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Senate

The Senate met at 9:45 a.m. and was called to order by the Hon. DAVID VITTER, a Senator from the State of Louisiana.

The PRESIDING OFFICER. Today's prayer will be offered by our guest Chaplain, Pastor Aubry L. Wallace. Chaplain Wallace is from the Sheriffs's Department of Chilton County, AL.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray: That Almighty God will grant to this body His concurring aid in the governing process of these United States.

Our Eternal Father, He who watches over the affairs of mankind, I humbly pray that Your protection and guidance be with these Senators here assembled as they deliberate. Bless these in whose hands You have allowed the future of our beloved Nation to rest. Guide them by Your Holy Spirit. May every decision be right and in accordance with Your divine wisdom and will.

Keep them safe from any who would do them harm. Let no evil spirit affect their will to do justly, to love mercy, and to walk humbly with their God.

Heavenly Father, make them aware of Your presence as they participate in this grand experiment we call human government. And at the close of this session may they hear from You these words: Well done, good and faithful servant.

In the Name of His Son Jesus I pray. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DAVID VITTER led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 15, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DAVID VITTER, a Senator from the State of Louisiana, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Mr. President, the Senate will begin today with a period of morning business until 12:30. At 12:30 the Senate will recess until 2:15 for the weekly party luncheons. Following the luncheons, we will resume debate in executive session on the nomination of Michael Chertoff to be Secretary of Homeland Security. Debate is equally divided until 4 this afternoon, with the vote occurring on the confirmation of Mr. Chertoff at 4 p.m. That vote will be the first vote of the day.

Yesterday I mentioned a number of items that are possible over the course of this week. Today we will continue to try to clear those bills for floor action. They include the genetic nondiscrimination bill, the high-risk pool legislation, a Nazi war crimes bill, the committee funding resolution, and any additional nominations that may be reported by the respective committees.

We will, over the course of the day, keep all Members notified of the schedule as we bring these matters forward for floor consideration.

LEGISLATIVE ACCOMPLISHMENTS AND A LOOK AHEAD

Mr. FRIST. Mr. President, I will take just a few moments at the beginning of today to comment on last week and a brief look ahead.

Last Thursday, the Senate achieved its first legislative victory, a bipartisan victory of the 109th session. By a vote of 72 to 26, the Senate passed the Class Action Fairness Act. The process was that we worked together across the aisle from beginning to end. The bill was introduced with 32 cosponsors, 24 Republicans and 8 Democrats. It came out of the Judiciary Committee on a strong bipartisan vote. Every vote on every amendment was bipartisan, and the vote on final passage was strongly bipartisan as well.

I stress the bipartisanship because in the 109th Congress we have a lot to do, and it is going to demand that we continue to work together in that same spirit. I thank my colleagues on both sides of the aisle for their fairness and cooperation. We have delivered to the American people a significant victory in the battle for fairness in the courts.

The class action bill does protect plaintiffs' rights while reining in the rampant abuse within the system itself. The consumer bill of rights protects plaintiffs from predatory lawyers and guarantees that they receive just compensation. The legislation restores justice to our court system by ending that practice of forum shopping, where we had nationwide cases that genuinely impact interstate commerce being moved to the Federal courts where they belong.

It took a while to have this success last week. Senator GRASSLEY, who was

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the lead sponsor on the bill, has been working on this for over a decade, and versions of this bill passed through the Judiciary Committee in each of the last two Congresses. In 2003, it came within one vote of passage. Finally, because of the continuing work of both sides of the aisle, people came together to recognize the intent was right, the legislation at different points could be improved, it was improved, and then we had relatively quick passage of it. The House will be addressing the bill shortly. Then hopefully we can have a bill to the President of the United States to be signed into law for the benefit of the American people.

Also, at the beginning of last week, on Monday, we passed a resolution commending the Iraqi people on their January 30 elections. As we saw over the weekend, those elections were finalized and, in terms of the final reports, again, it is a great victory for freedom and liberty throughout the world. It was an extraordinary event, and it was fitting that we came together on this floor to celebrate and commend the process and the results in those elections.

It was in the midst of terrorist blasts and terrorist threats that 8 million Iraqi voters streamed to over 5,000 polling stations to express that influence, that power and dignity that comes with voting. The various pictures that we all saw of families bringing their sons and daughters so that they could witness this moment in history is something that captures us all.

As I mentioned, over the weekend the votes were tallied of the 8.5 million people voting. For the first time in decades the Iraqi people have been able to speak and to speak freely—and they were heard, as we saw with the outcome. It is a transformation that is fundamental. It is a fundamental transformation of power from the people, instead of over the people. This has renewed a sense of momentum and optimism and hope.

The process, as we see, continues to unfold with negotiations going on as to who will be part of the Presidential Council. Again, looking from afar, from where we sit it is very encouraging to see the various coalitions working with each other, Shiites working with the Sunnis and working with other minority parties, all working together to fashion this government. It is an exciting time for the Iraqi people and all who watch.

Jumping ahead, today we will, as I mentioned in my opening statement, vote on the nomination of Judge Michael Chertoff to lead the Department of Homeland Security. We have heard much about the judge, both in committee and then on the floor yesterday, and we will over the course of today. He has a long and distinguished career in public service and law enforcement. In the mid-1980s he was an assistant U.S. attorney alongside Rudy Giuliani. He aggressively prosecuted mob and political corruption cases. He then went on to become New Jersey's U.S. attorney, where he oversaw high-profile and politically sensitive prosecutions in Jersey City, actually prosecuting the mayor of Jersey City, Mayor Gerald McCann, New York chief judge Sol Wachtler, and the kidnappers and killers of Exxon oil executive Sidney Reso. Fearless and scrupulous as a prosecutor, he became known not only for his legal brilliance but also for his skills as a manager and leader.

We all saw that take real meaning after 9/11. For the 20 hours after that worst ever attack on American soil, Judge Chertoff was central in directing our response. It was through his work as Chief of the Justice Department's Criminal Division that they traced the 9/11 killers back to al-Qaida, a central focus. We are indebted for all these things to his strong and unwavering leadership.

For the next 2 years Judge Chertoff was the key figure shaping our antiterrorism policies. His experience working directly with law enforcement, his expertise in homeland security policy, and his proven ability to lead in times of national crisis make him overwhelmingly qualified to direct our Homeland Security Department.

He earned unanimous approval in committee last week, with one member voting ''present.'' I am confident that today Judge Chertoff, who has already been confirmed by this body three times, will receive overwhelming, strong bipartisan support. He is an outstanding candidate and we all look forward to working with him in his new capacity.

Another matter of security, a different type of security, which I hope we will be addressing this week—I mentioned it also a little earlier—is the Genetic Nondiscrimination Act. This is the security of information about us that can be used to give us health care security. It is a bill that many of us on the floor have been working on aggressively over the last 7, 8 years. The bill, the Genetic Nondiscrimination Act, is just that. The bill is designed to protect Americans from having valuable genetic health information abused or misused by others—for example, being used against them to get health insurance coverage or being used in some way to discriminate against them for a future job. This whole field of genetic testing and genetic information has blossomed, in part because of a wonderful public-private project that was over about a 10-year period called the Human Genome Project. This explosion of information has introduced these genetic tests that can have—and it is early, they are early—but they do have the potential for having great predictive value regarding what disease or illness you might have later in life, and would allow you to prevent that, to take preventive measures if that is the case.

Right now, scientists tell us most Americans have about a half dozen potentially harmful genetic mutations. That is a statement that will change a week from now, a month from now, a year from now, as we learn more and more about it, but the point of this bill is that people run the risk of losing their jobs or not being promoted or not being able to get an insurance policy based on getting this test which could be of so much benefit to them. We need to prevent it, and we need to do it now, instead of waiting until it becomes a huge problem in the future.

One study in 2003 found that 40 percent of people at risk for colon cancer refused to participate in a screening exam, many citing the fear that the results might in some way cause them to lose their health insurance. That means they don't get this test. If they don't get the test, they lose the potential benefit to their own health and health security in the future. The knowledge of genetic risk has the power to save lives. As we look at tests that are early, and they are just being proven—the tests for heart disease, Alzheimer's, Parkinson's, a host of other diseases—there is great hope in these genetic tests becoming a powerful tool. The legislation we are considering this week is intended to make sure genetic testing is used as a tool to help and not hurt. I hope we will be able to pass that bill so that medical science does deliver a meaningful solution and keeps America moving forward.

I yield the floor.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business until the hour of 12:30 p.m. with the first 30 minutes under the control of the Democratic leader or his designee and the next 30 minutes under the control of the majority leader or his designee and the remainder of the time equally divided between the two leaders or their designee.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Illinois is recognized.

TSUNAMI ASSISTANCE—NEW MODEL FOR DEVELOPMENT

Mr. DURBIN. Mr. President, pursuant to that consent, I would like to be recognized to speak to an issue which the whole world has focused on over the last several weeks and months. Within a few weeks, the Senate is likely to vote to send hundreds of millions

of dollars in assistance to the nations that were devastated by the tsunami on December 26. We have seen the videotapes. We cannot forget them. Within a matter of minutes on that terrible day, whole families and villages were swept to sea. Schools, clinics, and hospitals were destroyed. Coastal cities were eliminated. What infrastructure there was in place was wiped out.

We are doing the right thing to come to the assistance of the victims of this disaster, one of the 10 most devastating natural disasters in recent history, but we should not overlook the fact there are many other challenges in this world. Millions have died in the Congo and the Sudan. Hundreds of thousands are still at risk. Preventable, treatable diseases kill millions more every year. Someone dies of AIDS every 10 seconds in this world. Someone new is infected every 6 seconds. Poverty kills. Bad water, hunger, poor sanitation kills; they are the weapons of economic injustice and economic disparity.

Nelson Mandela said recently:

> Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings.

Overcoming poverty is not just a gesture of charity; it is an act of justice. It is the protection of a fundamental human right, the right to dignity and a decent life. Our attention now focuses on the Indian Ocean, as it should. But let's not overlook the suffering in the world.

A number of years ago I went to Bangladesh. I went there to look at food programs. In the course of my visit, I met one of the most extraordinary people I ever had the pleasure to meet. His name was Muhammad Yunus. Muhammad Yunus, not that long ago in 1976, was an economics professor. Having taken a few economic courses—I remembered my professors—he would have blended in with the faculty of most universities.

He had an idea. It was an idea that was borne out of human experience. It involves basic economics. Dr. Yunus thought for a moment, what if we gave the poorest people on Earth a small sum of money, what would they do with it? Would they pay it back? They were two very basic questions. The issue came up because he saw in many of the poorest villages of Bangladesh people who were being exploited by those who would lend them money and charge them outrageous interest rates. He started something called Grameen Bank, which means the people's bank in their local language in 1976. The concept behind it was to give a very small loan to people who were very poor.

