To make the crevice big enough to accommodate wagons, the pioneers spent 6 weeks enlarging the crevice by hand, using hammers, chisels, and blasting powder. They then attached large ropes to the wagons as they began their descent down the steep incline. It is because of such tenacity and innovation on the part of pioneers that the western United States was shaped the way it was and much of that has contributed to the way of life and landscape still found in the West today.

The National Mormon Pioneer Heritage Area will serve as a special recognition of the people and places that have contributed greatly to our Nation's development. It will allow for the conservation of historical and cultural resources, the establishment of interpretive exhibits, will increase public awareness of the surviving skills and crafts of those living along Highway 89, and specifically allows for the preservation of historic buildings. In light of the benefits associated with preserving the rich heritage of the founding of many of the communities along Highway 89, my legislation has broad support from Sanpete, Sevier, Piute, Garfield, and Kane counties and is a locally based, locally supported undertaking.

Since the introduction of this legislation in the 108th Congress, I am pleased that the local counties, who have been unanimously supportive of this legislation, have come together to outline in a Memorandum of Understanding, with the local coordinating entity identified in the legislation, the cooperative relationship the coordinating entity enjoys with the elected officials of the local counties.

This legislation passed the Senate both in the 107th and 108th Congresses as part of packages agreed upon by the committee of jurisdiction. Unfortunately, both times the packages were not able to be considered by the other body prior to adjournment. I reintroduce this bill today with the hope that during this session of Congress we might achieve success in this body early enough to be considered by the House.

By Mr. BENNETT:

S. 164. A bill to provide for the acquisition of certain property in Washington County, Utah; to the Committee on Energy and Natural Resources.

Mr. BENNETT. Mr. President, today I am re-introducing a bill which is intended to bring to a close the Federal acquisition of an important piece of privately held land, located within the federally designated desert tortoise reserve in Washington County, UT.

As some of my colleagues are aware, this is not the first time legislation has been introduced in an attempt to resolve this issue. Most recently, on December 7, 2004, at the conclusion of the 108th Congress, the Senate passed by unanimous consent an amendment in the nature of a substitute to H.R. 620, which adopted as title XVI agreed upon provisions of S. 1209. Unfortunately, the House of Representatives adjourned sine die before it had time to act upon H.R. 620. The legislation I am introducing today is virtually the same as the language earlier adopted by the Senate, except for a technical clarification regarding management of the acquired lands.

I want to personally express my appreciation to Chairman DOMENICI and his staff for their leadership and assistance on this issue. I would also like to thank the ranking minority member, Mr. BINGAMAN, the Department of the Interior, and their respective staffs, for their assistance and support of this measure.

Earlier in July of 2000, I introduced S. 2873, which was referred to and reported favorably by the Senate Committee on Energy and Natural Resources. In addition, similar legislation was twice approved by the House of Representatives, both in the 106th and 107th Congresses. For over a decade, the private property addressed by this bill has been under Federal control and the Federal Government has enjoyed the benefits of the private property without fulfilling its constitutional obligation to compensate the landowner. The government's failure to timely acquire the landowner's private property has forced the landowner into bankruptcy. It is my hope that the time has come to finally resolve this issue.

In March of 1991, the desert tortoise was listed as an endangered species under the Endangered Species Act. Government and environmental researchers determined that the land immediately north of St. George, UT, was prime desert tortoise habitat. Consequently, in February 1996, nearly 5 years after the listing, the United States Fish and Wildlife Service, USFWS, issued Washington County a Section 10 permit under the Endangered Species Act which paved the way for the adoption of a habitat conservation plan, HCP, and an implementation agreement. Under the Plan and Agreement, the Bureau of Land Management, BLM, committed to acquire all private lands in the designated habitat area for the formation of the Red Cliffs Reserve for the protection of the desert tortoise.

One of the private land owners within the reserve is Environmental Land Technology, Ltd., ELT, which began acquiring lands from the State of Utah in 1981 for residential and recreational development several years prior to the listing of the species. Moreover, in the years preceding the listing of the desert tortoise and the adoption of the habitat conservation plan, ELT completed appraisals, cost estimates, engineering studies, site plans, surveys, utility layouts, and right-of-way negotiations. ELT staked out golf courses, and obtained water rights for the development of this land. Prior to the adoption of the HCP, it was not clear which lands the Federal and local governments would set aside for the desert tortoise, although it was assumed that there were sufficient surrounding Federal lands to provide adequate habitat. However, when the HCP was adopted in 1996, the decision was made to include ELT's lands within the boundaries of the reserve primarily because of the high concentrations of tortoises. The tortoises on ELT land also appeared to be one of, if not the only population without an upper respiratory disease that afflicted all of the other populations. As a consequence of the inclusion of the ELT lands, ELT's development efforts were halted.

With assurances from the Federal Government that the acquisition of the ELT development lands was a high priority, the owner negotiated with, and entered into, an assembled land exchange agreement with the BLM in anticipation of intrastate land exchanges. The private land owner then began a costly process of identifying comparable Federal lands within the State that would be suitable for an exchange for his lands in Washington County. Over the last 7 years, BLM and the private land owners, including ELT, have completed several exchanges, and the Federal Government has acquired, through those exchanges or direct purchases, nearly all of the private property located within the reserve, except for approximately 1,516 acres of the ELT development land. However, with the unforeseen creation of the Grand Staircase-Escalante National Monument in September 1996, and the subsequent land exchanges between the State of Utah and the Federal Government to consolidate Federal lands within that monument, there are no longer sufficient comparable Federal lands within Utah to complete the originally contemplated intrastate exchanges for the remainder of the ELT land.

Faced with this problem, and in light of the high priority the Department of the Interior has placed on acquiring

these lands, BLM officials recommended that the ELT lands be acquired by direct purchase. During the FY 2000 budget process, BLM proposed that $30 million be set aside to begin acquiring the remaining lands in Washington County. Unfortunately, because this project involves endangered species habitat and the USFWS is responsible for administering activities under the Endangered Species Act, the Office of Management and Budget shifted the $30 million from the BLM budget request to the USFWS's Cooperative Endangered Species Conservation Fund budget request. Ultimately, however, none of those funds was made available for BLM acquisitions within the Federal section of the reserve. Instead, the funds in that account were made available on a matching basis for the use of individual States to acquire wildlife habitat. The result of this bureaucratic fumbling has resulted in extreme financial hardship for ELT.

The lands within the Red Cliffs Reserve are ELT's only asset. The establishment of the Washington County HCP has effectively taken this property and prevented ELT from developing or otherwise disposing of the property. ELT has been brought to the brink of financial ruin as it has exhausted its resources in an effort to hold the property while awaiting the compensation to which it is entitled. ELT has had to sell its remaining assets, and the private land owner has also had to sell his personal assets, including his home, to simply hold the property. This has become a financial crisis for the landowner. It is simply wrong for the Federal Government to expect the landowner to continue to bear the cost of the government's efforts to provide habitat for an endangered species. That is the responsibility of the Federal Government. Moreover, while the landowner is bearing these costs, he continues to pay taxes on the property. This situation is made more egregious by the failure of the Department of the Interior to request any acquisition funding for FY 2004 or FY 2005, even though this acquisition has been designated a high priority by the agency. Over the past several years, ELT has pursued all possible avenues to complete the acquisition of these lands. The private land owner has spent millions of dollars pursuing both intrastate and interstate land exchanges and has worked cooperatively with the Department of the Interior. Unfortunately, all of these efforts have thus far been fruitless.

The bill that I am introducing today will finally bring this acquisition to a close. In my view, a legislative taking should be an action of last resort. But, if ever a case warranted legislative condemnation, this is it. This bill will transfer to the Federal Government all right, title, and interest in the ELT development property within the Red Cliffs Reserve, including an additional 34 acres of landlocked real property owned by ELT adjacent to the land within the reserve. Subject to existing law, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards and Practices for Appraisal Professionals, USPAP, a United States Court of competent jurisdiction shall determine the value for the land.

The bill includes language to allow, as part of the legislative taking, for the landowner to recover reasonable costs, interest, and damages, if any, as determined by the court. It is important to understand that, while Federal acquisitions should be completed on the basis of fair market value, when the Federal Government makes the commitment to acquire private land, the landowner should not have to be driven into financial ruin while waiting upon the Federal Government to discharge its obligation. While the Federal Government has never disputed its obligation to acquire the property, it has had the benefit of the private land for all these years without having to pay for it. The private landowner should not have to bear the costs of this Federal foot-dragging.

This legislation is consistent with the high priority the Department of the Interior has repeatedly placed on this land acquisition, and is a necessary final step towards an equitable resolution. The time for pursuing other options has long since expired and it is unfortunate that it requires legislative action. Without commenting on the Endangered Species Act itself, it would seem that if it is the government's objective to provide habitat for the benefit of an endangered species, then the government ought to bear the costs, rather than forcing them upon the landowner. It is also time to address this issue so that the Federal agencies may be single-minded in their efforts to recover the desert tortoise which remains the aim of the creation of the reserve. This legislation simply codifies the status quo by enabling the private land owner to obtain the compensation to which he is constitutionally entitled. It is time to right this wrong and get on with the efforts to recover the species and I encourage my colleagues to again support the immediate enactment of this important legislation.

By Mr. COLEMAN:

S. 165. A bill for the relief of Tchisou Tho; to the Committee on the Judiciary.

Mr. COLEMAN. Mr. President, today I am introducing a private relief bill for an outstanding young man from my State of Minnesota, Tchisou Tho.

This legislation would allow Tchisou, a Hmong immigrant, to stay in this country by adjusting his status to permanent resident. Not only would this allow him to stay in the country he has lived in since he was 5 years old, but it will make him eligible for in-State tuition at the University of Minnesota.

Tchisou's family came to the United States 14 years ago on a visitor's visa from France after fleeing Communist rule in Laos in 1975. He was 5 years old at the time. They moved to Minnesota in 1993 to find work and to give their children an opportunity to receive a quality education.

Tchisou was an all-American high school kid. He watched movies, hung out at the mall with his friends and attended prom. He was an honor roll student, active in his community, church, and school. Tchisou was going to be the first member of his family to graduate from high school, and he was getting ready to begin his freshman year on a scholarship to the University of Minnesota.

But in May 2003, just as Tchisou was getting ready to graduate from high school, his family met with immigration officials to request changes to their immigration status. Instead, they received a deportation order.

Tchisou's parents acknowledged that they had broken the law by overstaying their visas, and agreed to leave the country. But we all wanted Tchisou to have the chance to graduate with his high school class. Legislation I introduced last year allowed Tchisou to stay. And thanks to the compassion of the immigration authorities, Tchisou's family was allowed to remain in the country just long enough to see their son walk in his high school graduation ceremony. Shortly thereafter, Tchisou's parents and brothers and sisters returned to France as they promised, where they live today.

Still focused on his educational goals and now living with his married sister in St. Paul, Tchisou enrolled at the University of Minnesota as an international student. However, he was required to pay out-of-State tuition and unfortunately had to drop out after one semester when he ran out of money.

Determined to finish college, Tchisou is currently driving a forklift at the loading docks of a home improvement store, to save money for college while his immigration status is being sorted out. He was recently named employee of the month. Tchisou hopes to re-enroll at the University of Minnesota.

I acknowledge that Tchisou's parents broke the law. They overstayed their visas to remain in this country, which they should not have done. And they have since been deported. But I think it would be unfair to punish Tchisou for the actions of his parents. This private relief bill would allow Tchisou the chance to live the American dream.

With the help of my good friend and colleague, the senior Senator from Georgia, Chairman CHAMBLISS, we were able to pass this legislation last year. I hope the Senate will be able to act on this important legislation early this year so that Tchisou may enroll at the University of Minnesota, graduate, and be an asset to our community.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 165

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

SECTION 1. PERMANENT RESIDENT STATUS FOR TCHISOU THO.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act (8 U.S.C. 1151), Tchisou Tho shall be eligible for the issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of that Act (8 U.S.C. 1154) or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Tchisou Tho enters the United States before the filing deadline specified in subsection (c), Tchisou Tho shall be considered to have entered and remained lawfully and shall be eligible for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status are filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of an immigrant visa or permanent residence to Tchisou Tho, the Secretary of State shall instruct the proper officer to reduce by 1, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) or, if applicable, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 202(e) of that Act (8 U.S.C. 1152(e)).