Now, 29 years later, as I stand in the Senate, Dr. Yunus's theory of microcredit and the Grameen Bank grew from a class project to a world-wide phenomenon. Today, there are 80 million families in the world who are benefiting from Dr. Yunus's concept of microcredit. We estimate some 400 million people will benefit; 98 percent of them are women. These are people who are part of a quiet revolution. I have seen it firsthand. Their lives have been transformed. They have enough money to feed their children, to buy basic tools, maybe to buy a goat for milk, perhaps to buy a sewing machine—basic things that transform their lives.

They pay the money back. They pay it back so others in the village can borrow money, as well. The average loan for many of Dr. Yunus's clients in Bangladesh is $9. With $9, many people go from being a beggar to a businessperson. He actually decided that because Bangladesh did not have a telephone system that he would buy cell phones and he would loan money to people so they could purchase them. Go to the remote villages and there sit 10 women holding a cell phone. With these cell phones, they go to their villages, they sell them minutes on the phone, and they make a living. They are the Grameen Telephone Company, the telephone women who borrowed enough money to buy a cell phone and now make a living with that cell phone. Incidentally, they charge their cell phones with a solar-powered generator. They are thinking ahead. This type of thing is happening all over the world.

The reason I raise it is because when Dr. Yunus came to see me 2 weeks ago here in Washington we talked about the tsunami. He said there is so much that needs to be done there. They need to rebuild communities. They need to rebuild lives, but do not overlook the fact that the ocean, as it came in, swept away the schools and the teachers with it. Now the surviving children who are there are in camps trying to survive instead of thinking about thriving, going to school and giving back.

Dr. Yunus said to me, this man who comes up with amazing, simple ideas: Senator, why don't we create a tsunami scholars program? Why aren't we focusing on these children and their education? It is so simple and so obvious: To rebuild the schools, to bring in trained teachers so these kids have a chance but to take it a step beyond. What if we said across this world that we would challenge all colleges and universities to take two students from the tsunami area, students who would qualify to come to school, but to give these kids a chance at an education so they could go home and rebuild those villages and rebuild those nations?

Another challenge from Dr. Yunus, very basic, from a man who understands poverty at the most basic level. We are working on that now. We think we can put together a proposal that the United States can help to lead the world into considering.

The devastation of the tsunami took only a few minutes. It will take years to overcome. If we do the right things, we can rebuild those societies in the right way. The people living there are going to know a lot about us in the process. They will know that some of what they have been told about the United States is not true. Some who want them to be terrorists and to hate the United States will have a hard time explaining how the United States came to the assistance of these poor people after the tsunami and how we stood by them and their children in their education afterwards.

It is a small thing. It is important. It helps explain who we are. Tsunami scholarships are one example of how we can make certain we do not abandon the victims of this disaster after the headlines are gone. It is important we show this to the world, especially to the Muslim world, of what the American character is made.

I want to give these children of Indonesia, Thailand, Sri Lanka, India, and elsewhere a chance at an education that will not only transform their lives but allow them to go back and transform their countries.

The poet, Lord Byron, advised: Be thou the rainbow to the storms of life.

The peoples of the Indian Ocean have seem the storms. Let us be the rainbow that follows. Education is the most valuable tool you can put in the hands of anyone, particularly a child. As the children of the tsunami grow, let's make sure their opportunities for education are not constrained by misfortune or geography.

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

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

The bill clerk proceeded to call the roll.

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

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

Mr. ALLARD. Mr. President, I understand we are in Republican-allocated time on morning business.

The ACTING PRESIDENT pro tempore. The Senator is correct.

SUPPLEMENTAL APPROPRIATIONS

Mr. ALLARD. Mr. President, for the last 4 years, the United States has been locked in combat with the forces of terror. These extremists do not understand freedom and are trying even to this very day to spread their message of hate and oppression. America did not fire the first shot. Those killed on September 11 were innocent and did not deserve to die. They should be with us today. The forces of terror remain determined to defeat our Nation. They believe the United States will abandon Iraq and Afghanistan. They question our will to fight. They doubt our courage and our fortitude. They are wrong.

Our Nation has stepped up to fight and has never looked back. Under President Bush's leadership, our country has taken the battle to the enemy. As the President said in his State of the Union Address:

> Our country is still the target of terrorists who want to kill many and intimidate us all,

and we will stay on the offensive against them until the fight is won.

In less than 3 months after September 11, United States and Afghan forces toppled the Taliban regime, a brutal theocracy shielding al-Qaida and other terrorists. A year after September 11, the President challenged the United Nations to confront another protector of terror, Saddam Hussein. This cruel dictator threatened his neighbors, his people, and our country with his support for terror and his pursuit of weapons of mass destruction. He lied, cajoled, intimidated, and murdered. Our Nation did not stop with Afghanistan and Iraq. Our forces have sought out the enemy, cut off his funding resources, and disrupted his plans. We have captured thousands of terrorists, destroyed their networks, and prevented new attacks. There have been many successes in this war, and we should be encouraged and strengthened by our progress.

Our men and women in our Armed Forces are the real heroes in this conflict. They have fought and sacrificed for our country. Tragically, some have paid the ultimate price. Today nearly 200,000 soldiers, sailors, airmen, and marines are deployed in hotspots around the world. They continue to take the fight to the enemy and defeat him wherever he appears. Our men and women in uniform are determined and ready.

I visited our troops in Iraq and Afghanistan, and I have seen with my own eyes their commitment and determination. It is phenomenal. They believe in what they are doing. They know they are making a difference. I am reminded of those who have already sacrificed much but yet have not given up and remain committed to their duty. Soldiers such as Army CPT David Roselle have been an inspiration to me and many other Coloradans. While on patrol last year in Iraq, Captain Roselle lost a leg when an antitank mine went off nearby. After several surgeries and intense physical therapy, Captain Roselle rebuilt and retrained his muscles. He conducted 4-hour sessions of daily exercise, including mountain biking, weight lifting, swimming, and climbing. Six months after his last surgery, Captain Roselle was skiing down the slopes of the Colorado Rockies.

But the story does not end there. Now just over a year later, Captain Roselle is still in the Army, and commands the headquarters company of the 3rd Army Cavalry and is preparing to deploy with the unit this spring. It is Captain Roselle's relentlessness, his call to duty, and his determination to defend our great Nation that tells me that our forces are strong and victory remains the only option.

Our men and women deployed in combat are not the only heroes. I cannot fully express my admiration for the families of these soldiers, sailors, airmen, and marines. For months at a time, military families are asked to hold everything together and support their loved ones overseas. They have done this and have done it with pride.

Organizations such as Colorado's Home Front Heroes have also stepped up and supported our troops. Home Front Heroes has provided family support when none was available and sent thousands of care packages to our soldiers deployed overseas. The organization led the drive to get the State of Colorado to designate March 29 Support Our Troops Day. And in one case, Home Front Heroes actually paid for family members to travel to Germany to visit their wounded loved ones.

I see it all over Colorado. There is a steely determination to see the global war on terrorism completed and victory achieved. That is why it is more important than ever for Congress to do its part.

This week the Senate will receive the President's request for supplemental appropriations. This money is critical to continuing the war on terror and ensuring our troops have the necessary equipment, training, and information to succeed on the battlefield. While some may argue that this money should be included in the budget or that certain items are not emergencies, none of us would argue that the money is not needed. We know our troops need improved protection. Our chief of staff for the Army has testified that much of the Army's equipment is worn down and should be replaced. We owe it to our military families to provide the increased death gratuity.

As we consider this important appropriation, let us remember our successes so far. Fifty million people in Afghanistan and Iraq have tasted freedom and for most were able to cast a vote for the first time. Cities are being rebuilt and market economies are being developed. Terror networks have collapsed and funding for these networks is drying up. The war is not over, but we are making a difference. Congress must do its part. Now is the time for Congress to act.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, I recently had the good fortune to travel to Iraq with my colleagues Senator INHOFE and Senator ISAKSON. With my own eyes, I saw the political genesis of a nation moving from tyranny to liberty. This process was made possible by the skill and determination of our troops, the strides being made by the Iraqi security forces, and the growing determination of the Iraqi people to engage in the democratic process.

I cannot say enough about the sacrifice and dedication of our troops. Their professionalism and devotion to duty are truly inspiring. And I am convinced now more than ever the United States has the finest military in the world. To those who know it best, our military's might is not defined only by its sheer firepower but by the individual soldiers who all play their part in making a multifaceted operation like this possible.

Of course, our service members perform their military responsibilities with pride, with diligence, and with professionalism. But many of them also work hand to hand with the Iraqis every day trying to bridge the gaps in language, culture, and community, to forge a common bond cemented by freedom. In doing so, our men and women in uniform represent all that is good about our country.

My fellow Senators and I also visited wounded American soldiers in a military hospital in Germany on our way back from Iraq. These brave men and women who have already sacrificed so much for the cause of freedom were mostly and primarily concerned with getting back together with their units and for the well-being of their peers who are still in Iraq. That warrior spirit among these brave men and women is inspiring and gave me pause to consider what is clearly at stake for the Iraqi people.

Our National Guard and Reserves are also playing a critical role in Iraq. Three days ago I was honored to be able to welcome home the Second Battalion, 147th Field Artillery of the South Dakota National Guard from Iraq. These citizen soldiers put their lives on hold for over a year to provide critically needed support. They performed their mission effectively and honorably, and I applaud their selfless sacrifice.

The Iraqi people also deserve our admiration and thanks. While in Iraq we met with General David Petraeus who is in charge of training Iraqi securities forces. He was upbeat about their progress and the efficiency that is beginning to take root. General Petraeus's convictions were legitimized by the effectiveness shown by the Iraqi security forces on election day. Those forces were the first line of defense in successfully protecting over 5,000 polling stations throughout Iraq, none of which were penetrated by the insurgents. Some of the Iraqi security forces even gave their lives so their fellow countrymen could vote.

Perhaps the bravest of all on election day were the Iraqi citizens who also risked their lives by taking that critical first step on their journey to self-determination. The insurgents and terrorists grossly underestimated the Iraqi people's courage and thirst for freedom. The Iraqi people did not buckle under threats of violence and murder. Instead they spoke out with a great voice that has been heard throughout the world and well into the annals of recorded history. They have demanded their right to self-determination, their right to live their lives as they see fit, free from tyranny, free from fear, free from extremism. On election day, they earned that right.