By Mr. SMITH (for himself and Mr. WYDEN):

S. 166. A bill to amend the Oregon Resource Conservation Act of 1996 to reauthorize the participation of the Bureau of Reclamation in the Deschutes River Conservancy, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. SMITH. Mr. President, today I am introducing legislation, cosponsored by my colleague from Oregon, to reauthorize participation by the Bureau of Reclamation in the Deschutes River Conservancy for an additional 10 years.

The Deschutes River Conservancy, formerly know as the Deschutes Resources Conservancy, was originally authorized in 1996 as a pilot project. It was so successful it was reauthorized in the 106th Congress. The Conservancy is designed to achieve local consensus for on-the-ground projects to improve ecosystem health in the Deschutes River Basin.

The Deschutes River is truly one of Oregon's greatest resources. It drains Oregon's high desert along the eastern front of the Cascades, eventually flowing into the Columbia River. It is the State's most intensively used recreational river. It provides water to both irrigation projects and to the city of Bend, which is one of Oregon's fastest growing cities. The Deschutes Basin also contains hundreds of thousands of acres of productive forest and rangelands, serves the treaty fishing and water rights of the Confederated Tribes of Warm Springs, and has Oregon's largest non-Federal hydroelectric project.

By all accounts, the Deschutes River Conservancy has been a huge success. It has brought together diverse interests within the Basin, including irrigators, tribes, ranchers, environmentalists, an investor-owned utility, local businesses, as well as local elected officials and representatives of State and Federal agencies. Together, the Conservancy board members have been able to develop project criteria and identify a number of water quality, water quantity, fish passage and habitat improvement projects that could be funded. Over the years, projects have been selected by consensus, and there must be a fifty-fifty cost share from non-Federal sources.

Over the past 8 years, they have been very successful at finding cooperative, market-based solutions to enhance the ecosystem in the basin. The Conservancy has used this approach to restore over ninety cubic-feet-per-second of streamflow in the Deschutes Basin. In addition, by planting over 100,000 trees, installing miles of riparian fencing, removing berms and reconstructing stream beds, the Conservancy has helped improve fish habitat and water quality along one hundred miles of the Deschutes River and its tributaries.

The existing authorization provides for up to two million dollars each year for projects. This bill would continue that annual authorization ceiling for 10 years. Funds are provided through the Bureau of Reclamation, the group's lead Federal agency.

The Deschutes River Conservancy enjoys widespread support in Oregon. It has very committed board members who represent diverse interests in the Basin. The high caliber of their work, and their pragmatic approach to ecosystem restoration have been recognized by others outside the region.

I am convinced that Federal participation in this project needs to continue. This organization has helped to avoid the conflicts over water that we have seen in too many watersheds in the western United States. I urge my colleagues to continue support for this project. Not only is it important to central Oregon, but the Deschutes River Conservancy can serve as a national model for cooperative watershed restoration at the local level.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. CORNYN, and Mrs. FEINSTEIN):

S. 167. A bill to provide for the protection of intellectual property rights, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce the Family Entertainment and Copyright Act of 2005. This important legislation consists of a package of smaller intellectual property bills that the House and Senate have been working to enact since last Congress. This legislation passed the Senate not once, but twice, during the waning days of the last Congress. Unfortunately, though, it was doomed by a non-germane amendment unrelated to intellectual property law. My hope is that we can work together this Congress to avoid this type of pitfall, and I commit to work with other members to do so.

Before beginning my substantive discussion of the bill, I would like to thank my colleagues Senators LEAHY, CORNYN, and FEINSTEIN for their ongoing efforts on this legislation. Just as it was last year, this legislation is a group effort, and I want to take care to recognize the contributions and their excellent work along with that of Representatives SENSENBRENNER, SMITH, BERMAN, and CONYERS in the House.

Before going into a title-by-title discussion of the bill, I would like to express my particular support for the Family Movie Act, which has been included in this legislation. Chairman LAMAR SMITH and I worked on this bill last Congress. It's important legislation both to parents who want the ability to use new technologies to help shield their families from inappropriate content as well as the technology companies, such as ClearPlay in my home State of Utah, that are working to develop these technologies. The Family Movie Act will give parents more say over what their children see, without limiting the creative control of directors and movie studios.

Title I of this Act, the Artists' Rights and Theft Prevention Act of 2005, (the ART Act), contains a slightly modified version of S. 1932, authored by Senators CORNYN and FEINSTEIN in the 108th Congress. This bill will close two significant gaps in our copyright laws that are feeding some of the piracy now rampant on the Internet.

First, it criminalizes attempts to record movies off of theater screens. These camcorded copies of new movies now appear on filesharing networks almost contemporaneously with the theatrical release of a film. Several States have already taken steps to criminalize this activity, but providing a uniform Federal law—instead of a patchwork of State criminal statutes—will assist law enforcement officials in combating the theft and redistribution of valuable intellectual property embodied in newly-released motion pictures.

Second, the bill will create a pre-registration system that will permit criminal penalties and statutory-damage awards. This will also provide a tool for law enforcement officials combating the growing problem of music and movies being distributed on filesharing networks and circulating on the Internet before they are even released. Obviously, the increasingly frequent situation of copyrighted works

being distributed illegally via the Internet before they are even made available for sale to the public severely undercuts the ability of copyright holders to receive fair and adequate compensation for their works.

Title II of this Act, the Family Movie Act of 2005 (the FMA), resolves some ongoing disputes about the legality of so-called ''jump-and-skip'' technologies that companies like Clearplay in my home State of Utah have developed to permit family-friendly viewing of films that may contain objectionable content. The FMA creates a narrowly defined safe-harbor clarifying that distributors of such technologies will not face liability for copyright or trademark infringement, provided that they comply with the requirements of the Act. I have been working with my colleagues in the Senate and several leaders in the House—including, most importantly Chairmen SMITH and SENSENBRENNER—for the past couple of years to resolve this issue. The FMA will help to end aggressive litigation threatening the viability of small companies like Clearplay which are busy creating innovative technologies for consumers that allow them to tailor their home viewing experience to their own individual or family preferences.

The Family Movie Act creates a new exemption in section 110(11) of the Copyright Act for skipping and muting audio and video content in motion pictures during performances of an authorized copy of the motion picture taking place in the course of a private viewing in a household. The version passed last year by the House explicitly excluded from the scope of the new copyright exemption so-called ''ad-skipping'' technologies that make changes, deletions, or additions to commercial advertisements or to network or station promotional announcements that would otherwise be displayed before, during, or after the performance of the motion picture. This provision was included on the House floor to address the concerns of some Members who were concerned that a court might misread the new section 110(11) exemption to apply to ''ad-skipping''' cases, such as in the recent litigation involving ReplayTV.

In the Senate, however, some expressed concern that the inclusion of such explicit language could create unwanted inferences with respect to the merits of the legal positions at the heart of recent ''ad-skipping'' litigation. Those issues remain unsettled in the courts, and it was never the intent of this legislation to resolve or affect those issues in any way. Indeed, the Copyright Act contains literally scores of similar exemptions, and none of those exemptions have been or should be construed to imply anything about the legality of conduct falling outside their scope. As a result, the Copyright Office has now confirmed that such an explicit exclusion is unnecessary to achieve the desired outcome, which is to avoid application of this new exemption in potential future cases involving ad-skipping devices. In order to avoid unnecessary controversy, the Senate bill omits the exclusionary language with the understanding that doing so does not in any way change the scope of the bill.

That this change in no way affects the scope of the exemption is clear when considering that the new section 110(11) exemption protects the ''making imperceptible . . . limited portions of audio or video content of a motion picture. . . .'' An advertisement, under the Copyright Act, is itself a ''motion picture,'' and thus a product or service that enables the skipping of an entire advertisement, in any media, would be beyond the scope of the exemption. Moreover, the phrase ''limited portions'' is intended to refer to portions that are both quantitatively and qualitatively insubstantial in relation to the work as a whole. Where any substantial part of a complete work, such as a commercial advertisement, is made imperceptible, the new section 110(11) exemption would not apply. The limited scope of this exemption does not, however, imply or show that such conduct or a technology that enables such conduct would be infringing. This legislation does not in any way deal with that issue. It means simply that such conduct and products enabling such conduct are not immunized from liability by this exemption.

This bill also differs from the version passed by the House last year in that it adds two ''savings clauses.'' The copyright savings clause makes clear that there should be no spillover effect from the passage of this law: that is, nothing shall be construed to have any effect on rights, defenses, or limitations on rights granted under title 17, other than those explicitly provided for in the new section 110(11) exemption. The trademark savings clause clarifies that no inference can be drawn that a person or company who fails to qualify for the exemption from trademark infringement found in this provision is therefore liable for trademark infringement.

Title III of this Act, the National Film Preservation Act of 2004, will reauthorize the National Film Preservation Board and the National Film Preservation Foundation. These entities have worked successfully to recognize and preserve historically or culturally significant films—often by providing the grants and expertise that enable local historical societies to protect and preserve historically significant films for the local communities for which they are most important. This fine work will ensure that the history of the 20th century will be preserved and available to future generations.

As a conservative Senator from a socially conservative state, I occasionally take a few swings at the movie industry for the quality and content of the motion pictures they are currently creating, but I will note for the record that I commend efforts to ensure that important artistic, cultural, and historically significant films are preserved for future generations. I commend my friend from Vermont for his perseverance in reauthorizing Federal funds to continue this important effort.

Title IV of this act, the ''Preservation of Orphan Works Act,'' also ensures the preservation of valuable historic records by correcting a technical error that unnecessarily narrows a limitation on the copyright law applicable to librarians and archivists. This will strengthen the ability of librarians and archivists to better meet the needs of both researchers and ordinary individuals and will result in greater accessibility of important works. I applaud my colleague in the House—Representative HOWARD BERMAN of California—for his efforts on this bill and am pleased to see it included in this Senate package.

Just to conclude, I will again thank Ranking Democratic Member LEAHY, Senator CORNYN, Chairmen SENSENBRENNER and SMITH, as well as Mr. CONYERS and Mr. BERMAN for their bicameral, bipartisan approach to these bills and to intellectual property issues generally.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 167

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 ''Family Entertainment and Copyright Act of 2005''.

TITLE I—ARTISTS' RIGHTS AND THEFT PREVENTION

SEC. 101. SHORT TITLE.

This title may be cited as the ''Artists' Rights and Theft Prevention Act of 2005'' or the ''ART Act''.

SEC. 102. CRIMINAL PENALTIES FOR UNAUTHORIZED RECORDING OF MOTION PICTURES IN A MOTION PICTURE EXHIBITION FACILITY.

(a) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by adding after section 2319A the following new section:

''§ 2319B. Unauthorized recording of Motion pictures in a Motion picture exhibition facility

''(a) OFFENSE.—Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall—

''(1) be imprisoned for not more than 3 years, fined under this title, or both; or

''(2) if the offense is a second or subsequent offense, be imprisoned for no more than 6 years, fined under this title, or both.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in any proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient

to support a conviction of that person for such offense.

''(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.

''(c) AUTHORIZED ACTIVITIES.—This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or by a person acting under a contract with the United States, a State, or a political subdivision of a State.

''(d) IMMUNITY FOR THEATERS.—With reasonable cause, the owner or lessee of a motion picture exhibition facility where a motion picture or other audiovisual work is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture or other audiovisual work being exhibited, or the agent or employee of such licensor—

''(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section with respect to that motion picture or audiovisual work for the purpose of questioning or summoning a law enforcement officer; and

''(2) shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).

''(e) VICTIM IMPACT STATEMENT.—

''(1) IN GENERAL.—During the preparation of the presentence report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

''(2) CONTENTS.—A victim impact statement submitted under this subsection shall include—

''(A) producers and sellers of legitimate works affected by conduct involved in the offense;

''(B) holders of intellectual property rights in the works described in subparagraph (A); and

''(C) the legal representatives of such producers, sellers, and holders.

''(f) STATE LAW NOT PREEMPTED.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

''(g) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) TITLE 17 DEFINITIONS.—The terms 'audiovisual work', 'copy', 'copyright owner', 'motion picture', 'motion picture exhibition facility', and 'transmit' have, respectively, the meanings given those terms in section 101 of title 17.