Let me be clear, there is still much work that needs to be done, and there are still enemies to fight. But freedom's light does not shine without a

price. The Iraqi people know this. They understand a new Iraq must not be dominated by only one ethnic or religious sect. Many Iraqis I met with, including Shiites and others, expressed the belief that for democracy to work, the Sunnis, who now find themselves the minority, must be a part of and represented in an inclusive Iraqi government.

Of course we all look forward to a free and stable Iraq. But we should not attempt to impose an artificial time line on this goal. Instead we should focus on a conditions-based schedule that allows for a responsible transfer of responsibility from American to Iraqi troops. Our generals support that concept, not arbitrary deadlines. When the conditions are right for us to leave, we will know and so will a free and sovereign Iraq.

I believe the recent elections and the self-confidence they have inspired in the Iraqi people may represent a turning point in the struggle for democracy in Iraq. With the bravery and the dedication of our troops and the courage of the Iraqi people and their security forces, we can look forward to the day when our troops come home with the honor they have earned.

We will soon be debating legislation that will provide funding and resources for our troops to complete their mission. It is critical that in the course of this debate we understand what is happening today in Iraq and what it means for American troops who are bringing about freedom and democracy. We must make sure they have the resources, the equipment, the training, and the weaponry to succeed in this mission.

The insurgents, who continue to prey upon the fears of the Iraqi people, who resort to tactics and thuggery and indiscriminately kill innocent people, are not going to go quietly. It is important that we complete this mission. It is important that we win and secure the freedom of the Iraqi people. It was clear to me, having traveled to Iraq and listened firsthand to the stories that have been shared and conveyed by Iraqi voters, who for the first time were able to take that ink-stained finger and mark a ballot, that they are committed to the cause of freedom and democracy in their own country.

We heard statements such as ''we are profoundly grateful.'' We heard statements talking about how the mission is succeeding, but it is still fragile, how we need to continue to focus on training and equipping Iraqi security forces, and that the reconstruction needs to move faster.

Engagement with the Iraqis is the way for us to succeed, and giving the Iraqis the opportunity to govern, which is what the elections were all about. Giving the Iraqis the opportunity to defend the freedom they secured when they voted on election day should be our mission in Iraq. It is important as a nation, as a Congress, and here in the Senate, that we take the steps necessary to ensure that our troops—our young men and women who are bravely and courageously setting and laying the foundation for a safe, strong, and free Iraq—have what they need to complete that mission.

I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Georgia is recognized.

Mr. IZAKSON. Mr. President, the President has sent to us an $81.9 billion supplemental for our war against terror and the fight in Iraq and Afghanistan. This morning, in Congress Daily, I read a quote about that supplemental from the distinguished ranking member of the Appropriations Committee:

> This supplemental request provides support for our men and women in uniform, but it provides little basis for optimism for a stable and secure Iraq.

The comment of the respected distinguished Senator from West Virginia deserves amplification in terms of stability and security in Iraq.

I am pleased to have just returned from Iraq with Senator THUNE, who just spoke, and to have had the chance to see firsthand the results of what our men and women in our Armed Forces have been doing in Iraq since we deposed Saddam Hussein and began providing peace and a foundation for future security. In fact, it is that foundation I would like to address.

There are three key pillars to security and stability in Iraq. The first pillar is for us to continue this year, and for a time uncertain, to provide the Iraqi people with security so they can complete the writing of their constitution, hold their permanent elections, and allow their democracy to flourish. The second pillar is that government itself. It is essential that we pass this supplemental to continue the security and allow those who were recently elected to form their constitution and do their work.

When you talk about optimism, I have to share a story about the recent visit. Senator THUNE, Senator INHOFE, and I met with deputy Ambassador Salih, a Kurd. We met alone, with no staff, no press, no encouragement, total candor. We asked Mr. Salih, a Kurd in the minority—and even though the results of the election were not complete at the time we were there, we knew they would be in a minority. We asked:

> Don't you fear that the Shiites, who will inevitably be in the majority, will overrun you?

He said:

> Oh, no, we have a secret weapon.

This is a Kurdish leader in the middle of Iraq in the 21st century who said he had a secret weapon. He said that secret weapon is one word: ''Filibuster.'' Then he proceeded to describe their study of American democracy and our Republic. If there were ever a reason for optimism about what this supplemental provides for the people of Iraq and their stability and security, it is one of their minority leaders proudly stating one of the pillars and principles of our Government as the way they would ensure that the majority never overran the minority.

Following that meeting, we went and met with Dr. Al-Rubiae, a Shiite, obviously to be in the majority. We worried that since, for so many years, they had been the victims of the Sunnis—since they now would be in a majority, would there be a propensity to overrun the minority? So we asked:

> Dr. al-Rubiae, what will you do? Will the minority have a voice?

He said:

> The American Constitution requires two-thirds vote to amend the Constitution. We will require two-thirds vote to adopt ours.

The point is very clear. He, too, had studied Adams and Jefferson and our Founding Fathers. Knowing he would be in the majority, he recognized that the peace, strength, and stability in Iraq was predicated upon the majority not overrunning the minority.

So when we question whether this supplemental provides any optimism for stability and security in Iraq, I submit those two absolutely accurate quotes of two gentlemen—one in the majority and one in the majority—those who will take part in writing the constitution. Who would have thought they would quote Jefferson or Adams or our Constitution 6 months ago, or a year ago, or 2 years ago? It is because of the men and women we have sent into harm's way, the coalition forces, our commitment to freedom, and our present commitment to spreading democracy around the globe that today provides great optimism in Iraq.

But there is a third pillar we must consider as well, which is the future ability of the Iraqis—once their constitution is written, their government is established, and our troops lessen—to be able to secure themselves. There have been a lot of comments about whether they can do that. I give you comments that Lieutenant General Petraeus shared with us on our visit.

First, the coalition forces have trained 136,065 Iraqis. Our goal by the end of this year is 200,000. Recruiting has mushroomed since the election. In fact, on television, some of you have seen the lines the day after the election that showed up at recruiting centers that were previously vacant. So we know the resources are coming. Our coalition forces are helping us with their training, and already the Iraqis who are trained are demonstrating heroism just like the heroism of our American soldiers. There is no better example than this: On election day, when at a polling place an Iraqi-trained soldier by our coalition forces was in the first line of defense, as were Iraqis at every polling place, all 5,200. He spotted a suspicious character. He approached him. He noticed the bulging waistline, symmetrically indicating a bomb. He threw himself on the bomber and the bomber detonated the bomb. The Iraqi soldier, trained by coalition forces,

gave his life. Those in line to vote, identifying with their index finger their commitment to liberty, were not injured and did not leave. They voted and democracy was born in that precinct, in that district in Iraq, in large measure, because of the bravery and heroism of that Iraqi soldier, trained by United States and coalition forces.

So as we consider the $81.9 billion for the continuation of our effort in Iraq and Afghanistan, and to a certain extent in the Middle East, if we look for optimism, it surrounds us everywhere. Only after our engagement in Afghanistan were the Taliban deposed. Only after our engagement in Iraq was Hussein captured. Only after our commitment against terrorism and countries that harbor terrorists did Libya give up its weapons of mass destruction.

Recently, the Palestinians elected a new leader, Abbas, and already the prospect for hope and peace in the Middle East between Israel and Palestine is brighter. To me, that is great optimism for the future of security and stability, not only in Iraq, not only in the Middle East, but throughout the world.

We also must ask ourselves this: If we don't have optimism in the investment we make in the war on terror and the spreading of democracy, then what dividend would we receive by making no investment at all?

My submission to you is that we would be fighting the war on terror not only overseas but on our own streets. We would be spending more than we invested in this war to try to be a defensive country, rather than an offensive country helping to spread democracy wherever people yearn for it.

I have great respect for those who will question any spending we might entertain. I understand the concerns about the investment that we may make in the coming weeks in the supplemental for Iraq. But I will tell you that with the comments of Deputy Ambassador Salih, the comments of Dr. al-Rubiae, and the evidence of the heroism of the Iraqi soldier at the polling place Sunday, a week ago, it is clear to me this supplemental will continue that major pillar of support for democracy in the Middle East; that is, the presence of U.S. men and women in our Armed Forces to continue to secure that nation so it can finalize a constitution and have permanent elections for its peace and its security.

Our President has sent us a document to make an expanded investment in peace and democracy. I submit to you that the evidence for optimism abounds in Iraq and I, for one, will stand by this President and stand by our men and women in harm's way, so that their democracy, which has now bloomed, will flourish in a part of the world that has never seen it.

I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, as I understand, we are in a period for morning business?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. KENNEDY. Is there a time limit on statements in morning business?

The ACTING PRESIDENT pro tempore. The time until 12:30 p.m. is equally divided.

Mr. KENNEDY. I thank the Chair.

NOMINATION OF MICHAEL CHERTOFF

Mr. KENNEDY. Mr. President, I support the nomination of Mr. Chertoff to be Secretary of the Department of Homeland Security. He brings a wealth of experience to this position and that experience will serve him well, because the challenges facing this department in the post 9/11 era continue to be immense. The agency can never afford to drop its guard for a moment. From protecting our borders to managing difficult immigration issues, Mr. Chertoff will be at the heart of many of the country's most complex security issues.

Just under 2 years ago, the Department of Homeland Security was created in the largest overhaul of Federal agencies in more than half a century. It merged 185,000 Federal workers and 22 agencies in order to create a more national effort to protect ourselves in the wake of September 11.

It is a job that requires overseeing the development of innovative methodologies and techniques to prevent and deter terrorist attacks. It requires rapid response to threats and hazards, and it requires effective information analysis and information sharing between agencies at all levels—Federal, State and local.

The Secretary's job is to strengthen and maintain the security of our airports, seaports and land borders. But, equally important is the Secretary's ability to welcome the more than 500 million citizens, permanent residents, lawful visitors, students, and temporary workers who cross our borders each year.

As Secretary, Mr. Chertoff will have a major role on immigration policy. One of the most important responsibilities of his position is to see that the immigration service and enforcement functions are well-coordinated, and that the service functions are not given short shrift. Without strong leadership and the insistence on close coordination, the officials in the various immigration bureaus of the department are prone to issue conflicting policies and legal interpretations and create disarray in the department's mission.

Questions have been raised about Mr. Chertoff's role in the Criminal Division of the Department of Justice in developing the investigative strategy that led to the department's detention of hundreds of immigrants after 9/11. According to the report of the department's Inspector General in June 2003, there were "significant problems in the way the detainees were handled." There were also problems that included a failure to distinguish detainees suspected of ties to terrorism from detainees with no such connection. The Inspector General found there was inhumane treatment of detainees at Federal detention centers, unnecessarily prolonged detention resulting from the department's "hold until cleared" policy, secret detentions without formal charges, interference with access to counsel, and closed hearings.

I met with Judge Chertoff and raised my concerns about these detainees and his role in formulating the policy. He recognized and understood that significant problems had occurred at the Justice Department in the treatment of the detainees and indicated a willingness to re-evaluate current policies and put in place protocols to prevent these abuses from recurring.

Unfortunately, the administration has not been nearly as accommodating. It has refused to provide vital documents to the two Senate Committees charged with oversight over the Department of Homeland Security, the Homeland Security and Government Accountability Committee and the Judiciary Committee. Specifically, the administration continues to play hide and seek with documents that would shed light on the issues of torture and interrogation. In doing so, the administration persists in displaying a disturbing disregard for our constitutional role in Presidential nominations. By refusing to come clean and provide necessary documents, and by discouraging responsiveness and candor from its nominees on the issue of torture, the administration is only making the crisis worse, further embarrassing the Nation in the eyes of the world, and casting greater doubt on its commitment to the rule of law.

As Senator LEVIN has emphasized, FBI e-mails state that while Mr. Chertoff headed the Criminal Division, discussions occurred between the FBI and the Justice Department about interrogation abuses. The e-mails indicate that FBI personnel were deeply concerned about the interrogation techniques being used at Guantanamo Bay by the Department of Defense and the FBI communicated their concerns directly to certain persons in the Criminal Division.

The e-mails in their public form, however, were heavily redacted to avoid disclosing who spoke to whom. Although the e-mails were never provided by the administration to the Senate, we were able to obtain the documents in the same way as the general public obtained them, by surfing the web for the redacted documents as released in a Freedom of Information Act lawsuit.

Senator LEVIN and Senator LIEBERMAN asked for the unedited version of the e-mails in order to learn who in the FBI communicated the information and who in the Criminal Division received it. The request was denied, even though the information might well have been highly relevant

to our consideration of Mr. Chertoff's nomination. It is beyond debate that our advice and consent function under the constitution includes inquiries into matters which may reflect on the nominee.

Mr. Chertoff may have no knowledge about the e-mails or the FBI discussion, but part of our constitutional obligation is to obtain enough information to make an informed decision. The American people deserve to know whether we have done our constitutional job responsibly.

Senator LEVIN has already spoken passionately about the stiff-arm that he and Senator LIEBERMAN and their committee received from the Department of Justice as they sought to give meaning to the words ''advice and consent.'' From the text of the redacted version, it's obvious that Mr. Chertoff should have been asked about the torture issues in the depth that the documents would have enabled. He was head of the Criminal Division during the relevant time period. Naturally, they asked to see the unredacted version of the document prior to any vote on the nomination.

But the administration flatly refused to cooperate. The White House could easily have provided the documents only to Senators and to staff with appropriate security clearances. It did not. Instead, it concealed the full text of the e-mails in what amounts to an obvious coverup.

In addition, Senator LEAHY and I sent a letter to the Department of Justice on February 4, asking it to provide a separate department document which reportedly advised the CIA on the legality of specific interrogation techniques at a time when Mr. Chertoff was head of the Criminal Division. Again, the administration refused to provide it, claiming that its contents were classified, even though Senators are cleared to review classified material.

Our problems with the administration on this nomination, however, pale in comparison with the failure of the Senate Republican majority to carry out its own constitutional responsibilities on this nomination. Instead of insisting on adequate answers to the questions raised by the documents, they have acquiesced in the administration's coverup and abdicated their own independent constitutional responsibility to provide ''advice and consent'' on Presidential nominations. They have allowed partisanship to trump the Constitution.

In effect, the Republican Senate is acting as George Bush's poodle. The Founders of our country would be appalled at what has happened in this case. Obvious questions about this nomination have gone unanswered, and the Republican leadership of the Senate, instead of meeting its constitutional responsibility to seek answers, rolls over and shirks its duty to see that the Senate's consent on this nomination is an informed consent, not a blatantly defective consent.

The Founders of our country did not create a parliamentary democracy. They created a democracy based on the fundamental principle of separation of powers with the Congress and the Judiciary acting as checks and balances on the power of the President We ignore that fundamental principle at our peril.

A major issue in the 2006 congressional elections will clearly be the rubberstamp Congress. The refusal by the Republican Senate majority to exercise its constitutional responsibilities on this nomination is a flagrant example of that problem.

An essential part of winning the war on terrorism and protecting the country for the future is protecting the ideals and values that America stands for here at home and around the world. That means standing up against torture. It means shedding light on an administration that prefers to act in darkness. It also means living up to our oath of office as Senators to protect and defend the Constitution.

The checks and balances in the Constitution are essential to our democracy and a continuing source of our country's strength. They are not obstacles or inconveniences to be jettisoned in times of crisis. We owe it to those who come after us to be vigilant. Republicans and Democrats alike must insist that our constitutional obligations and prerogatives be respected. I hope very much that this blatant abdication of our constitutional responsibility will not be repeated.

Regardless of the difficulties we have faced in obtaining these important documents, I am looking forward to working closely with Mr. Chertoff. His long history of government service and dedication to the public good are impressive. He has left the security of lifetime tenure on the federal bench to accept the challenge of steering the Department of Homeland Security through difficult waters. His willingness to respond to the President's call speaks well of his character.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, I ask unanimous consent to be able to proceed for 10 minutes as in morning business.

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

Mr. DODD. Mr. President, I rise this afternoon to discuss briefly the nomination of Judge Michael Chertoff, of New Jersey, to be Secretary of Homeland Security. I thank our colleagues on the Homeland Security and Governmental Affairs Committee, especially Chairwoman SUSAN COLLINS and my dear friend and colleague from Connecticut, JOSEPH LIEBERMAN, for their close consideration of this nomination. The task of reviewing the nominee for Secretary of Homeland Security is a difficult one, and the committee did a fine job.

I have reviewed the credentials of Judge Chertoff. They are impressive. In a legal career spanning over a quarter of a century, Judge Chertoff has shown a respectable dedication to public service. In my view, he has also demonstrated an ability effectively to manage a variety of security issues. For these reasons, I believe that Judge Chertoff is qualified and capable to serve as Secretary of the Department of Homeland Security. I plan on voting for his nomination.

The job for which Judge Chertoff is being nominated is a challenging one. In this post 9/11 era, the Secretary of Homeland Security bears the primary responsibility of ensuring the safety of all Americans from threats that range from terrorist attacks to natural phenomena. In order to meet this responsibility, the Secretary must oversee 22 separate agencies and 180,000 employees, all of whom carry out critical daily duties that include safeguarding our borders, securing our domestic infrastructure, and providing emergency disaster assistance. We all know that success in carrying out these duties will rest on the ability of the Secretary to coordinate and manage the resources at his disposal. They are huge.

If confirmed, Judge Chertoff will unfortunately find that the current resources at his disposal are inadequate to ensure the operation of an effective Department of Homeland Security. I strongly agree with several of my colleagues on the Homeland Security and Government Affairs Committee who argue that more must be done to improve the Department's ability to identify security threats and to respond to these threats in an effective and appropriate manner.

I agree that the Department of Homeland Security must be given adequate resources to address the plethora of security vulnerabilities that continue to plague our borders, airports, seaports, transportation systems, utility networks, and financial networks. I also agree that more work must be done to develop and implement a Government-wide strategy on homeland security activities, and to devise specific plans of action for specific threats. Furthermore, I strongly concur that more resources must be provided to our first responders—the millions of brave men and women who make up our front lines of defense at home.

For any homeland security response to be fully effective and successful, our firefighters, law enforcement personnel, and emergency response teams require the most updated equipment and training to function. Regrettably, the administration's fiscal year 2006 budget deeply cuts these and other initiatives related to homeland security.

All of these challenges that I mention demand immediate and long-term investments. While I applaud the work that has already been done to enhance our domestic security since 9/11, I remain, as many of my colleagues do, deeply disturbed by the administration's continued disinclination to invest adequately in these activities. As more gaps in our security are uncovered and exploited, and as more work is being done to enhance our capabilities in identifying closing these gaps, the Bush administration's policy has been to provide less resources, including unthinkable cuts of $615 million to State homeland security initiatives and our first responders. How can we fully expect to be safe as a nation if the very people who are committed to our safety are deprived of the vital resources that ensure our safety?

In his testimony before the Homeland Security and Governmental Affairs Committee, Judge Chertoff indicated his determination to '' . . . improve our technology, strengthen our management practices, secure our borders and transportation systems, and most important, focus each and every day on keeping America safe from attacks.''

I am encouraged by these remarks, and I hope Judge Chertoff's determination can allow him to meet the challenges, but he faces some awesome ones within the administration, if, in fact, these budget cut proposals are enacted into law.

I am also encouraged by the remarks he made regarding the rights to due process that all Americans enjoy. In his testimony to the Homeland Security and Governmental Affairs Committee, Judge Chertoff said:

> I believe that we cannot live in liberty without security, but we would not want to live in security without liberty.

I believe this position is noteworthy, especially in light of the report issued by the Department of Justice inspector general in 2003 that criticized the prolonged detention of hundreds of people—primarily immigrants—of suspected ties to terrorism that were later deemed groundless. Judge Chertoff admitted that mistakes were made in the detention and treatment of these individuals—an admission rarely heard from this administration—and vowed to prevent them from happening again.

The question for our country is not whether Judge Chertoff is the right man for the job—I believe he is—but whether Judge Chertoff will be given an impossible job by the President who nominated him. We surely cannot meet the needs of our homeland security apparatus on a tin-cup budget, just as we cannot meet the needs of our military, our schools, and our health care facilities.

I find it troubling that—at the same time as it cuts support for police, firefighters, schoolchildren, and hospitals—this administration continues to view as sacrosanct the massive tax cuts worth $1.6 trillion that benefit only some of the most wealthy individuals in our Nation. Clearly, the President is not willing to ask any of these people—although I think many of them would be more than willing—to make the sacrifice for the well-being of our Nation. Yet, at the same time, the President is willing to tell firefighters, law enforcement personnel, and emergency response teams—people who risk their lives every day for our Nation—that not only are they going to get fewer resources each year, but they are required to do more with less. This severely skewed set of priorities is simply stunning. While it may be difficult for many of us to see this mismatch clearly today, I believe future historians who write about this period will harshly judge it as such.

If confirmed, Judge Chertoff faces formidable and daunting challenges—challenges that must be overcome if we are to ensure the safety of this country and well-being of all Americans. I speak on behalf of all of my colleagues when I wish him the best in this very difficult endeavor he is willing to undertake.

I am also here to discuss another issue raised by our colleague, Senator CARL LEVIN of Michigan. The issue concerns the repeated failure of this administration to provide the Senate with information necessary to carry out its constitutional responsibilities of giving advice and consent and conducting oversight of the executive branch.