''(2) AUDIOVISUAL RECORDING DEVICE.—The term 'audiovisual recording device' means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 18, United States Code, is amended by inserting after the item relating to section 2319A the following:

''2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility.''.

(c) DEFINITION.—Section 101 of title 17, United States Code, is amended by inserting after the definition of ''Motion pictures'' the following: ''The term ''motion picture exhibition facility'' means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.''.

SEC. 103. CRIMINAL INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.

(a) PROHIBITED ACTS.—Section 506(a) of title 17, United States Code, is amended to read as follows:

''(a) CRIMINAL INFRINGEMENT.—

''(1) IN GENERAL.—Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed—

''(A) for purposes of commercial advantage or private financial gain;

''(B) by the reproduction or distribution, including by electronic means, during any 180–day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than $1,000; or

''(C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

''(2) EVIDENCE.—For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement of a copyright.

''(3) DEFINITION.—In this subsection, the term 'work being prepared for commercial distribution' means—

''(A) a computer program, a musical work, a motion picture or other audiovisual work, or a sound recording, if, at the time of unauthorized distribution—

''(i) the copyright owner has a reasonable expectation of commercial distribution; and

''(ii) the copies or phonorecords of the work have not been commercially distributed; or

''(B) a motion picture, if, at the time of unauthorized distribution, the motion picture—

''(i) has been made available for viewing in a motion picture exhibition facility; and

''(ii) has not been made available in copies for sale to the general public in the United States in a format intended to permit viewing outside a motion picture exhibition facility.''.

(b) CRIMINAL PENALTIES.—Section 2319 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''Whoever'' and inserting ''Any person who''; and

(B) by striking ''and (c) of this section'' and inserting '', (c), and (d)'';

(2) in subsection (b), by striking ''section 506(a)(1)'' and inserting ''section 506(a)(1)(A)'';

(3) in subsection (c), by striking ''section 506(a)(2) of title 17, United States Code'' and inserting ''section 506(a)(1)(B) of title 17'';

(4) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(5) by adding after subsection (c) the following:

''(d) Any person who commits an offense under section 506(a)(1)(C) of title 17—

''(1) shall be imprisoned not more than 3 years, fined under this title, or both;

''(2) shall be imprisoned not more than 5 years, fined under this title, or both, if the offense was committed for purposes of commercial advantage or private financial gain;

''(3) shall be imprisoned not more than 6 years, fined under this title, or both, if the offense is a second or subsequent offense; and

''(4) shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a second or subsequent offense under paragraph (2).''; and

(6) in subsection (f), as redesignated—

(A) in paragraph (1), by striking ''and'' at the end;

(B) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(3) the term 'financial gain' has the meaning given the term in section 101 of title 17; and

''(4) the term 'work being prepared for commercial distribution' has the meaning given the term in section 506(a) of title 17.''.

SEC. 104. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.

(a) PREREGISTRATION.—Section 408 of title 17, United States Code, is amended by adding at the end the following:

''(f) PREREGISTRATION OF WORKS BEING PREPARED FOR COMMERCIAL DISTRIBUTION.—

''(1) RULEMAKING.—Not later than 180 days after the date of enactment of this subsection, the Register of Copyrights shall issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published.

''(2) CLASS OF WORKS.—The regulations established under paragraph (1) shall permit preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution.

''(3) APPLICATION FOR REGISTRATION.—Not later than 3 months after the first publication of a work preregistered under this subsection, the applicant shall submit to the Copyright Office—

''(A) an application for registration of the work;

''(B) a deposit; and

''(C) the applicable fee.

''(4) EFFECT OF UNTIMELY APPLICATION.—An action under this chapter for infringement of a work preregistered under this subsection, in a case in which the infringement commenced no later than 2 months after the first publication of the work, shall be dismissed if the items described in paragraph (3) are not submitted to the Copyright Office in proper form within the earlier of—

''(A) 3 months after the first publication of the work; or

''(B) 1 month after the copyright owner has learned of the infringement.''.

(b) INFRINGEMENT ACTIONS.—Section 411(a) of title 17, United States Code, is amended by inserting ''preregistration or'' after ''shall be instituted until''.

(c) EXCLUSION.—Section 412 of title 17, United States Code, is amended by inserting after ''section 106A(a)'' the following: '', an action for infringement of the copyright of a work that has been preregistered under section 408(f) before the commencement of the infringement and that has an effective date of registration not later than the earlier of 3 months after the first publication of the work or 1 month after the copyright owner has learned of the infringement,''.

SEC. 105. FEDERAL SENTENCING GUIDELINES.

(a) REVIEW AND AMENDMENT.—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and

in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes, including any offense under—

(1) section 506, 1201, or 1202 of title 17, United States Code; or

(2) section 2318, 2319, 2319A, 2319B, or 2320 of title 18, United States Code.

(b) AUTHORIZATION.—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

(c) RESPONSIBILITIES OF UNITED STATES SENTENCING COMMISSION.—In carrying out this section, the United States Sentencing Commission shall—

(1) take all appropriate measures to ensure that the Federal sentencing guidelines and policy statements described in subsection (a) are sufficiently stringent to deter, and adequately reflect the nature of, intellectual property rights crimes;

(2) determine whether to provide a sentencing enhancement for those convicted of the offenses described in subsection (a), if the conduct involves the display, performance, publication, reproduction, or distribution of a copyrighted work before it has been authorized by the copyright owner, whether in the media format used by the infringing party or in any other media format;

(3) determine whether the scope of ''uploading'' set forth in application note 3 of section 2B5.3 of the Federal sentencing guidelines is adequate to address the loss attributable to people who, without authorization, broadly distribute copyrighted works over the Internet; and

(4) determine whether the sentencing guidelines and policy statements applicable to the offenses described in subsection (a) adequately reflect any harm to victims from copyright infringement if law enforcement authorities cannot determine how many times copyrighted material has been reproduced or distributed.

TITLE II—EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES

SEC. 201. SHORT TITLE.

This title may be cited as the ''Family Movie Act of 2005''.

SEC. 202. EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES.

(a) IN GENERAL.—Section 110 of title 17, United States Code, is amended—

(1) in paragraph (9), by striking ''and'' after the semicolon at the end;

(2) in paragraph (10), by striking the period at the end and inserting ''; and'';

(3) by inserting after paragraph (10) the following:

''(11) the making imperceptible, by or at the direction of a member of a private household, of limited portions of audio or video content of a motion picture, during a performance in or transmitted to that household for private home viewing, from an authorized copy of the motion picture, or the creation or provision of a computer program or other technology that enables such making imperceptible and that is designed and marketed to be used, at the direction of a member of a private household, for such making imperceptible, if no fixed copy of the altered version of the motion picture is created by such computer program or other technology.''; and

(4) by adding at the end the following:

''For purposes of paragraph (11), the term 'making imperceptible' does not include the addition of audio or video content that is performed or displayed over or in place of existing content in a motion picture.

''Nothing in paragraph (11) shall be construed to imply further rights under section 106 of this title, or to have any effect on defenses or limitations on rights granted under any other section of this title or under any other paragraph of this section.''.

(b) EXEMPTION FROM TRADEMARK INFRINGEMENT.—Section 32 of the Trademark Act of 1946 (15 U.S.C. 1114) is amended by adding at the end the following:

''(3)(A) Any person who engages in the conduct described in paragraph (11) of section 110 of title 17, United States Code, and who complies with the requirements set forth in that paragraph is not liable on account of such conduct for a violation of any right under this Act. This subparagraph does not preclude liability, nor shall it be construed to restrict the defenses or limitations on rights granted under this Act, of a person for conduct not described in paragraph (11) of section 110 of title 17, United States Code, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

''(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such manufacture or license for a violation of any right under this Act, if such manufacturer, licensee, or licensor ensures that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance of the motion picture is altered from the performance intended by the director or copyright holder of the motion picture. The limitations on liability in subparagraph (A) and this subparagraph shall not apply to a manufacturer, licensee, or licensor of technology that fails to comply with this paragraph.

''(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology manufactured after the end of the 180-day period beginning on the date of the enactment of the Family Movie Act of 2005.

''(D) Any failure by a manufacturer, licensee, or licensor of technology to qualify for the exemption under subparagraphs (A) and (B) shall not be construed to create an inference that any such party that engages in conduct described in paragraph (11) of section 110 of title 17, United States Code, is liable for trademark infringement by reason of such conduct.''.

(c) DEFINITION.—In this section, the term ''Trademark Act of 1946'' means the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

TITLE III—NATIONAL FILM PRESERVATION

Subtitle A—Reauthorization of the National Film Preservation Board

SEC. 301. SHORT TITLE.

This subtitle may be cited as the ''National Film Preservation Act of 2005''.

SEC. 302. REAUTHORIZATION AND AMENDMENT.

(a) DUTIES OF THE LIBRARIAN OF CONGRESS.—Section 103 of the National Film Preservation Act of 1996 (2 U.S.C. 179m) is amended—

(1) in subsection (b)—

(A) by striking ''film copy'' each place that term appears and inserting ''film or other approved copy'';

(B) by striking ''film copies'' each place that term appears and inserting ''film or other approved copies''; and

(C) in the third sentence, by striking ''copyrighted'' and inserting ''copyrighted, mass distributed, broadcast, or published''; and

(2) by adding at the end the following:

''(c) COORDINATION OF PROGRAM WITH OTHER COLLECTION, PRESERVATION, AND ACCESSIBILITY ACTIVITIES.—In carrying out the comprehensive national film preservation program for motion pictures established under the National Film Preservation Act of 1992, the Librarian, in consultation with the Board established pursuant to section 104, shall—

''(1) carry out activities to make films included in the National Film registry more broadly accessible for research and educational purposes, and to generate public awareness and support of the Registry and the comprehensive national film preservation program;

''(2) review the comprehensive national film preservation plan, and amend it to the extent necessary to ensure that it addresses technological advances in the preservation and storage of, and access to film collections in multiple formats; and

''(3) wherever possible, undertake expanded initiatives to ensure the preservation of the moving image heritage of the United States, including film, videotape, television, and born digital moving image formats, by supporting the work of the National Audio-Visual Conservation Center of the Library of Congress, and other appropriate nonprofit archival and preservation organizations.''.

(b) NATIONAL FILM PRESERVATION BOARD.—Section 104 of the National Film Preservation Act of 1996 (2 U.S.C. 179n) is amended—

(1) in subsection (a)(1) by striking ''20'' and inserting ''22'';

(2) in subsection (a) (2) by striking ''three'' and inserting ''5'';

(3) in subsection (d) by striking ''11'' and inserting ''12''; and

(4) by striking subsection (e) and inserting the following:

''(e) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.''.

(c) NATIONAL FILM REGISTRY.—Section 106 of the National Film Preservation Act of 1996 (2 U.S.C. 179p) is amended by adding at the end the following:

''(e) NATIONAL AUDIO-VISUAL CONSERVATION CENTER.—The Librarian shall utilize the National Audio-Visual Conservation Center of the Library of Congress at Culpeper, Virginia, to ensure that preserved films included in the National Film Registry are stored in a proper manner, and disseminated to researchers, scholars, and the public as may be appropriate in accordance with—

''(1) title 17, United States Code; and

''(2) the terms of any agreements between the Librarian and persons who hold copyrights to such audiovisual works.''.

(d) USE OF SEAL.—Section 107 (a) of the National Film Preservation Act of 1996 (2 U.S.C. 179q(a)) is amended—

(1) in paragraph (1), by inserting ''in any format'' after ''or any copy''; and

(2) in paragraph (2), by striking ''or film copy'' and inserting ''in any format''.

(e) EFFECTIVE DATE.—Section 113 of the National Film Preservation Act of 1996 (2 U.S.C. 179w) is amended by striking ''7'' and inserting ''12''.

Subtitle B—Reauthorization of the National Film Preservation Foundation

SEC. 311. SHORT TITLE.

This subtitle may be cited as the ''National Film Preservation Foundation Reauthorization Act of 2005''.

SEC. 312. REAUTHORIZATION AND AMENDMENT.

(a) BOARD OF DIRECTORS.—Section 151703 of title 36, United States Code, is amended—

(1) in subsection (b)(2)(A), by striking ''nine'' and inserting ''12''; and

(2) in subsection (b)(4), by striking the second sentence and inserting ''There shall be no limit to the number of terms to which any individual may be appointed.''.