In a letter written by the Department of Justice to Senators LIEBERMAN and LEVIN on February 7—just over a week ago—the Department of Justice claimed that an unredacted document related to the Chertoff nomination would not be provided to the Homeland Security and Governmental Affairs Committee because '' . . . it contains information covered by the Privacy Act . . . as well as deliberative process material.'' The assertion by the Department of Justice that their inability to comply rests on the Privacy Act is absurd and wholly unacceptable.

As Senator LEVIN has stated—and I strongly agree with him in this—the Privacy Act protects private individuals from having personal information released without their consent. In this case, the Department of Justice is using the Privacy Act to conceal the names of public officials who have engaged in Government activities at taxpayers' expense. That is precisely the kind of case in which Congress ought to have full knowledge of Government personnel and their activities in order to exercise its advice and consent responsibility fully.

To deny the Senate information about what public officials are doing at taxpayers' expense is essentially to deny the American people their right to know what their Government is or is not doing in the name of its citizens. To deny the American people their right to know of their Government's actions is an abuse of not only the Privacy Act, it is an abuse of power, in my view.

This may seem like a small matter to some, just one document. However, it should be noted that Senator LEVIN has precisely and carefully raised an issue that would be deeply disturbing to anyone who is committed to openness and accountability in our Government. I suggest to my colleagues that we are going to be seeing this issue arise over and over again if we as a body—all of us here—do not challenge it. I do not care what party is in the White House. If any administration starts making the case in the Executive Branch that the Privacy Act applies to Government personnel and Government documents that Congress may need to fulfill its Constitutional obligations, then a dangerous precedent will be set—one that I think we will deeply regret.

This matter reflects an already persistent, almost obsessive preoccupation by the current administration with secrecy, thereby avoiding accountability to Congress and, of course, to the citizens we seek to represent.

The examples of this preoccupation are almost too many to recite. One example that comes to mind is when Members of Congress and environmental organizations were unable to ascertain who—just the names—participated in the Vice President's energy task force, the group which laid the blueprints for the administration's current energy policy.

Another example is the refusal of the recent nominee, now current Attorney General, to provide information to the Judiciary Committee pertaining to the development of his legal rationale for permitting torture. Of particular note in this case, when asked to provide information, the Attorney General said:

> I do not know what notes, memoranda, e-mails, or other documents others may have about these meetings, nor have I conducted a search.

The unwillingness even to search for information requested by Congress epitomizes a certain official arrogance that sets a dangerous precedent because, when carried to its conclusion, it impairs and even impedes most congressional oversight. Government employees are named in countless documents that Congress needs in order to carry out its constitutionally mandated responsibilities and to shine the light where appropriate for the people of this country on the actions of our Government.

In closing, I do not believe Judge Chertoff is an architect of the policy to deny the public their right to know what their Government is doing. That point needs to be made crystal clear. If I thought that were the case, I would not support this nominee. I think Judge Chertoff has made clear how he views these matters. But Senator LEVIN has raised a very important issue that transcends this nomination and reaches every agency and office in this government. It is the issue of preserving the openness, transparency,

and accountability of our democratic government. I thank Senator LEVIN who, once again, during his service here, has proved how valuable attention to detail is. I commend my colleague for raising it.

I thank the indulgence of the Chair. I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

RECESS

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

Thereupon, the Senate, at 12:38 p.m., recessed until 2:14 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

EXECUTIVE SESSION

NOMINATION OF MICHAEL CHERTOFF TO BE SECRETARY OF HOMELAND SECURITY

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session and resume consideration of the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Michael Chertoff, of New Jersey, to be Secretary of Homeland Security.

The PRESIDING OFFICER. Who yields time?

The Senator from Maine.

Ms. COLLINS. Mr. President, I yield 5 minutes to the distinguished Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Maine for yielding me time.

I am in support of the President's nominee, Judge Michael Chertoff. He seems to have worked for almost every part of the Federal Government, including this body. I heard the Senator from Maine say that she had never seen a better witness before her committee.

As Secretary of Homeland Security, Judge Chertoff will play a very important and visible role in our everyday lives, protecting us from terrorism, but my purpose today is to highlight another job he has. He is also the chief immigration officer. As Secretary, he will oversee the Bureau of Citizenship and Immigration Services, the successor to the INS, which manages immigration in this country. This job of Judge Chertoff is not primarily about keeping people out of the United States; it is also about welcoming new Americans into the United States.

The numbers are down some since 2001, but as many as 1 million immigrants become new American citizens each year.

I have attended a number of the ceremonies which are held in Federal courthouses all over America every month to welcome and naturalize these new citizens. I was in Nashville in December when 50 or 60 people from all backgrounds were administered the oath of allegiance by Judge Echols. The oath requires each new American to renounce any old allegiance and swear a new one to the United States of America.

Each one of these new citizens has waited at least 5 years. They have learned English. They have learned something about U.S. history. They have proved they are of good character. Many new citizens have tears in their eyes as they recite that oath. It is an inspiring scene. Each of these new citizens brings a new background and cultural tradition to the rich fabric of American life. That increases our magnificent diversity, but diversity is not our most important characteristic.

Jerusalem is diverse. The Balkans are diverse. Iraq is diverse. A lot of the world is diverse. What is unique about the United States of America is that we take all of that diversity and make ourselves into one country. We are able to say we are all Americans. We do that because we unify it with principles and values in which we all believe: liberty, equality, rule of law. It also helps that we speak a common language. It is hard to be one people if we cannot talk with one another. Many of these new citizens and many others living in this country lack a solid grasp of our common language or a clear understanding of our history and civic culture. Without proficiency in English, our common language, and an understanding of our history and values, immigrants will find it difficult to integrate themselves into our American society.

So my hope today is that Judge Chertoff does a magnificent job in his role at preventing terrorism. My hope also is that he does a good job in keeping out of this country people who are not legally supposed to be here. But equally important is Secretary Chertoff's role in welcoming new citizens to this country, helping them learn our history, our common language—helping all of us remember those principles that unite us as one country. That is a part of the Department of Homeland Security. It is of increasing interest to Members of the Senate on both sides of the aisle, and I look forward to working with Judge Chertoff in this new role and I support his confirmation.

The PRESIDING OFFICER. Who yields time? The Senator from Maine.

Ms. COLLINS. Mr. President, I yield 5 minutes to the distinguished Senator from Virginia and, from the minority's time, I will yield 10 minutes to the distinguished Senator from New York.

The PRESIDING OFFICER. Without objection, the Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I am privileged to be the new boy on Senator COLLINS's committee. My mission is to try to achieve the smoothest working relationship between the Department of Defense, with which I have been privileged to work these 27 years in the Senate, and the distinguished new department and the committee for homeland defense over which my colleague presides as able chairman together with Senator LIEBERMAN.

Just a word or two I want to speak on Judge Chertoff. I, frankly, had not met him prior to the President's very wise selection of this able individual. I rise today to urge my colleagues to give the strongest endorsement possible to this nominee.

I started my career as a young lawyer, a prosecutor, but my first job out of law school was law clerk to a Federal circuit court judge, the same position that Judge Chertoff holds today. I recall all through law school and the early part of, I guess about 8 or 10 years that I practiced law, lawyers always thought: Maybe someday I could be a judge, a Federal judge. The whole bar looks up to the judicial branch, as they should. It is the third branch of our magnificent Republic. When an individual is selected by a President and confirmed in the Senate, he or she then dons that black robe, and it is a lifetime appointment.

I was privileged to observe the life of a Federal judge. My judge was E. Barrett Prettyman, and I had the privilege of standing on this very floor several years ago and recommending the Federal courthouse here in Washington be named for Judge Prettyman. I am always grateful to the Senate for its wisdom in accepting my recommendation. But I remember that judge so well. He had the strongest influence on my life. I aspired at one time to be a Federal judge, but I hastily tell my colleagues I am not sure I ever would have been qualified, for various reasons.

But when you accept that appointment you take that oath of office for life. That is why I, and I think most if not every one of my colleagues, spend so much time working with our Presidents to find the best qualified people to assume these important jobs in the Federal judiciary. But it is a lifetime appointment.

When I looked at Judge Chertoff in my office, we compared experiences. He was a law clerk on the Supreme Court, so he had gone through some of the similar experiences that I had as a lawyer, and also I was assistant U.S. attorney as was he. I said: You have to explain to me why you gave up a lifetime appointment to a position in which you can control your hours and largely control your vacations and have a magnificent family life and everything else to take on this enormous, uncertain challenge.

He looked me in the eye, and he said: In America, you have to step up and be counted when the President and the citizens of this Nation need you. I give

up this position with great reluctance, but I accept the next position and I will give it everything I have ever been taught in terms of how to do something for this country.

That deeply touched me, Madam Chairman. I feel very confident that, with the advice and consent of this august body, we will send forth an individual eminently qualified to handle this position, and one who will bring about the necessary security that this country deserves and needs and expects.

I yield the floor.

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

Mr. SCHUMER. Mr. President, I also rise to speak in support of the nomination of Michael Chertoff.

Today we vote on one of the most important Cabinet positions in our Government, and that is Secretary of the Department of Homeland Security. New York, perhaps more than any other State in the Union, knows the need for a strong defense at home. Therefore, I take this vote very seriously. I have considered carefully Judge Michael Chertoff's background. I have considered his experience, and I met with him personally to express the needs and concerns of the citizens of New York and my own concerns about what we have and have not been doing when it comes to homeland security.

After careful review and after hearing his commitment to work with me and other Members of this body, I intend to vote in favor of Judge Chertoff's nomination for this vital post. It is clear, crystal clear, that Judge Chertoff has the intelligence and the skill to run this behemoth Department. There is no question about that. But what has really been missing from the Government is an advocate for funds and focus in homeland security that will protect New York and the rest of the country. Judge Chertoff assured me he would fight within the administration for resources that have been missing in homeland security.

It is no secret that, while we have given all the money it takes to fight the war on terror overseas, we have shortchanged the domestic war on terror at home. Program after program, which we all admit is necessary to defend us at home, is shortchanged when it comes to funding and focus.

The Department of Homeland Security was run by admirable people, but their constitution was such that when they went into the Oval Office, they didn't make much of a fight for the things that were necessary.

I asked Judge Chertoff about that when I met him. I said: I am sure you are not going to make a public fight, but are you privately, within the confines of the Oval Office, going to demand the funds that this Department needs to make us secure? He told me he would.

There is no doubt Judge Chertoff has been blessed with a brilliant mind, and he has formidable experience as a prosecutor, as Chief of the Justice Department's Criminal Division, and more recently as an appellate judge. He now faces the toughest challenge of his thus far impressive career. He will be called upon to lead and manage a Department of 170,000 employees, forged out of 22 separate Government agencies, still not all working together. That is no small task.