(b) POWERS.—Section 151705 of title 36, United States Code, is amended in subsection (b) by striking ''District of Columbia'' and inserting ''the jurisdiction in which the principal office of the corporation is located''.

(c) PRINCIPAL OFFICE.—Section 151706 of title 36, United States Code, is amended by inserting '', or another place as determined by the board of directors'' after ''District of Columbia''.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 151711 of title 36, United States Code, is amended by striking subsections (a) and (b) and inserting the following:

''(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Library of Congress amounts necessary to carry out this chapter, not to exceed $530,000 for each of the fiscal years 2005 through 2009. These amounts are to be made available to the corporation to match any private contributions (whether in currency, services, or property) made to the corporation by private persons and State and local governments.

''(b) LIMITATION RELATED TO ADMINISTRATIVE EXPENSES.—Amounts authorized under this section may not be used by the corporation for management and general or fundraising expenses as reported to the Internal Revenue Service as part of an annual information return required under the Internal Revenue Code of 1986.''.

TITLE IV—PRESERVATION OF ORPHAN WORKS

SEC. 401. SHORT TITLE.

This title may be cited as the ''Preservation of Orphan Works Act''.

SEC. 402. REPRODUCTION OF COPYRIGHTED WORKS BY LIBRARIES AND ARCHIVES.

Section 108(i) of title 17, United States Code, is amended by striking ''(b) and (c)'' and inserting ''(b), (c), and (h)''.

Mr. LEAHY. Mr. President, today I join my colleagues, Senators HATCH, FEINSTEIN, and CORNYN, introducing an important piece of bipartisan intellectual property legislation. The provisions of the ''Family Entertainment and Copyright Act of 2005'' are virtually identical to those in the bill we passed in the waning days of the 108th Congress. Unfortunately, that package of intellectual property bills was hijacked in an effort to use it as a vehicle to pass unrelated legislation. The effort failed, and in the end so did Congress: we were not able to send to the President the most important package of intellectual property legislation on last year's agenda. The legislation passed in the Senate—several times in fact—but there was simply not enough time for the House of Representatives to act.

I am pleased that we were able to salvage two components of last year's bill. As Congress came to a close, the House passed the Senate version of the CREATE Act, legislation I cosponsored with Senator HATCH. The new law will continue to encourage collaborative research partnerships between private industry and not-for-profits, such as universities. We were also able to send to the President the Anti-counterfeiting Amendments Act, a version of Senator Biden's legislation that my friend from Delaware has championed for several years. Both laws are important, but our task remains incomplete.

It is time to enact the remaining components of the Family Entertainment and Copyright Act, to finish off the work of the 108th Congress as we begin the 109th.

Title I of the bill contains the ''Artists'' Rights and Theft Prevention Act,'' better known as the ART Act. This provision passed the Senate as a standalone bill in June of 2004, and again as part of the FECA bill at the end of the last Congress. The bill will make important inroads in the fight against movie piracy by criminalizing the use of camcorders to pilfer movies from the big screen. It will also direct the Register of Copyrights to create a registry of pre-release works in order to better address the problem of movie-theft before these works are offered for legal distribution.

The next title of the bill is the Family Movie Act, which will preserve the rights of families to watch motion pictures in the manner they see fit. At the same time, the Act protects the rights of directors and copyright holders to maintain the artistic vision and integrity of their works. A version of this legislation passed the other chamber in September of 2004, and it passed the Senate as part of the FECA bill at the end of the 108th Congress.

Title III of the bill is the Film Preservation Act, legislation that I sponsored in the last Congress. A version of this bill, too, was part of the FECA bill that passed the Senate last Congress. The Film Preservation Act will allow the Library of Congress to continue its important work in preserving America's fading film treasures. The works preserved by this important program include silent-era films, avant-garde works, ethnic films, newsreels, and home movies that are in many ways more illuminating on the question of who we are as a society than the Hollywood sound features kept and preserved by major studios. What's more, the bill will assist libraries, museums, and archives in preserving films, and in making those works available to researchers and the public.

Finally, the bill contains the Preservation of Orphan Works Act. This provision corrects for a drafting error in the Sonny Bono Copyright Term Extension Act. Correction of this error will allow libraries to create copies of certain copyrighted works, such as films and musical compositions that are in the last 20 years of their copyright term, are no longer commercially exploited, and are not available at a reasonable price. Again, this provision ensures that copies of culturally-illuminating works are not lost to history.

Anytime we enact a package of legislation as large as the ''Family Entertainment and Copyright Act,'' building consensus is difficult. However, this is a chamber built on collegiality and compromise, and while I may have crafted specific components of this package differently, I believe that the final result we have achieved is one worthy of enactment. The components of this package have already passed the Senate at least once, and I have received assurances from the other chamber that the bill will receive swift consideration once it is approved in this body.

The legislative process is functioning well when we work with our colleagues across the aisle, and it is at its best when we work on a bipartisan basis with our friends in the other chamber. This bill has benefited from both. The agenda of the 109th Congress promises many issues that divide us, but this is not such a bill: It has garnered broad consensus, and I hope that we can finally move to swiftly enact it.

Mr. CORNYN. Mr. President, in the fall of 2003, I introduced S. 1932, the Artists' Rights and Theft Prevention Act of 2003, along with my friend from California, Senator FEINSTEIN. As introduced, the ART Act was a modest but necessary first step to combat the rampant piracy plaguing the motion picture, recording and general content industries. The Bill focuses on the most egregious form of copyright piracy plaguing the entertainment industry today—the piracy of film, movies, and other copyrighted materials before copyright owners have had the opportunity to market fully their products.

Now, as part of a comprehensive package, ''the Family Entertainment and Copyright Act of 2005,'' it is even more significant. This package contains a number of targeted, important reforms that help strengthen our intellectual property laws. I rise to express my strong support for the bill and ask my colleagues to move it expeditiously.

Intellectual property laws and the American businesses that rely on them deserve our strongest support. Our Nation was founded on a number of important ideas. One central one was that the value created by the work and sweat of a person should be recognized as that person's property and should be protected. Protecting the creativity and capital that American innovators invest to make our lives richer is the right thing to do. Failure to do so not only would diminish the quality of our individual lives, but our country would suffer too. Intellectual property-related industries are a central driver of our Nation's economy and a staple of our international trade.

The copyright-based industries alone accounted for more than 5 percent of the U.S. GDP or $535,100,000,000 in 2001 and almost 6 percent of U.S. employment, and led all major industry sectors in foreign sales and exports in 2001, the last year for which we have figures.

As the Justice Department recently has pointed out:

Ideas and the people who generate them serve as critical resources both in our daily lives and in the stability and growth of America's economy. The creation of intellectual property—from designs for new products to artistic creations—unleashes our Nation's potential, brings ideas from concept to commerce, and drives future economic and productivity gains. In the increasingly knowledge-driven, information age economy, intellectual property is the new coin of the realm. . . . [Report of the DOJ Task Force on Intellectual Property, p. 7.]

As the DOJ IP Task Force Report notes, America's economy relies more and more on ideas we create, not things we make. We need to protect our Nation's innovative and creative works with strong laws and enforcement of those laws because doing so is vital to our national economic security.

Having noted and quoted the DOJ Report, I want to pause to thank the Justice Department and outgoing Attorney General John Ashcroft for taking these issues seriously and for taking significant steps to address them. The formation of the Intellectual Property Task Force spotlighted these issues at the Justice Department and the work of the Task Force, headed by David Israelite did a superb job in developing comprehensive and serious steps better protecting our intellectual property interests. The DOJ engaged in serious domestic and international investigations and prosecutions against digital thieves who have misused promising digital technology like the Internet to further their attacks on American businesses. General Ashcroft and the Justice Department, who deserve our gratitude for so many reasons, certainly deserve it for their efforts on this area.

Having provided that foundation, let me discuss briefly some of the important provisions contained in this legislative package.

We have purposefully compiled a package of legislation that strikes a balance between innovation and copyright protection. One needn't be sacrificed to encourage the other—rather they go hand-in-hand.

First, I would mention the Cornyn-Feinstein ''Artist's Rights and Theft Prevention Act'' or the ART Act. Notably, it contains a provision making it a felony to record a movie in a theater. One of the principal ways that movie piracy happens is by thieves sitting in a movie theater, or bribing a projectionist to help them, and recording movies with small camcorders. These camcorded copies can then make their way around the world on the internet and usually land on the streets of cities around the world in pirated copies sold on the street, often the day the movie opens in the U.S. or even before the movie opens in many countries.

All it takes is a single or a small handful of camcorded copies distributed worldwide to have a devastating effect on a movie's profitability. Movies are generally an investment of tens or hundreds of millions of dollars that rely on box office and home video and other subsequent sales to recoup this investment. A camcorded copy released early in any of these cycles can undermine the economics of this business, and especially if they hit the streets or the internet while the movie is still in theaters. This is theft, and it is theft that supports organized crime groups, and perhaps, even terrorism. It deserves to be stopped by the specter of a federal felony.

Its second key provision focuses on so-called ''pre-released'' works. Because serious harm can be done to both the reputation of and market for creative products if they are pirated before they actually come to market, we have included reforms in the ART Act and this package that make it easier for the Justice Department to prosecute those who steal and distribute copies of copyrighted works on the internet before they are released to the public by their owners or authorized distributors. We make the prosecutor's job easier by allowing certain presumptions with regard to the harm caused, including the dollar amount and number of copies, necessary to allow the prosecutor to bring a felony action where the works in question are being prepared for commercial release but have not been released to the public legitimately. This is fair because no one can legitimately believe that they are within their rights copying and distributing works that are not yet available in the marketplace. Again this is a common sense concept, which deserves the support of the Congress.

Also, I would mention the Family Movie Act—another important component of this package. This provision allows the use of certain, specified technology to skip or mute content that may be objectionable to certain viewers when watching a movie at home, so long as no fixed copy of the edited work is made.

Very few would argue that many of the movies produced today contain significant amounts of gratuitous sex, violence, foul language or other potentially objectionable content. A number of innovative companies have stepped forward to solve this problem by providing filters that tag such scenes and allows consumers to tailor their viewing experience.

This legislation is designed to solve an on-going controversy surrounding the use of such technology. Specifically, there is litigation pending over the issue of whether providing edited versions of movies to consumers creates a ''derivative work'' that violates the rights of those who created or own the copyrights and trademarks for the original movies. The existence of this controversy arguably is hampering the development of the technology that families may find helpful in protecting children from potentially objectionable content.

Let me make clear that this bill is not designed to deal with ad-skipping by consumers in the home. I know that there has been some misinformation about this by groups who apparently oppose copyright protections generally, but this bill has nothing to do with anything other than using a certain kind of technology to modify the viewing experience of a movie to skip over objectionable content.

Finally, the two remaining provisions—though relatively small—are not insignificant. The Film Preservation Act, legislation that I recognize is particularly important to Senator LEAHY, and I thank him for his efforts in promoting it, will reauthorize a Library of Congress Program dedicated to saving rare and significant films. Additionally, we make a small but necessary change to the Sonny Bono Copyright Term Extension Act. Correction of this error will allow libraries to create copies of certain copyrighted works, such as films and musical compositions that are in the last 20 years of their copyright term, are no longer commercially exploited, and are not available at a reasonable price.

Before I relinquish my time, I do want to thank a number of people who have worked tirelessly on behalf of this bill. Allow me to thank David Jones and Tom Sydnor of the staff of Chairman ORRIN HATCH, who is not only our previous Judiciary Committee Chairman, but a leader on copyright and intellectual property issues; Susan Davies and Dan Fine of Senator LEAHY's staff, who also has long been a leader on intellectual property issues; and finally, David Hantman of Senator FEINSTEIN's staff, a Senator with whom I am happy to have teamed to introduce the ART Act in the last Congress.

Having begun with the staff, who rarely get mentioned as much as they deserve for the great work they do, let me also thank the Senators they work for: Senators HATCH, LEAHY, and FEINSTEIN for their co-sponsorship, as well as the Majority Leader, who has taken a personal interest in this legislation and worked to make it happen.

Mr. CORNYN. Mr. President, would the Senator yield for a quick question?

Mr. HATCH. I would be happy to yield for a question from the distinguished Senator from Texas.