Judge Chertoff will have to be smart, tough, dedicated, and savvy—but a keen mind and a strong work ethic will not be enough. As I have said, what has been missing from homeland security has been funds and focus. A color-coded warning system can have all the colors in the rainbow, but without adequate funding for vital programs and without a laser-like focus, we are not serving the people well. Judge Chertoff assured me he would fight hard for the funds and maintain a strong focus to maintain these programs at the Department if confirmed. If my reading of his character and personality is correct, he will make those fights inside the administration that have been lacking thus far.

Judge Chertoff, of course, will also have to commit himself to working with Members of Congress in a bipartisan way, so together we can best protect the homeland.

Unfortunately, as I said in the past, sometimes this administration has acted with too much secrecy and too often it has failed to consult Congress. Too often it behaved as if it has a monopoly on wisdom. I am optimistic that Judge Chertoff will, as he has assured me, work with us in a bipartisan way. I have also talked to him about the need for changing the funding formula so funds are not distributed simply as if they were dropped from an airplane, but go to the places of the greatest need.

I have told him it is unconscionable Wyoming gets more on a per-capita basis for homeland security than New York. He has told me that we have a real problem with the funding formula; he knows it has to be changed and he would work to change it.

I have also raised with Judge Chertoff the serious problems of staffing we have at the northern border with Canada. New York, of course, has a 300-mile such border. As of last year, we were short more than 1,400 Customs and Border Protection officers on that border. Judge Chertoff promised to make securing the northern border a priority, should he be confirmed by the Senate.

I also pressed Judge Chertoff on other matters, areas in which the Government should do more to protect the homeland. I discussed with him the creation of an assistant secretary for cybersecurity, something I have raised before, given reports of the mounting attacks on our computer systems. On these and on other matters, Judge Chertoff has shown a willingness to deliberate and be openminded and that means a lot in my book.

In conclusion, the task of the next Secretary will be difficult. The stakes couldn't be higher. Based on his record of achievement and my personal meetings with him, I have high hopes for Judge Chertoff. I hope and pray he lives up to those high hopes. I will vote yes on the nomination of Michael Chertoff as Secretary of the Department of Homeland Security.

Ms. COLLINS. Mr. President, I thank my colleague from New York for his excellent statement.

I see a very valuable member of the committee, the Senator from Hawaii, is here to speak. I am prepared to yield to him 10 minutes from the minority side.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I rise today to discuss the nomination of Judge Michael Chertoff to be Secretary of the Department of Homeland Security, DHS.

Since the inception of DHS in 2003, Secretary Tom Ridge has led the department with strength and grace. His tenure sets a high standard for future secretaries to meet. I would like to take this opportunity to thank Secretary Ridge for his hard work and dedication to his country.

As a member of the Homeland Security and Governmental Affairs Committee, I was able to discuss with Judge Chertoff his positions on issues such as the DHS personnel regulations, civil liberties, and bioterrorism. Judge Chertoff expressed his commitment to these issues and promised he would investigate and report back to the committee on a number of DHS policies of concern to me.

There were five main points that I raised with Judge Chertoff. First, I asked for his assurance that he will defend the Constitution to safeguard our civil liberties. The price of security should never erode our constitutional freedoms, which are essential to the preservation of this democracy. One specific activity I have concerns about is data mining, which could involve the collection of personal data that could violate an individual's privacy rights. Judge Chertoff affirmed his commitment to liberty and privacy, and I will continue to monitor DHS closely to ensure that he fulfills that commitment.

We also discussed the just-released personnel regulations covering the 180,000 men and women who staff DHS. To make these new regulations work, there must be significant and meaningful outreach to this dedicated workforce, their unions, and their managers. A well-managed organization values employee input and understands the important role employees play in protecting against mismanagement. To undermine opportunities for employees to voice concerns or even have notice of departmental changes unnecessarily harms workers.

My third concern is the protection of whistleblower rights in the department. Whistleblowers alert Congress

and the public to threats to health, waste of taxpayer money, and other information vital to running an effective and efficient government. I asked Judge Chertoff to pledge to protect whistleblowers and foster an open work environment that promotes the disclosure of Government mismanagement and Government illegality. In response, he promised ''to support whistleblowers and to support candid assessments by employees when there are problems in the department.'' I am pleased he acknowledges the importance of whistleblowers to a Federal agency and has vowed to protect their rights. As ranking member of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, and the author of whistleblower protection legislation, I will be monitoring the department closely to ensure that Judge Chertoff follows through on this promise.

The fourth issue on which I asked for Judge Chertoff's commitment was bioterrorism and, more specifically, agriculture security. Since 2001, I have urged the administration to develop a coordinated response to bioterrorism and agroterrorism through legislation, which is critical to the health and safety of Americans.

Yesterday, I had the opportunity to participate in a gaming exercise called ''Scarlet Shield'' at the National Defense University that postulated a bioterrorist attack. This exercise brought home to me the need to do much more in ensuring an effective, coordinated response.

I will introduce shortly the Homeland Security Food and Agriculture Act of 2005, which will improve State, local, and tribal governments' ability to respond to an attack on the food supply and facilitate DHS's coordination with other Federal agencies with food and agriculture responsibilities. Judge Chertoff agrees with me that bioterrorism is one of the greatest threats our Nation currently faces, and as such I hope I can count on his support for my bill.

The final issue I discussed with the Judge is the security challenges for my home State of Hawaii, 2,500 miles from the West Coast. Being the only island State, Hawaii has been blessed with diverse and breathtaking geography and a unique culture. However, its geographic location poses challenges to securing the State from asymmetric threats. For example, when disaster strikes, Hawaii cannot call on neighboring States for assistance due to distance and time difference. Our eight inhabited islands must be self sufficient. For that reason, I have established positive working relationships with Secretary Ridge and senior policymakers from DHS as well as from PACOM and NORTHCOM to ensure that when national homeland security policies are being formulated, the needs of Hawaii are kept under consideration. Judge Chertoff promised to be mindful of these unique needs and to continue the positive relationship Hawaii has enjoyed with Secretary Ridge.

I also note I am pleased Judge Chertoff has stressed the importance of close cooperation with Congress, particularly the Homeland Security and Governmental Affairs Committee, and has promised to provide the information we need to fulfill our oversight responsibilities.

With Judge Chertoff's assurances that he will protect civil liberties and whistleblower rights, work openly with Congress, and prioritize the other issues I have detailed today, I will support his nomination to be the Secretary of Homeland Security. I believe he has the professionalism and the commitment to serve the department well, and I hope we, in the Congress, will enjoy a long and productive relationship with him.

Thank you very much, Madam Chairman.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank my colleague from Hawaii for his excellent statement. He is a very valuable member of the committee, and I very much enjoy working with him.

I rise again today in support of the nomination of Judge Michael Chertoff to be the new Secretary of Homeland Security. As the Presiding Officer knows better than most, this is one of the most challenging and critical jobs in the entire Federal Government. Judge Chertoff is clearly the right person to take the helm of this Department, and it is past time to put him in that post.

The Committee on Homeland Security and Governmental Affairs held a nomination hearing for Judge Chertoff on February 2. It was a long and thorough hearing. Judge Chertoff answered every question posed to him fully and candidly. His responses to more than 250 written questions my committee presented to him were just as forthright. His nomination was endorsed by a unanimous vote.

I mention this because there should be no impression among our colleagues that our committee did not do a thorough job in questioning Judge Chertoff. To the contrary, he was subjected to hundreds of questions. He responded to every question posed to him at our committee's lengthy nomination hearing. And every member of the committee, on both sides of the aisle, had ample opportunity to question Judge Chertoff on whatever issues they wished to raise with him.

In fact, I am aware of no opposition to his nomination. Virtually the only issue we have debated during the course of these proceedings is one that I believe has no bearing whatsoever on Judge Chertoff's fitness to serve in this critical capacity. This issue is the demand, by a few of our colleagues, for information regarding the FBI's personnel working at Guantanamo Bay's detention facility and what information they may have had about interrogation techniques used on detainees by Department of Defense personnel.

Let me make clear that all of us have concerns about the proper and humane treatment of our detainees. The distinguished chairman of the Armed Services Committee, who also serves on our committee, held a number of hearings to explore the treatment of detainees. It is my understanding that the Senate Intelligence Committee is also embarking on an investigation of the treatment of detainees by CIA personnel. So this is an issue. But the problem is, this is not an issue in which Judge Chertoff has been involved in setting policy. He is being asked for information he simply does not have.

At our committee's nomination hearing, Judge Chertoff was asked about these concerns by my distinguished colleague from Michigan, Senator LEVIN. Judge Chertoff's answer was unequivocal. Let me read it to you. He said:

> I was not aware during my tenure at the Department of Justice that there were practices at Guantanamo, if there were practices at Guantanamo, that would be torture or anything even approaching torture.

He was not aware—not he did not recall not he was not sure; He was not aware. That is unambiguous testimony.

Our responsibility as Senators to advise and consent on executive branch nominees is a solemn one. It is one, as chairman of the committee, I take very seriously. If there were a good reason to delay consideration of a nomination in order to secure important information, then delay would be appropriate; it would be called for. But expecting a nominee to provide information that he has sworn under oath he does not know is not a good reason for delaying his nomination.

The questions about Judge Chertoff's knowledge of the treatment of detainees have been asked and answered, repeatedly. They have been asked in prehearing questions. They have been asked at the hearing. And they have been asked posthearing.

Judge Michael Chertoff is eminently qualified for this important position. In his distinguished career, he has established a strong reputation as a tough prosecutor. But he has established a reputation as a fierce defender of civil liberties. His position on the balance between these two critical roles was made clear in his testimony before the committee. He said:

> I believe that we cannot live in liberty without security, but we would not want to live in security without liberty.

I cannot think of a more eloquent statement by a nominee, showing us—demonstrating beyond a doubt—he clearly understands that as he increases security for our Nation, he must be ever mindful of privacy rights, of civil liberties, of the very freedoms that define us as Americans, and that we cherish. Indeed, we would be handing the terrorists a victory if we so

compromised our freedoms in the name of security. Judge Chertoff understands that tension, that balance, the need for constant evaluation.

Judge Chertoff has also demonstrated a great ability to work with law enforcement agencies at all levels of Government. He has a keen understanding of the broad range of homeland security vulnerabilities faced by States and communities throughout the country.

When I have talked to law enforcement officials from Maine to California about Judge Chertoff, they have unanimously and enthusiastically embraced his nomination. They know he will listen to State and local law enforcement, and that he views them as partners in our fight to tighten and improve our homeland security.