Mr. CORNYN. As the chairman knows, he and I and our other cosponsors have worked throughout last Congress on the provisions of the Family Entertainment and Copyright Act of 2005 that we have introduced today. With respect to the Family Movie Act portion of the bill, I just wanted to raise the point that there had been some concern over the potential effect of the FMA on future cases involving ''ad skipping'' technologies and ask if you would have any objection to including in the record the relevant portion of the floor discussion on that issue from last Congress?

Mr. HATCH. I thank my friend, the Senator from Texas, for that reminder. I would certainly have no objection to entering our previous colloquy into the RECORD again and ask unanimous consent that it appear after our remarks.

Mr. HATCH. Mr. President, Section 102 of the ART Act establishes a new provision of Title 18 entitled, ''Unauthorized Recording of Motion Pictures in a Motion Picture Exhibition Facility.'' I ask Senator CORNYN, what is the purpose of this provision?

Mr. CORNYN. Section 102 addresses a serious piracy issue facing the movie business: the use of camcorders in a motion picture theater. Sad to say, there are people who go to the movie theater, generally during pre-opening ''screenings'' or during the first weekend of theatrical release, and using sophisticated digital equipment, record the movie. They're not trying to save $8.00 so they can see the movie again. Instead, they sell the camcorded version to a local production factory or to an overseas producer, where it is converted into DVDs or similar products and sold on the street for a few dollars per copy. This misuse of camcorders is a significant factor in the estimated $3.5 billion per year of losses the movie industry suffers because of hard goods piracy. Even worse, these camcorded versions are posted on the Internet through ''P2P'' networks such as KaZaA, Grokster and Morpheus—and made available for millions to download. The goal of our bill is to provide a potent weapon in the arsenal of prosecutors to stem the piracy of commercially valuable motion pictures at its source.

Mr. HATCH. I have heard it said that this bill could be used against a salesperson or a customer at stores such as Best Buy or Circuit City if he or she were to point a video camera at a television screen showing a movie. Is this cause for concern?

Mr. CORNYN. Absolutely not. The offense is only applicable to transmitting or copying a movie in a motion picture exhibition facility, which has to be a movie theater or similar venue ''that is being used primarily for the exhibition of a copyrighted motion picture.'' In the example of Best Buy—the store is being used primarily to sell electronic equipment, not to exhibit motion pictures. For the same reason, the statute would not cover a university student who records a short segment of a film being shown in film class, as the venue is being used primarily as a classroom, and not as a movie theater.

Mr. HATCH. Does the Senator from California agree with your colleague from Texas?

Mrs. FEINSTEIN. Absolutely on all points.

Mr. HATCH. I have also heard some say that this statute could be used to prosecute someone for camcording a DVD at his home. Is this a fair concern?

Mrs. FEINSTEIN. No, it is not. The definition of a motion picture exhibition facility includes the concept that the exhibition has to be ''open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.'' This definition makes clear that someone recording from a television in his home does not meet that definition. It is important to emphasize that the clause ''open to the public'' applies specifically to the exhibition, not to the facility. An exhibition in a place open to the public that is itself not made to the public is not the subject of this bill.

Thus, for example, a university film lab may be ''open to the public.'' However, a student who is watching a film in that lab for his or her own study or research would not be engaging in an exhibition that is ''open to the public.'' Thus, if that student copied an excerpt from such an exhibition, he or she would not be subject to liability under the bill.

Mr. HATCH. Do the users of hearing aids, cell phones or similar devices have anything to fear from this statute?

Mrs. FEINSTEIN. Of course not. The statute covers only a person who ''knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under Title 17, or any part thereof. . . .'' In other words, the defendant would have to be making, or attempting to make, a copy that is itself an audiovisual work, or make, or attempt to make, a transmission embodying an audiovisual work, as that term is defined in Section 101 of Title 17. As such, the Act would not reach the conduct of a person who uses a hearing aid, a still camera, or a picture phone to capture an image or mere sound from the movie.

Mr. HATCH. It appears that there is no fair use exception to this provision. Is that correct?

Mrs. FEINSTEIN. This is a criminal provision under Title 18, not a copyright provision under Title 17. Accordingly, there is no fair use exception included. However, Federal prosecutors should use their discretion not to bring criminal prosecutions against activities within movie theaters that would constitute fair use under the copyright laws. The object of this legislation is to prevent the copying and distribution of motion pictures in a manner that causes serious commercial harm. This legislation is not intended to chill legitimate free speech.

Mr. HATCH. Does the Senator from Texas agree?

Mr. CORNYN. Yes, on all points.

Mr. CORNYN. Mr. President, would the chairman yield for a question?

Mr. HATCH. I would be happy to yield for a question from the distinguished Senator from Texas.

Mr. CORNYN. As the chairman knows, he and I and our other co-sponsors have worked throughout this Congress on the provisions of the Family Entertainment and Copyright Act of 2004 that we have introduced today. I just want to confirm what I believe to be our mutual understanding about the effect of certain provisions of the Family Movie Act. Title II of the Family Entertainment and Copyright Act of 2004 that we introduced today modifies slightly the Family Movie Act provisions of H.R. 4077 as passed by the House of Representatives. That bill created a new exemption in section 110(11) of the Copyright Act for skipping and muting audio and video content in motion pictures during performances that take place in the course of a private viewing in a household from an authorized copy of the motion picture. The House-passed version specifically excluded from the scope of the new copyright exemption computer programs or technologies that make changes, deletions, or additions to commercial advertisements or to network or station promotional announcements that would otherwise be displayed before, during, or after the performance of the motion picture.

My understanding is that this provision reflected a ''belt and suspenders'' approach that was adopted to quiet the concerns of some Members in the House who were concerned that a court might misread the statute to apply to ''ad-skipping'' cases. Some Senators, however, expressed concern that the inclusion of such explicit language could create unwanted inferences as to the ''ad-skipping'' issues at the heart of the recent litigation. Those issues remain unsettled, and it was never the intent of this legislation to resolve or affect those issues. In the meantime, the Copyright Office has confirmed that such a provision is unnecessary to achieve the intent of the bill, which is to avoid application of this new exemption in potential future cases involving ''ad-skipping'' devices; therefore, the Senate amendment we offer removes the unnecessary exclusionary language.

Would the chairman confirm for the Senators present his understanding of the intent and effect, or perhaps stated more appropriately, the lack of any effect, of the Senate amendment on the scope of this bill?

Mr. HATCH. My cosponsor, Senator CORNYN, raises an important point. While we removed the ''ad-skipping'' language from the statute to avoid this unnecessary controversy, you are absolutely correct that this does not in any way change the scope of the bill. The bill protects the ''making imperceptible . . . limited portions of audio or video content of a motion picture . . .'' An advertisement, under the Copyright Act, is itself a ''motion picture,'' and thus a product or service that enables the skipping of an entire advertisement, in any media, would be beyond the scope of the exemption. Moreover, the phrase ''limited portions'' is intended to refer to portions that are both quantitatively and qualitatively insubstantial in relation to the work as a whole. Where any substantial part of a complete work, such as a commercial advertisement, is made imperceptible, the new section 110(11) exemption would not apply.

The limited scope of this exemption does not, however, imply or show that

such a product would be infringing. This legislation does not in any way deal with that issue. It means simply that such a product is not immunized from liability by this exemption.

Mr. CORNYN. I thank the chairman. I am pleased that we share a common understanding. If the chairman would yield for one more question about the Family Movie Act?

Mr. HATCH. Certainly.

Mr. CORNYN. This bill also differs from the House-passed version because it adds two ''savings clauses.'' As I understand it, the ''copyright'' savings clause makes clear that there should be no ''spillover effect'' from the passage of this law: that is, nothing shall be construed to have any effect on rights, defenses, or limitations on rights granted under title 17, other than those explicitly provided for in the new section 110(11) exemption. The second, relating to trademark, clarifies that no inference can be drawn that a person or company who fails to qualify for the exemption from trademark infringement found in this provision is therefore liable for trademark infringement. Is that the chairman's understanding as well?

Mr. HATCH. Yes it is. Let me ask that a copy of the section-by-section analysis of the Family Movie Act as amended by the Senate be included in the RECORD. This section-by-section analysis contains a more complete analysis of the bill as proposed today in the Senate, including the limited changes made by the bill Senators LEAHY, CORNYN, BIDEN, and I offer today.

The analysis follows.

SECTION-BY-SECTION ANALYSIS OF THE FAMILY MOVIE ACT OF 2004, AMENDED AND PASSED BY THE SENATE

OVERVIEW

Title II of the Family Entertainment and Copyright Act of 2004 incorporates the House-passed provision of the Family Movie Act of 2004, with limited changes as reflected in this section-by-section analysis. As discussed herein, these changes are not intended to and do not affect the scope, effect or application of the bill.

The purpose of the Family Movie Act is to empower private individuals to use technology to skip and mute material that they find objectionable in movies, without impacting established doctrines of copyright or trademark law or those whose business models depend upon advertising. This amendment to the law should be narrowly construed to effect its intended purpose only. The sponsors of the legislation have been careful to tailor narrowly the legislation to clearly allow specific, consumer-directed activity and not to open or decide collateral issues or to affect any other potential or actual disputes in the law.

The bill as proposed in the Senate makes clear that, under certain conditions, ''making imperceptible'' of limited portions of audio or video content of a motion picture—that is, skipping and muting limited portions of movies without adding any content—as well as the creation or provision of a computer program or other technology that enables such making imperceptible, does not violate existing copyright or trademark laws. That is true whether the movie is on prerecorded media, like a DVD, or is transmitted to the home, as through pay-per-view and ''video-on-demand'' services.

Subsection (a): Short Title

Subsection (a) sets forth the short title of the bill as the Family Movie Act of 2004.

Subsection (b): Exemption from Copyright and Trademark Infringement for Skipping of Audio or Video Content of Motion Pictures

Subsection (b) is the Family Movie Act core provision and creates a new exemption at section 110(11) of the Copyright Act for the ''making imperceptible'' of limited portions of audio or video content of a motion picture during a performance in a private household. This new exemption sets forth a number of conditions to ensure that it achieves its intended effect while remaining carefully circumscribed and avoiding any unintended consequences. The conditions that allow an exemption, which are discussed in more detail below, consist of the following:

The making imperceptible must be ''by or at the direction of a member of a private household.'' This legislation contemplates that any altered performances of the motion picture would be made either directly by the viewer or at the direction of a viewer where the viewer is exercising substantial choice over the types of content they choose to skip or mute.

The making imperceptible must occur ''during a performance in or transmitted to the household for private home viewing.'' Thus, this provision does not exempt an unauthorized ''public performance'' of an altered version.

The making imperceptible must be ''from an authorized copy of a motion picture.'' Thus, skipping and muting from an unauthorized or ''bootleg'' copy of a motion picture would not be exempt.

No ''fixed copy'' of the altered version of the motion picture may be created by the computer program or other technology that makes imperceptible portions of the audio or video content of the motion picture. This provision makes clear that services or technologies that make a fixed copy of the altered version are not afforded the benefit of this exemption.

The ''making imperceptible'' of limited portions of a motion picture does not include the addition of audio or video content over or in place of other content, such as placing a modified image of a person, a product, or an advertisement in place of another, or adding content of any kind.

These limitations, and other operative provisions of this new section 110(11) exemption, merit further elaboration as to their purposes and effects.

The bill makes clear that the ''making imperceptible'' of limited portions of audio or video content of a motion picture must be done by or at the direction of a member of a private household. While this limitation does not require that the individual member of the private household exercise ultimate decision-making over each and every scene or element of dialog in the motion picture that is to be made imperceptible, it does require that the making imperceptible be made at the direction of that individual in response to the individualized preferences expressed by that individual. The test of ''at the direction of an individual'' would be satisfied when an individual selects preferences from among options that are offered by the technology.

An example is the ClearPlay model. ClearPlay provides so-called ''filter files'' that allow a viewer to express his or her preferences in a number of different categories, including language, violence, drug content, sexual content, and several others. The version of the movie that the viewer sees depends upon the preferences expressed by that viewer. Such a model would fall under the liability limitation of the Family Movie Act.

This limitation, however, would not allow a program distributor, such as a provider of video-on-demand services, a cable or satellite channel, or a broadcaster, to make imperceptible limited portions of a movie in order to provide an altered version of that movie to all of its customers, which could violate a number of the copyright owner's exclusive rights, or to make a determination of scenes to be skipped or dialog to be muted and to offer to its viewers no more of a choice than to view an original or an altered version of that film. Some element of individualized preferences and control must be present such that the viewer exercises substantial choice over the types of content they choose to skip or mute.

It is also important to emphasize that the new section 110(11) exemption is targeted narrowly and specifically at the act of ''making imperceptible'' limited portions of audio or video content of a motion picture during a performance that occurs in, or that is transmitted to, a private household for private home viewing. This section would not exempt from liability an otherwise infringing performance, or a transmission of a performance, during which limited portions of audio or video content of the motion picture are made imperceptible. In other words, where a performance in a household or a transmission of a performance to a household is done lawfully, the making imperceptible limited portions of audio or video content of the motion picture during that performance, consistent with the requirements of this new section, will not result in infringement liability. Similarly, an infringing performance in a household, or an infringing transmission of a performance to a household, are not rendered non-infringing by section 110(11) by virtue of the fact that limited portions of audio or video content of the motion picture being performed are made imperceptible during such performance or transmission in a manner consistent with that section.

The bill also provides additional guidance, if not an exact definition, of what the term ''making imperceptible'' means. The bill provides specifically that the term ''making imperceptible'' does not include the addition of audio or video content that is performed or displayed over or in place of existing content in a motion picture. This is intended to make clear in the text of the statute what has been expressed throughout the consideration of this legislation, which is that the Family Movie Act does not enable the addition of content of any kind, including the making imperceptible of audio or video content by replacing it or by superimposing other content over it. In other words, for purposes of section 110(11), ''making imperceptible'' refers solely to skipping scenes and portions of scenes or muting audio content from the original, commercially available version of the motion picture. No other modifications of the content are addressed or immunized by this legislation.

The House sponsor of this legislation noted in his explanation of his bill, and the Senate is also aware, that some copy protection technologies rely on matter placed into the audio or video signal. The phrase ''limited portions of audio or video content of a motion picture'' means what it would naturally seem to mean (i.e., the actual content of the motion picture) and does not refer to any component of a copy protection scheme or technology. This provision does not allow the skipping of technologies or other copy-protection-related matter for the purpose of defeating copy protection. Rather, it is expected that skipping and muting of content

in the actual motion picture will be skipped or muted at the direction of the viewer based on that viewer's desire to avoid seeing or hearing the action or sound in the motion picture. Skipping or muting done for the purpose of or having the effect of avoiding copy protection technologies would be an abuse of the safe harbor outlined in this legislation and may violate section 1201 of title 17.

Violating the Digital Millennium Copyright Act, and particularly its anti-circumvention provisions, is not necessary to enable technology of the kind contemplated under the Family Movie Act. Although the amendment to section 110 provides that it is not an infringement of copyright to engage in the conduct that is the subject of the Family Movie Act, the Act does not provide any exemption from the anti-circumvention provisions of section 1201 of title 17, or from any other provision of chapter 12 of title 17. It would not be a defense to a claim of violation of section 1201 that the circumvention is for the purpose of engaging in the conduct covered by this new exemption in section 110(11), just as it is not a defense under section 1201 that the circumvention is for the purpose of engaging in any other non-infringing conduct.

There are a number of companies currently providing the type of products and services covered by this Act. The Family Movie Act is intended to facilitate the offering of such products and services, and it certainly creates no impediment to the technology employed by those companies. Indeed, it is important to underscore the fact that the support for such technology and consumer offerings that is reflected in this legislation is driven in some measure by the desire for copyright law to be respected and to ensure that technology is deployed in a way that supports the continued creation and protection of entertainment and information products that rely on copyright protection. This legislation reflects the firm expectation that those rights and the interests of viewers in their homes can work together in the context defined in this bill. Any suggestion that support for the exercise of viewer choice in modifying their viewing experience of copyrighted works requires violation of either the copyright in the work or of the copy protection schemes that provide protection for such work should be rejected as counter to legislative intent or technological necessity.

The House-passed bill included an explicit exclusion to the new section 110(11) exemption in cases involving the making imperceptible of commercial advertisements or network or station promotional announcements. This provision was added on the House floor to respond to concerns expressed by Members during the House Judiciary Committee markup that the bill might be read somehow to exempt from copyright infringement liability devices that allow for skipping of advertisements in the playback of recorded television (so called ''ad-skipping'' devices). Such a reading is not consistent with the language of the bill or its intent.

The phrase ''limited portions of audio or video content of a motion picture'' applies only to the skipping and muting of scenes or dialog that are part of the motion picture itself, and not to the skipping of commercial advertisements, which are themselves considered motions pictures under the Copyright Act. It also should be noted that the phrase ''limited portions'' is intended to refer to portions that are both quantitatively and qualitatively insubstantial in relation to the work as a whole. Where any substantial part of a complete work (including a commercial advertisement) is made imperceptible, the section 110(11) exemption would not apply.

The House-passed bill adopted a ''belt and suspenders'' approach to this question by adding exclusionary language in the statute itself. Ultimately that provision raised concerns in the Senate that such exclusionary language would result in an inference that the bill somehow expresses an opinion, or even decides, the unresolved legal questions underlying recent litigation related to these so-called ''ad-skipping'' devices. In the meantime, the Copyright Office also made clear that such exclusionary language is not necessary. In other words, the exclusionary language created unnecessary controversy without adding any needed clarity to the statute.

Thus, the Senate amendment omits the exclusionary language while leaving the scope and application of the bill exactly as it was when it passed the House. The legislation does not provide a defense in cases involving so-called ''ad-skipping'' devices, and it also does not affect the legal issues underlying such litigation, one way or another. Consistent with the intent of the legislation to fix a narrow and specific copyright issue, this bill seeks very clearly to avoid unnecessarily interfering with current business models, especially with respect to advertising, promotional announcements, and the like. Simply put, the bill as amended in the Senate is narrowly targeted to the use of technologies and services that filter out content in movies that a viewer finds objectionable, and it in no way relates to or affects the legality of so-called ''ad-skipping'' technologies.

There are a variety of services currently in litigation that distribute actual copies of altered movies. This type of activity is not covered by the section 110(11) exemption created by the Family Movie Act. There is a basic distinction between a viewer choosing to alter what is visible or audible when viewing a film, the focus of this legislation, and a separate entity choosing to create and distribute a single, altered version to members of the public. The section 110(11) exemption only applies to viewer directed changes to the viewing experience, and not the making or distribution of actual altered copies of the motion picture.

Related to this point, during consideration of this legislation in the House there were conflicting expert opinions on whether fixation is required to infringe the derivative work right under the Copyright Act, as well as whether evidence of Congressional intent in enacting the 1976 Copyright Act supports the notion that fixation should not be a prerequisite for the preparation of an infringing derivative work. This legislation should not be construed to be predicated on or to take a position on whether fixation is necessary to violate the derivative work right, or whether the conduct that is immunized by this legislation would be infringing in the absence of this legislation. Subsection (b) also provides a savings clause to make clear that the newly-created copyright exemption is not to be construed to have any effect on rights, defenses, or limitations on rights granted under title 17, other than those explicitly provided for in the new section 110(11) exemption.

Subsection (c): Exemption from Trademark Infringement

Subsection (c) provides for a limited exemption from trademark infringement for those engaged in the conduct described in the new section 110(11) of the Copyright Act. In short, this subsection makes clear that a person engaging in the conduct described in section 110(11)—the ''making imperceptible'' of portions of audio or video content of a motion picture or the creation or provision of technology to enable such making available—is not subject to trademark infringement liability based on that conduct, provided that person's conduct complies with the requirements of section 110(11). This section provides a similar exemption for a manufacturer, licensee or licensor of technology that enables such making imperceptible, but such manufacturer, licensee or licensor is subject to the additional requirement that it ensure that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance of the motion picture is altered from the performance intended by the director or the copyright holder.

Of course, nothing in this section would immunize someone whose conduct, apart from the narrow conduct described by 110(11), rises to the level of a Lanham Act violation. For example, someone who provides technology to enable the making imperceptible limited portions of a motion picture consistent with section 110(11) could not be held liable on account of such conduct under the Trademark Act, but if in providing such . . .

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 10—HONORING THE LIFE OF JOHNNY CARSON

Mr. NELSON of Nebraska (for himself, Mr. HAGEL, Mr. KENNEDY, Mrs. FEINSTEIN, and Mr. INOUYE) submitted the following resolution; which was considered and agreed to:

S. RES. 10

Whereas Johnny Carson, a friend to the United States Senate, passed away January 23, 2005;

Whereas Johnny Carson was a philanthropist, friend, and favorite Nebraska native son;

Whereas Johnny Carson was born in Iowa, raised in Norfolk, Nebraska, and made famous in Hollywood as a late night friend to all of America;

Whereas Johnny Carson served in the United States Navy as an ensign during World War II;

Whereas Johnny Carson late hosted ''The Tonight Show'' for 30 years;

Whereas Johnny Carson was best known as America's late night king of comedy;

Whereas Johnny Carson was one of the biggest stars in Hollywood but never forgot his roots;

Whereas Johnny Carson was respected by his colleagues as a gentleman; and

Whereas Johnny Carson was bright and witty, and always set the highest of standards for his performances: Now, therefore, be it

Resolved, That the Senate—

(1) mourns the loss of Johnny Carson;

(2) recognizes the contributions of Johnny Carson to his home State of Nebraska;

(3) admires the sense of humor and late night presence of Johnny Carson in homes in the United States for over 30 years;

(4) expresses gratitude for the lifetime of memories Johnny Carson provided; and

(5) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the family of Johnny Carson.

SENATE RESOLUTION 11—HONORING THE SERVICE OF REVEREND LLOYD OGILVIE

Mr. KYL (for himself, Mr. BROWNBACK, Mr. LOTT, Mr. CHAMBLISS,

and Mr. SANTORUM) submitted the following resolution; which was considered and agreed to:

S. RES. 11

Whereas a decade ago, on January 24, 1995, the Reverend Lloyd Ogilvie was elected by the Senate as its 61st Chaplain;

Whereas Reverend Lloyd Ogilvie is a friend and confidant to Senators, and to many staff members and Senate employees;

Whereas Reverend Lloyd Ogilvie was always a soothing presence in a body whose Members are sometimes at loggerheads;

Whereas Reverend Lloyd Ogilvie is someone upon whom Democrats and Republicans, men and women of different religious faiths, can count as a sympathetic and trusted advisor; and

Whereas after the tragedy of September 11, 2001, and until his retirement in 2003, we depended on him even more to strengthen our spirit and help us find consolation in Scripture: Now, therefore, be it

Resolved, That the Senate honors the significance of this 10-year anniversary by declaring to the Reverend Lloyd Ogilvie that we remember his loving service to the Senate and this Country, and use this anniversary to express our gratitude to him for his ministry to the Senate family.

SENATE RESOLUTION 12—COMMENDING THE UNIVERSITY OF SOUTHERN CALIFORNIA TROJANS FOOTBALL TEAM FOR WINNING THE 2004 BOWL CHAMPIONSHIP SERIES NATIONAL CHAMPIONSHIP GAME

Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted the following resolution; which was considered and agreed to:

S. RES. 12

Whereas the University of Southern California Trojans football team won the 2004 Bowl Championship Series national championship game, defeating Oklahoma University by a score of 55 to 19 in the FedEx Orange Bowl at Pro Player Stadium in Miami, Florida, on January 4, 2004;

Whereas the University of Southern California Trojans football team has won 11 national championships;

Whereas the University of Southern California Trojans football team has won 34 Pacific 10 conference championships;

Whereas the University of Southern California Trojans football team has won 27 bowl games, only 2 games fewer than the University of Alabama;

Whereas the University of Southern California Trojans football team won 13 games during the 2004 season for the first time in the history of the school and became the first team since the University of Nebraska in 1994–1995 to repeat as Associated Press national champions and the second team to start and finish the season at number 1 in the Associated Press poll;

Whereas the University of Southern California Trojans football team has won 22 consecutive games;

Whereas the University of Southern California Trojans football team is ranked in the top 10 in every defensive category;

Whereas the University of Southern California Trojans football team has set a school record by scoring at least 20 points in its last 38 games;

Whereas Head Coach Pete Carroll has a record of 42 wins, 9 losses at the University of Southern California and is the second University of Southern California coach to win back-to-back national championships;

Whereas Heisman Trophy winner and Associated Press Player of the Year, quarterback Matt Leinart, completed 18 of 35 passes for a total of 332 yards and set an Orange Bowl record with 5 touchdown passes;

Whereas tailback Reggie Bush was a Heisman Trophy finalist and the winner of the Chic Harley award, presented annually to the College Football Player of the Year by the Touchdown Club of Columbus; and

Whereas quarterback Matt Leinert, tailback Reggie Bush, defensive tackle Shaun Cody, and linebacker Matt Grootegoed were named to the Associated Press All-American first team: Now, therefore, be it

Resolved, That the Senate—

(1) commends the University of Southern California Trojans football team for winning the 2004 Bowl Championship Series national championship game; and

(2) directs the Secretary of the Senate to make available to the University of Southern California an enrolled copy of this resolution for appropriate display.