I point out that Judge Chertoff was confirmed three times previously by this body. He was confirmed overwhelmingly by both sides of the aisle 2 years ago for one of the highest courts in the land. And now, having attained a lifelong appointment at the pinnacle of his legal profession, he nevertheless is giving that up. He is giving up a lifetime appointment on one of the most prestigious courts in the country to step forward to serve our Nation in one of the most difficult jobs imaginable, one of the most thankless jobs in the Federal Government.

I remind my colleagues of what he told our committee when I asked him why he was willing to give up that judgeship, why he was willing to make that sacrifice. He said—and his words are eloquent—

> September 11th and the challenge it posed was, at least to my lights, the greatest challenge of my generation, and it was one that touched me both personally and in my work at the Department of Justice.
>
> The call to serve in helping to protect America was the one call I could not decline.

We are fortunate to have an individual of Michael Chertoff's quality, with his commitment to public service, who is willing to answer the call of his country. I hope he will be unanimously confirmed later this afternoon.

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.

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

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

Ms. COLLINS. Mr. President, I ask unanimous consent to speak as in morning business for up to 10 minutes and that this speech not interrupt the debate on the Chertoff nomination.

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

Ms. COLLINS. Mr. President, I will withhold that request so that the Senator from New Jersey, who has just come to the Chamber, may speak on the nomination. I yield him 10 minutes from the minority side.

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

The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank the chairman of the Governmental Affairs Committee for that courtesy. This is a task we are pleased to take on. For me, it is a moment of special significance. We are proud of the fact that Judge Michael Chertoff, the nominee to be Secretary of Homeland Security, is from New Jersey. I hope we are going to see a strong vote for his confirmation.

I thank our chairman and leader in the Governmental Affairs Committee for her persistence in moving some very important matters through that committee. She worked very hard at it. First it was the intelligence reform bill. While I was annoyed that I had to work Saturdays and other days, the fact is, without the diligence shown by the Senator from Maine, we would not have gotten it through. We were on the edge of the precipice when finally it passed, and I was enthusiastic to try to be of help there. So it is with this issue as well.

This is an important day for America. We all are concerned about the issue that haunts us constantly. Memories of 9/11 will never leave the minds of those who were alive or who study American history in the future. It was a terrible day for America. We live every day with the remnants of that reminder.

This morning, in the Commerce Committee on which I sit, we had a discussion on aviation safety and baggage security requirements. I came down this morning from New Jersey and, because of some security involvements, was unable to catch two airplanes. But it had to be done. It was not that I was particularly suspicious looking, but there was a line to get through, and that is what happens. So we are always reminded. Go into a building, popular places, and you cannot go into those places, wherever they are, whether they are concerts or whether they are educational forums, if it has any volume of attendance, you will invariably see the security process at play. We are worried about our families and our society, how we function.

Judge Chertoff has been selected to be the next Secretary for Homeland Security. It is fair to say that Secretary Ridge did a good job in trying to amalgamate all these parts into an organization with 180,000 people. It is an enormous task. Fortunately, the foresight to name someone such as Michael Chertoff to this post did present an unusual and appropriate candidate. He received undergraduate law degrees with honor from Harvard University. After law school, he clerked on the Second Circuit Court of Appeals. Following that clerkship, he went on to serve as a clerk for a great New Jerseyan, Supreme Court Justice William J. Brennan.

In 1990, Michael Chertoff, in his meteoric rise to the top because of his ability, became the U.S. attorney for the District of New Jersey. During that tenure, less than 4 years, he was so aggressive in tackling organized crime, public corruption, health care, and bank fraud, with great success in making the perpetrators of these crimes pay the price and get out of the community orbit so we could approach things correctly and honestly.

Michael Chertoff also played a critical role in helping the New Jersey State legislature investigate racial profiling in our State. It was a blight on our community. Driving while Black should not be a crime, and we identified that very clearly. As a matter of fact, oddly enough, the present attorney general of the State of New Jersey, a fellow named Peter Harvey, distinguished attorney and outstanding member of the Governor's cabinet, was stopped on one of our highways. He had pulled into a restaurant parking lot, and a policeman came over and asked to check his license and to inspect his car for no reason other than the fact that he was Black. There was no other reason. He had no suspicion surrounding his presence. Yet our attorney general, then a lawyer, was stopped because of color. That should not be a crime. Thanks in part to Judge Chertoff's efforts, the State legislature passed a bill to ban racial profiling. That prompted me to introduce the first bill in the U.S. Senate to address this issue. The results have been excellent.

Judge Chertoff now serves on the prestigious U.S. Court of Appeals for the Third Circuit. A good measure of his commitment to public service, one he has been questioned about publicly in place after place, including our committee, is the question as to why he would give up a lifetime tenure on the second highest court in the land to accept a call to duty. We hope this tenure will be better, but it will have to be earned every day of his career.

The mission of the Department of Homeland Security is critical to our country and to my State of New Jersey. On September 11, 2001, 700 of the almost 3,000 people who perished that day came from the State of New Jersey. There is hardly anyone in our State who didn't know someone or some family member of someone who died that day in the World Trade Center.

I was a commissioner of the Port Authority of New York and New Jersey when I was elected to the Senate, and those Trade Center buildings were kind of a business home for me.

From the location where I live now, I could see the silhouette and the trade centers always as a landmark. It was a pleasure to get up in the morning and see the sun coming over the tops of those buildings. Yes, when we saw what happened that day, smoke rising from the World Trade Center buildings, as each one collapsed in a crush of flames and debris, that can never be forgotten. The New York/New Jersey region bore the brunt of those attacks on that terrible day.

It continues to be identified, by the way, by the FBI as the most at-risk area for terrorist attack. The 2 miles that go from Newark Liberty Airport to the New York/New Jersey harbor are said by the FBI to be the most inviting targets for terrorists. Judge Chertoff understands this. When Senator CORZINE and I talked with Michael Chertoff, we didn't have to remind him about what that area looks like, what that stretch of land is like that could be so inviting to terrorists. I am confident Judge Chertoff will work to target homeland security grants to areas where the actual risk and threat of terrorism are the greatest.

This is not just about New York and New Jersey. There are many high-risk States—some are colored red in the political description that we use today, and some are blue. Examples: Texas, Florida, California, Georgia, Illinois, Virginia—the list goes on of States where there are inviting targets for terrorists. These high-risk States are not getting enough funding because, under current law, 40 percent of all homeland security grants—over $1 billion each year—is given to each and every State regardless of risk and threat. That doesn't make sense.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator has used his 10 minutes.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that I be permitted 5 more minutes.

The PRESIDING OFFICER. Is there objection?

Ms. COLLINS. Mr. President, I will make clear that it is coming from the Democrats' time.

Mr. LAUTENBERG. We are glad to take that responsibility. I may ask for a minute or two more.

The PRESIDING OFFICER. The Senator is recognized for 5 more minutes.

Mr. LAUTENBERG. Mr. President, the 9/11 Commission report stated:

> Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities. Federal homeland security assistance should not remain a program for general revenue sharing.

The 9/11 Commission correctly understood that homeland security is too important to be caught up in pork-barrel politics. That is why Senator CORZINE and I introduced a bill last week, S. 308, requiring that all homeland security grants for terrorism prevention and preparedness be based on relative risks, threats, and vulnerabilities. I hope my colleagues will see that that is in the national interest and support that legislation. I know Judge Chertoff understands that problem. He is a highly intelligent, competent, and dedicated public servant who has compiled a number of impressive accomplishments in all three branches of the Federal Government. I ask my colleagues to vote to confirm him.

I would like to add a word. Right now, we are talking about whether the minority is obstructing progress on different issues—Social Security and other legislation that is before us that needs attention. Here is an example of where we can arrive at a consensus view with dispatch—get it done. We know Judge Chertoff is an excellent candidate, but that is not to say there may not be a vote against him. There were votes against the confirmation of Secretary Condoleezza Rice. There was a difference of view. It was the same thing with Mr. Gonzales. But it reflects the fact that the minority is represented. There were many people from the Democratic side who voted for Secretary Rice and for Attorney General Gonzales. But why is there a move underway—I use this opportunity to say this—to undercut the voice of the minority? It was said by our leader here that 48 million people voted Democrat in the last Presidential election. Do we want to say that those voices should not be heard? Never.

Mr. President, I know you and our chairperson, Senator COLLINS, were elected with good support from your constituents. Does that free you from representing the part of the constituency that didn't vote for you? Not at all. We have to recognize that schemes that would deprive the minority from registering their point of view are against the Constitution. It is against the fabric of our democratic society to say if you didn't vote for us, we are going to nail you; you are not going to have your view; you are obstructionists. That is not right. Here we have a chance once again to express some bipartisanship by voting for an outstanding candidate to be the next Secretary of Homeland Security.

I yield the floor.

Mr. JEFFORDS. Mr. President, We are here today discussing the nomination of Judge Michael Chertoff to be the next Secretary of the United States Department of Homeland Security.

Let me begin by thanking Secretary Ridge for all he did in leading the department through its creation and start-up. It was a difficult job and the Nation owes him a debt of gratitude for tackling this difficult task.

I opposed the creation of the Department of Homeland Security, in part, because I was concerned that by combining disparate areas of the Federal Government we could create more problems than benefits. Several recent reports from the Government Accountability Office have shown that this is a valid concern.

The next Secretary of the Homeland Security Department will need to focus time and energy on ensuring that the various divisions within the department become integrated. A separate and divided Department of Homeland Security cannot work to increase our national security. Our best chance for preventing another terrorist attack relies on a coordinated and well run agency. If this does not occur, I fear that my original concern regarding the creation of this entity will be realized.

Judge Chertoff has an impressive resume and, in fact, has already been confirmed by the Senate for several positions. His experience includes serving as a Federal appellate court judge, United States Attorney, and head of the Criminal Division at the United States Department of Justice. However, questions have been raised about the potential involvement of Judge Chertoff in the prison abuse scandals, an issue that was pivotal in my opposition to Judge Gonzales being confirmed as the United States Attorney General.

Senators LEVIN and LIEBERMAN have been working to determine whether Judge Chertoff had any knowledge about the scandal, and they deserve our profound thanks. However, as in too many cases, this administration has made a decision to keep much of the information from the public. The citizens of the United States deserve honesty and openness from the government.

The information that has been revealed shows that Judge Chertoff had no knowledge or involvement in the torture scandal. I must make a decision based on the record I have in front of me, not on the possibility of the record I do not know. Reviewing this record leads me to believe that Judge Chertoff would be capable of performing the duties of Secretary of the Department of Homeland Security, and I will thus support his confirmation to that position.