SENATE CONCURRENT RESOLUTION 4—EXPRESSING THE SENSE OF THE CONGRESS THAT THE DEPARTMENT OF DEFENSE SHOULD CONTINUE TO EXERCISE ITS STATUTORY AUTHORITY TO SUPPORT THE ACTIVITIES OF THE BOY SCOUTS OF AMERICA, IN PARTICULAR THE PERIODIC NATIONAL AND WORLD BOY SCOUT JAMBOREES

Mr. NELSON of Florida (for himself, Mr. ALLARD, Mr. ALLEN, Mr. NELSON of Nebraska, Mr. SESSIONS, and Mr. ENZI) submitted the following concurrent resolution; which was referred to the Committee on Armed Services:

S. CON. RES. 4

Whereas the Boy Scouts of America was incorporated on February 8, 1910, and received a Federal charter on June 15, 1916, which is codified as chapter 309 of title 36, United States Code;

Whereas section 30902 of title 36, United States Code, states that it is the purpose of the Boy Scouts of America to promote, through organization, and cooperation with other agencies, the ability of boys to do things for themselves and others, to train them in scoutcraft, and to teach them patriotism, courage, self-reliance, and kindred virtues;

Whereas, since its inception, millions of Americans of every race, creed, and religion have participated in the Boy Scouts of America, and the Boy Scouts of America, as of October 1, 2004, utilizes more than 1,200,000 adult volunteers to serve 2,863,000 youth members organized in 121,051 units;

Whereas the Department of Defense and members of the Armed Forces have a long history of supporting the activities of the Boy Scouts of America and individual Boy Scout troops inside the United States, and section 2606 of title 10, United States Code, enacted in 1988, specifically authorizes the Department of Defense to cooperate with and assist the Boy Scouts of America in establishing and providing facilities and services for members of the Armed Forces and their dependents, and civilian employees of the Department of Defense and their dependents, at locations outside the United States;

Whereas sections 4682, 7541, and 9682 of title 10, United States Code, authorize the Department of Defense to sell and, in certain cases, donate obsolete or excess material to the Boy Scouts of America to support its activities; and

Whereas Public Law 92–249, enacted on March 10, 1972, and codified as section 2554 of title 10, United States Code, recognizes that Boy Scout Jamborees may be held on military installations and authorizes the Department of Defense, in support of Boy Scout Jamborees, to lend certain equipment and to provide transportation from the United States or military commands overseas, and return, at no expense to the United States Government, and to provide other personnel services and logistical support to the Boy Scouts of America to support national and world gatherings of Boy Scouts at events known as Boy Scout Jamborees: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the Department of Defense should continue to exercise its long-standing statutory authority to support the activities of the Boy Scouts of America, in particular the periodic national and world Boy Scout Jamborees.

Mr. NELSON of Florida. Mr. President, today I rise to submit a concurrent resolution on behalf of myself, Senators ALLARD, ALLEN, BEN NELSON of Nebraska, SESSIONS and ENZI expressing the sense of the Congress that the Department of Defense should continue to exercise its statutory authority to support the activities of the Boy Scouts of America, in particular the periodic national and world Boy Scout Jamborees.

I ask unanimous consent that, the attached letter from Secretary of Defense Rumsfeld be printed in the RECORD.

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

THE SECRETARY OF DEFENSE,
Washington, DC, December 2, 2004.

The SPEAKER,
House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: The Department of Defense (DOD) has a long tradition of providing worldwide support for Boy Scout activities, which have been mutually beneficial to the Department and the Boy Scouts of America. I am especially appreciative of the efforts undertaken by numerous Scouting organizations to assist Service members deployed in the war on terrorism.

As you are aware, the American Civil Liberties Union sued the Department of Defense, the Department of Housing and Urban Development, and others, challenging the various statutory authorizations of support for the Boy Scouts on the grounds that they violate the Establishment Clause of the First Amendment. The Department of Justice is fighting the lawsuit, and the Department of Defense is assisting in all respects.

The Department of Defense entered a ''partial settlement'' in the litigation, which apparently resolved a small component of the overall lawsuit. I was unaware of this settlement, but I have since been advised that this agreement does not fundamentally change the long-standing relationship between America's Boy Scouts and U.S. military installations. I have been assured that Scouts will continue to have access to our facilities for camping, hiking, fishing, etc.

I am concerned with the impression left by the ACLU in recent reporting of this matter that suggests the Department of Defense is changing its relationship with the Boy Scouts. Recently, I supported Sense of Congress resolutions introduced in the House and Senate that the Department should continue to exercise its statutory authority to

support the activities of the Boy Scouts, in particular the periodic national and world Boy Scout Jamborees.

I also have reviewed legislation recently introduced that affirms Congressional support for Scouting organizations. I believe this legislation is important and welcome the opportunity to work with you as it moves forward.

Sincerely,

DONALD RUMSFELD.

SENATE CONCURRENT RESOLUTION 5—CONGRATULATING THE PEOPLE OF UKRAINE FOR CONDUCTING A DEMOCRATIC, TRANSPARENT, AND FAIR RUNOFF PRESIDENTIAL ELECTION ON DECEMBER 26, 2004, AND CONGRATULATING VIKTOR YUSHCHENKO ON HIS ELECTION AS PRESIDENT OF UKRAINE AND HIS COMMITMENT TO DEMOCRACY AND REFORM

Mr. LUGAR (for himself and Mr. BIDEN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 5

Whereas the establishment of a democratic, transparent, and fair election process for the 2004 presidential election in Ukraine and of a genuinely democratic political system have been prerequisites for that country's full integration into the international community of democracies;

Whereas the Government of Ukraine has accepted numerous specific commitments governing the conduct of elections as a participating State of the Organization for Security and Cooperation in Europe (OSCE);

Whereas the election of Ukraine's next president was seen as an unambiguous test of the extent of the Ukrainian authorities' commitment to implement these standards and build a democratic society based on free elections and the rule of law;

Whereas a genuinely free and fair election requires government and public authorities to ensure that candidates and political parties enjoy equal treatment before the law and that government resources are not employed to the advantage of individual candidates or political parties;

Whereas a genuinely free and fair election requires the full transparency of laws and regulations governing elections, multiparty representation on election commissions, and unobstructed access by candidates, political parties, and domestic and international observers to all election procedures, including voting and vote-counting in all areas of the country;

Whereas efforts by national and local officials and others acting at the behest of such officials to impose obstacles to free assembly, free speech, and a free and fair political campaign took place throughout Ukraine during the entire 2004 presidential election campaign without condemnation or remedial action by the Government of Ukraine;

Whereas on October 31, 2004, Ukraine held the first round of its presidential election and on November 21, 2004, Ukraine held a runoff presidential election between the two leading candidates, Prime Minister Viktor Yanukovich and opposition leader Viktor Yushchenko;

Whereas a consensus of Ukrainian and international election observers determined that the runoff election did not meet a considerable number of international standards for democratic elections, and these observers specifically declared that state resources were abused in support of Viktor Yanukovich, and that illegal voting by absentee ballot, multiple voting, assaults on electoral observers and journalists, and the use of counterfeit ballots were widespread;

Whereas following the runoff presidential election on November 21, 2004, tens of thousands of Ukrainian citizens engaged in peaceful demonstrations in Kiev and elsewhere to protest the unfair election and the declaration by the Ukrainian Central Election Commission that Viktor Yanukovich had won a majority of the votes;

Whereas, on November 25, 2004, the Ukrainian Supreme Court blocked the publication of the official runoff election results thus preventing the inauguration of the next president of Ukraine until the Supreme Court examined the reports of voter fraud;

Whereas on November 27, 2004, the Parliament of Ukraine passed a resolution declaring that there were violations of law during the runoff presidential election on November 21, 2004, and that the results of the election did not reflect the will of the Ukrainian people;

Whereas on December 1, 2004, the Parliament of Ukraine passed a no confidence motion regarding the government of Prime Minister Viktor Yanukovich;

Whereas European mediators and current Ukrainian President Leonid Kuchma began discussions on December 1, 2004, to attempt to work out a resolution to the standoff between the supporters of both presidential candidates;

Whereas on December 3, 2004, the Ukrainian Supreme Court ruled that the runoff presidential election on November 21, 2004, was invalid and ordered a new presidential election to take place on December 26, 2004;

Whereas on December 8, 2004, the Parliament of Ukraine passed laws to reform the Ukrainian electoral process, including to reconstitute the Ukrainian Central Election Commission, and to close loopholes for fraud in preparation for a new presidential election;

Whereas on December 26, 2004, the people of Ukraine again went to the polls to elect the next president of Ukraine in what the consensus of domestic and international observers declared as a more democratic, transparent, and fair election process with fewer problems than the previous two rounds;

Whereas on January 10, 2005, the election victory of opposition leader Viktor Yushchenko was certified by the Ukrainian Central Election Commission; and

Whereas the runoff presidential election on December 26, 2004, signifies a turning point for Ukraine which offers new hope and opportunity to the people of Ukraine: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) commends the people and Government of Ukraine for their commitment to democracy and their determination to end the political crisis in that country in a peaceful and democratic manner;

(2) congratulates the people and Government of Ukraine for ensuring a free and fair runoff presidential election which represents the true choice of the Ukrainian people;

(3) congratulates Viktor Yushchenko on his election as President of Ukraine;

(4) applauds the Ukrainian presidential candidates, the European Union and other European representatives, and the United States Government for the role they played in helping to find a peaceful resolution of the crisis;

(5) acknowledges and welcomes the strong relationship formed between the United States and Ukraine and expresses its strong and continuing support for the efforts of the Ukrainian people and the new Government of Ukraine to establish a full democracy, the rule of law, and respect for human rights; and

(6) pledges its assistance to the strengthening of a fully free and open democratic system in Ukraine, the creation of a prosperous free market economy in Ukraine, the reaffirmation of Ukraine's independence and territorial sovereignty, and Ukraine's full integration into the international community of democracies.

Mr. LUGAR. Mr. President, today I offer a resolution celebrating the December 26 election in Ukraine. I am pleased that Ukraine has dominated newspaper headlines and media broadcasts all over the world for the last sixty days. In that time, extraordinary events have occurred. A free press has revolted against government intimidation and reasserted itself. An emerging middle class has found its political footing. A new generation has found its hope for the future. A society has rebelled against the illegal activities of its government. It is in our interests to recognize and protect these advances.

I congratulate the people of Ukraine in their undeniable quest for freedom and democracy. Furthermore, I would also like to congratulate President Viktor Yushchenko, who was inaugurated last Sunday, for his victory.

The December 26 election in Ukraine was a tribute to Ukraine's maturing democracy and places Ukraine on a path to join the community of European democracies. A fraudulent and illegal election would have left Ukraine crippled. The new president would have lacked legitimacy with the Ukrainian people and the international community.

With the stakes so high, I commend President Bush, his Administration, and the international community for providing the people of Ukraine with the support they needed to withstand the threats to free and fair elections. Even in the face of repeated attempts to end any hope of a free and fair election, I was inspired by the willingness and courage of so many citizens of Ukraine to demonstrate their passion for free expression and the building of a truly democratic Ukraine.

I am hopeful that the momentum to foster democratic freedom around the world will continue. In his inaugural speech last week, President Bush stated his unequivocal support for democracy and put securing individual freedom at the forefront of America's foreign policy. I agree with the President. We must be prepared to play an active role in ensuring that democracy and basic freedoms are promoted and preserved around the world.

The future of Ukraine rests with its leaders and its people, but the United States and Europe must continue to support a foundation of democracy, rule of law, and a market economy, which will allow Ukraine to prosper and reach its full potential. I urge my colleagues to lend their support to U.S. policy in Ukraine and ask their support for this resolution.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that the following hearings have been scheduled before the Committee on Energy and Natural Resources to consider the President's Proposed Budget for FY 2006 for the agencies and programs under the jurisdiction of this Committee:

Tuesday, March 1 at 10 a.m., in Room SD–366—Department of the Interior.

Wednesday, March 2 at 10 a.m., in Room SD–366—Forest Service.

Thursday, March 3 at 10 a.m., in Room SD–366—Department of Energy.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit testimony for the hearing send two copies of their testimony to the Committee on Energy and Natural Resources, U.S. Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Carole McGuire at 202–224–0537.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. LUGAR. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open executive session during the session on Tuesday, January 25, 2005, at 10 a.m., to organize for the 109th Congress. The committee will also consider favorably reporting the nomination of Michael O. Leavitt, to be Secretary of Health and Human Services.

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

PRIVILEGE OF THE FLOOR

Mr. CORNYN. Mr. President, I ask unanimous consent that Brian George, an intern in my office, be granted the privileges of the floor for the duration of my remarks.

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

HONORING THE LIFE OF JOHNNY CARSON

Mr. LUGAR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 10, submitted earlier today by Senator NELSON of Nebraska.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 10) honoring the life of Johnny Carson.

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

Mr. LUGAR. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 10) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 10

Whereas Johnny Carson, a friend to the United States Senate, passed away January 23, 2005;

Whereas Johnny Carson was a philanthropist, friend, and favorite Nebraska native son;

Whereas Johnny Carson was born in Iowa, raised in Norfolk, Nebraska, and made famous in Hollywood as a late night friend to all of America;

Whereas Johnny Carson served in the United States Navy as an ensign during World War II;

Whereas Johnny Carson late hosted ''The Tonight Show'' for 30 years;

Whereas Johnny Carson was best known as America's late night king of comedy;

Whereas Johnny Carson was one of the biggest stars in Hollywood but never forgot his roots;

Whereas Johnny Carson was respected by his colleagues as a gentleman; and

Whereas Johnny Carson was bright and witty, and always set the highest of standards for his performances: Now, therefore, be it

Resolved, That the Senate—

(1) mourns the loss of Johnny Carson;

(2) recognizes the contributions of Johnny Carson to his home State of Nebraska;

(3) admires the sense of humor and late night presence of Johnny Carson in homes in the United States for over 30 years;

(4) expresses gratitude for the lifetime of memories Johnny Carson provided; and

(5) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the family of Johnny Carson.

HONORING THE SERVICE OF REVEREND LLOYD OGILVIE

Mr. LUGAR. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 11, submitted earlier today.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 11) honoring the service of Reverend Lloyd Ogilvie.

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

Mr. LUGAR. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 11) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 11

Whereas a decade ago, on January 24, 1995, the Reverend Lloyd Ogilvie was elected by the Senate as its 61st Chaplain;

Whereas Reverend Lloyd Ogilvie is a friend and confidant to Senators, and to many staff members and Senate employees;

Whereas Reverend Lloyd Ogilvie was always a soothing presence in a body whose Members are sometimes at loggerheads;

Whereas Reverend Lloyd Ogilvie is someone upon whom Democrats and Republicans, men and women of different religious faiths, can count as a sympathetic and trusted advisor; and

Whereas after the tragedy of September 11, 2001, and until his retirement in 2003, we depended on him even more to strengthen our spirit and help us find consolation in Scripture: Now, therefore, be it

Resolved, That the Senate honors the significance of this 10-year anniversary by declaring to the Reverend Lloyd Ogilvie that we remember his loving service to the Senate and this Country, and use this anniversary to express our gratitude to him for his ministry to the Senate family.

COMMENDING THE UNIVERSITY OF SOUTHERN CALIFORNIA TROJANS FOOTBALL TEAM

Mr. LUGAR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 12, submitted earlier today by Senators FEINSTEIN and BOXER.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 12) commending the University of Southern California Trojans football team for winning the 2004 Bowl Championship Series national championship game.

The Senate proceeded to consider the resolution.

Mrs. FEINSTEIN. Mr. President, as a strong supporter of California's college athletes, I rise today with Senator BOXER in support of S. Res. 12 commending the University of Southern California Trojans football team for winning the 2004 Bowl Championship Series national championship game.

No one who witnessed the Trojans decisive 55 to 19 victory over the University of Oklahoma in the FedEx Orange Bowl can deny that USC is the best college football team in the Nation. Led by Head Coach Pete Carroll, the Trojans brought home their 11th national championship, their 22nd straight win, and 27th victory in a bowl game, second all time to only the University of Alabama.

Not even the most die-hard Trojan fan could have anticipated such a win.

In addition to winning 13 games during the 2004 season for the first time in the history of the school, USC became the first team since the University of Nebraska in 1994–1995 to repeat as Associated Press national champions and the second team to start and finish the season at number one in the Associated Press poll. As the number one team in the country, they took on the best and they beat the best.

Every USC player deserves praise and recognition for their fine play on the field, but I would like to particularly point out the accomplishments of Heisman Trophy winner and Associated Press Player of the Year, quarterback Matt Leinert, who completed 18 of 35 passes for a total of 332 yards and set an Orange Bowl record with five touchdown passes. There were times when he could do no wrong and his play reminded me of a couple quarterbacks from my hometown team, the 49ers: Joe Montana and Steve Young.

Matt has also distinguished himself by announcing that he would return to school for his senior year, foregoing an opportunity to be the first pick in the National Football League draft. I wish more college athletes would follow his lead.

Ultimately, however, this was a team win featuring a high scoring offense and a tenacious defense. USC ranked in the top 10 in every defensive category and set a school record by scoring at least 20 points in the last 38 games.

Led by All-Americans Matt Leinert, tailback Reggie Bush, defensive tackle Shaun Cody, and linebacker Matt Grootegoed, USC brought much pride to the University and the Pacific Ten Conference.

Legions of Trojan fans across the country celebrated the victory and have already made plans for a return trip to the championship game in 2005.

And anyone who has seen a USC game over the past few years knows that another championship run is a strong possibility.

Let me also take a moment to congratulate the University of Oklahoma Sooners for their great season. They were a worthy opponent and a credit to the University and their State.

Years from now, as Americans engage in one of their favorite pastimes and debate the great college football teams of all-time, the 2004 University of Southern California Trojans will surely make the list. I congratulate the team once again for their incredible season and I look forward to watching them make another run at a championship next year.

Mrs. BOXER. Mr. President, I rise to pay tribute to the outstanding accomplishments of the University of Southern California football team. Earlier this month, the Trojans completed a perfect season by winning the Orange Bowl and their second consecutive national championship.

Last year, USC shared the championship after being excluded from the Bowl Championship Series title game.

This year, there was no doubt. The Trojans won all 13 of their games and led both the Associated Press and the USA Today/ESPN coaches polls from the preseason through the bowl games.

On Tuesday, January 4, they ended the season with a bang. In a much-anticipated meeting with second-ranked Oklahoma, the Trojans overwhelmed the Sooners by a score of 55–19 to win the Orange Bowl and the national championship in utterly convincing fashion.

I would like to congratulate USC President Steven B. Sample, Head Coach Pete Carroll, and the Trojan football team for an unforgettable season.

Mr. LUGAR. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 12) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 12

Whereas the University of Southern California Trojans football team won the 2004 Bowl Championship Series national championship game, defeating Oklahoma University by a score of 55 to 19 in the FedEx Orange Bowl at Pro Player Stadium in Miami, Florida, on January 4, 2004;

Whereas the University of Southern California Trojans football team has won 11 national championships;

Whereas the University of Southern California Trojans football team has won 34 Pacific 10 conference championships;

Whereas the University of Southern California Trojans football team has won 27 bowl games, only 2 games fewer than the University of Alabama;

Whereas the University of Southern California Trojans football team won 13 games during the 2004 season for the first time in the history of the school and became the first team since the University of Nebraska in 1994–1995 to repeat as Associated Press national champions and the second team to start and finish the season at number 1 in the Associated Press poll;

Whereas the University of Southern California Trojans football team has won 22 consecutive games;

Whereas the University of Southern California Trojans football team is ranked in the top 10 in every defensive category;

Whereas the University of Southern California Trojans football team has set a school record by scoring at least 20 points in its last 38 games;

Whereas Head Coach Pete Carroll has a record of 42 wins, 9 losses at the University of Southern California and is the second University of Southern California coach to win back-to-back national championships;

Whereas Heisman Trophy winner and Associated Press Player of the Year, quarterback Matt Leinart, completed 18 of 35 passes for a total of 332 yards and set an Orange Bowl record with 5 touchdown passes;

Whereas tailback Reggie Bush was a Heisman Trophy finalist and the winner of the Chic Harley award, presented annually to the College Football Player of the Year by the Touchdown Club of Columbus; and

Whereas quarterback Matt Leinert, tailback Reggie Bush, defensive tackle Shaun Cody, and linebacker Matt Grootegoed were named to the Associated Press All-American first team: Now, therefore, be it

Resolved, That the Senate—

(1) commends the University of Southern California Trojans football team for winning the 2004 Bowl Championship Series national championship game; and

(2) directs the Secretary of the Senate to make available to the University of Southern California enrolled copies of this resolution for appropriate display;

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. LUGAR. Mr. President, I ask unanimous consent that immediately following the vote on the Rice nomination, the Senate remain in executive session and proceed to the consideration of Calendar No. 5, the nomination of Jim Nicholson to be Secretary of Veterans Affairs; provided further that there be 30 minutes equally divided between the chairman and ranking member, and that at the expiration or yielding back of time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate; provided further that following the vote the President be immediately notified of the Senate's action; provided further that following that vote, the Senate proceed to the consideration of the nomination of Michael Leavitt to be Secretary of Health and Human Services; that there be 2 hours of debate equally divided between the chairman and ranking members or their designees, and that following the use or yielding back of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

Finally, I ask unanimous consent that the President then be notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LUGAR. I thank the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, on our side, I ask unanimous consent that the time for debate on the Leavitt nomination be divided as follows: Senator BAUCUS, 15 minutes; Senator DORGAN, 15 minutes; Senator STABENOW, 20 minutes; and Senator KENNEDY, 10 minutes.

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

APPOINTMENTS

The PRESIDING OFFICER. The Chair announces on behalf of the Committee on Finance, pursuant to section 8002 of title 26, U.S. Code, the designation of the following Senators as members of the Joint Committee on Taxation: the Senator from Iowa, Mr. GRASSLEY; the Senator from Utah, Mr. HATCH; the Senator from Mississippi,

Mr. LOTT; the Senator from Montana, Mr. BAUCUS; and the Senator from West Virginia, Mr. ROCKEFELLER.

ORDERS FOR WEDNESDAY, JANUARY 26, 2005

Mr. LUGAR. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, January 26. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for the two leaders be reserved, that there then be a period of morning business equally divided until 10:30 a.m., with the first half of the time under the control of the Democratic leader or his designee, and the remaining time under the control of Senator BROWNBACK or his designee; provided that at 10:30 a.m. the Senate proceed to executive session, as provided under the previous order; provided further that the vote occur on the Rice nomination at 11:30 a.m. with the debate prior to the 11:30 a.m. vote occurring in the following order: Senator LUGAR, Senator BIDEN, Senator BOXER, Senator BYRD, Senator REID, and Senator FRIST.

I further ask that the last 5 minutes be reserved for Senator LUGAR or his designee.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

PROGRAM

Mr. LUGAR. Mr. President, tomorrow, following morning business, the Senate will resume debate on the nomination of Condoleezza Rice to be Secretary of State. Under the order, there will be 1 hour of debate on the nomination prior to the vote on confirmation. Again, the vote on the Rice nomination will occur at 11:30 a.m.

Following that vote, the Senate will act on two additional Cabinet nominations; Jim Nicholson to be Secretary of Veterans Affairs and Michael Leavitt to be Secretary of Health and Human Services. Under the agreement just entered, we will require some time to debate each nomination, but rollcall votes will not be necessary. The Senate may also act on other nominations should they become available.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. LUGAR. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:52 p.m., adjourned until Wednesday, January 26, 2005, at 9:30 a.m.