It is my hope that Judge Chertoff will complete the work that Secretary Ridge began and create an integrated Department of Homeland Security. I also hope that Judge Chertoff will be able to lead by example and create the open environment at the Department of Homeland Security that my constituents and the citizens of this Nation deserve and expect.

It will take many hours of hard work and it will not be easy. I wish him the best of luck in accomplishing the task.

Mr. HATCH. Mr. President, today I rise in strong support of the nomination of Judge Michael Chertoff to become Secretary of Homeland Security.

Voting in favor of Judge Chertoff and commending him on his remarkable accomplishments is beginning to become a habit for us.

At the beginning of President Bush's first term, Judge Chertoff was nominated to become Assistant Attorney General for the Criminal Division. To this position, he brought years of experience as a Federal prosecutor in New York and a highly successful term as the U.S. attorney for the District of NewJersey.

As a prosecutor, Judge Chertoff handled a wide variety of complex crimes that included successfully prosecuting a RICO murder case involving the third-ranking member of the Genovese La Cosa Nostra Family and others. The principal defendants were convicted of conspiring to murder John Gotti and murdering a mob associate. They each received 75 to 80 year prison terms.

He also successfully prosecuted the Mafia Commission Case, which charged

the bosses of all five New York La Cosa Nostra Families with operating a national commission through a pattern of racketeering acts such as extortion, loan sharking, and the murders of a mafia boss and two associates.

Upon his confirmation, Mr. Chertoff ran the Criminal Division of the Department of Justice during the trying days after September 11. As Senator COLLINS stated:

since 9/11, Judge Chertoff has established himself as a leading expert on the legal and national security issues surrounding the war on terror.

After this period, in which I worked closely with the Criminal Division of the Justice Department to formulate the PATRIOT ACT, Judge Chertoff was nominated to the third Circuit and was confirmed by a vote of 88 to 1.

As we all know, becoming a judge on the 3rd Circuit is a lifetime appointment and the culminating achievement of many outstanding legal careers. Few leave the bench before retirement. However, Judge Chertoff is not a man who will shirk from his duty. His nation called and asked him to sacrifice. He answered that call and stood up to be counted during a period of war.

This is true not only for the time that he spent affiliated with the Justice Department but in his everyday practice. For example, Judge Chertoff served as special counsel to the New Jersey Senate Judiciary Committee in its investigation of racial profiling.

Under his counsel, the committee held nine hearings examining racial profiling allegations, concluding that the former attorney general had misled the committee and had attempted to cover up the extent of racial profiling in New Jersey from the U.S. Department of Justice.

After a convicted rapist was mistakenly released from prison, Mr. Chertoff again served as special counsel for the New Jersey Senate Judiciary Committee during its hearings into the application of Megan's Law, which requires State correction officials to notify prosecutors 90 days prior to the release of a sex offender, and the reasons why it was not being systematically employed by the State.

Mr. Chertoff also represented three indigent defendants on death row in Arkansas through a program operated by the NAACP Legal Defense Fund. The death sentences of all three defendants were overturned on the appeal that he handled.

I understand that Judge Chertoff received the unanimous approval of the Homeland Security and Governmental Affairs Committee, with one member voting ''present.'' I believe that this is not only a reflection on the judge's credentials but a realization that securing the homeland is not a partisan issue, but a commitment by the Government to its people that we will find the best leaders to defend our Nation. Judge Chertoff time and time again has set the standard by which others will have to follow.

Mr. President, it has been my privilege to know Judge Chertoff for a number of years and I can honestly say that the President has made an inspired decision in this nomination.

Mr. SALAZAR. Mr. President, I rise today to discuss the nomination of Judge Michael Chertoff to be our Nation's second Homeland Security Secretary.

Our next Homeland Security chief will face a number of urgent challenges. I believe the most pressing of those will be better coordinating our Federal, State and local homeland security personnel.

When I was Colorado's attorney general, I started a new effort to bring district attorneys, police departments and sheriffs together to foster interagency cooperation. That was tough, but it allowed us to coordinate and fund better law enforcement training, and better prosecute gang violence, fight senior financial fraud, establish school hotlines and many other vital efforts to fight crime that knows no jurisdictional boundaries.

The challenge for DHS is, of course, even larger.

Unfortunately, 3 years after 9/11 there is a huge gap between Washington and our first responders on the ground. In his fiscal year 2006 budget, the President proposed consolidating and reducing funding for State and local heroes.

At a time when our law enforcement agencies are being asked to do more with less, the President apparently believes they should have even less. The President's budget for next year eliminates funding for new hires under the COPS grants, which have helped to put 1,289 additional officers on the streets in Colorado. The President's budget also calls for a 24 percent cut in homeland security grants to States and a complete elimination of grants to rural fire fighters.

At the same time, the Homeland Security grant money that is available is not flowing effectively to State and local agencies. Police, fire and emergency medical departments are not getting the help they need. Worse yet, critical anti-terrorism intelligence is not getting to the law enforcement personnel on the ground who can act on it.

I met with Mike Chertoff and he promised me that he would work to better coordinate Federal, State and local agencies. I appreciated his candor in our meeting, but I am very disappointed to see his unwillingness to respond to a series of very straightforward questions posed by Senators Levin and Lieberman.

Here is why this matters: we need a straight-shooting and straight-talking person in this job. Judge Chertoff will face the awesome task of wrangling the 180,000 employees and 22 agencies that form the Department of Homeland Security. Secretary Tom Ridge started the process of cutting the bureaucratic red tape and integrating the department. DHS took a number of steps, including establishing an Operational Integration Staff, but a great deal is still left to do.

Judge Chertoff has experience moving unwieldy bureaucracy in times of crisis. As Assistant Attorney General of the Criminal Division of the Department of Justice from 2001–2003, Chertoff shared information and coordinated antiterrorism efforts not only across DOJ, but also with DHS and foreign law enforcement. Chertoff also pushed resources to the field where they were needed most.

Chertoff was essentially the Nation's attorney as it prosecuted the war on terrorism. I know a little about this. As Colorado's former top attorney, I can tell my colleagues that one needs a good lawyer to fight crime and prevent terror.

Chertoff will also have to balance the need to fight terrorism with the need to preserve our freedom.

This is a difficult balance to achieve. In the last few years, we have faced some difficult choices. The administration has detained terrorism suspects for long periods without access to an attorney. They have tried to use military tribunals instead of civilian courts. And worst of all, the administration's uneven record on adherence to the Geneva Convention and on the use of torture is an affront to our American ideals.

Chertoff has expressed his belief that torture is wrong. He expressed his philosophy during his confirmation hearing: ''We cannot live in liberty without security, but we would not want to live in security without liberty.''

Judge Chertoff has said all the right things about preserving civil liberties. But we will face numerous threats to our security over the next 4 years, and we will be faced with even tougher choices. It is my sincere hope that Chertoff will do a better job than his predecessors have done in allowing us to live with both security and liberty.

What strikes me most about Mike Chertoff is his commitment to public service. Two years ago, Chertoff was confirmed for a lifetime appointment to the 3rd U.S. Circuit Court of Appeals. Chertoff could easily have kept that seat forever, but he stepped down from that secure job to face another political gauntlet. In short, when duty called, Judge Chertoff answered.

You could not ask for a tougher job in Washington than Homeland Security Secretary. I am hopeful Judge Chertoff is the right person for the job.

Mr. CORZINE. Mr. President, I rise today in strong support of the confirmation of Michael Chertoff to be Secretary of Homeland Security. He is an extraordinary professional and a remarkably talented lawyer. He is highly intelligent, honorable, and impartial. He is also a straight shooter, which is exactly what we need right now in this position. He is also a personal friend.

Mr. Chertoff has impeccable credentials—not the least of which is being a native New Jerseyan. He attended Harvard College and Harvard Law School,

where he was editor of the Harvard Law Review. He then served as a Supreme Court law clerk. In private practice and public service, he developed a reputation as a brilliant, tough, fair, and truly world class litigator, and earned the respect of his peers and adversaries. Indeed, one New Jersey paper has even suggested he might be New Jersey's ''Lawyer Laureate.''

In recent years, Judge Chertoff has served as Assistant Attorney General for the Criminal Division and circuit judge for the Third Circuit. In each of these capacities and throughout his career, he has served our Nation exceptionally well. So when Judge Chertoff told me recently that this position, as Secretary of Homeland Security, is the most important task he has ever undertaken in his public career, I took notice. Given his commitment to public service and the distinguished results of his remarkable career, this statement speaks for itself.

I wish to emphasize one particular aspect of Judge Chertoff's career: his role in helping the New Jersey State legislature investigate racial profiling. As special counsel to the State senate Judiciary Committee, he led the committee probe into how top State officials handled racial profiling by the State Police. His work was bipartisan, objective, balanced, and thoroughly professional, and helped expose the fact that for too long, State authorities were aware that statistics showed minority motorists were being treated unequally by some law enforcement officials, and yet ignored the problem. This landmark racial profiling investigation demonstrated Judge Chertoff's ability to balance the State's responsibility to provide for the public safety with protecting our citizens' civil liberties.

Judge Chertoff is uniquely positioned to undertake the enormous challenges that come with the position of Secretary of Homeland Security. Particularly important to the citizens of New Jersey is his understanding of the critical importance of allocating our homeland security resources to those areas of the country where the risks and vulnerabilities are greatest.

New Jersey is on the front lines of terrorism. We lost 700 people on September 11, 2001. Two of the 9/11 terrorists were based in New Jersey, and the anthrax that hit this institution originated in New Jersey. The Post Office in Hamilton, NJ, where the anthrax was sent, has taken years to clean up and will finally reopen next week. The costs are expected to be $72 million for decontamination and $27 million for the refurbishment of the facility.

Newark Liberty Airport, and Port Newark, and the Ports of Philadelphia and Camden are critical vulnerabilities. New Jersey is home to rail lines, bridges, and tunnels to New York City, as well as chemical plants and nuclear facilities. Atlantic City has the second highest concentration of casinos in the country, and between tourists and those who work there, is visited by as many as 300,000 people.

Wall Street and other financial services firms house important front and back office operations, including clearance and settlement services, and other operations essential to the functioning of America's capital markets in Newark, Jersey City, and Hoboken. And, last summer, Newark was one of three locations including New York City and Washington, DC—that was put on Orange Alert for a possible terrorist attack as intelligence suggested that the Prudential building in downtown Newark could be a target.

Yet despite these growing threats to New Jersey from anthrax to the Orange Alert, and the ever-expanding costs associated with protecting the most densely populated State in the country—remarkably homeland security grants to New Jersey were cut in 2005.

Funding was reduced from $93 million in 2004 to $61 million in 2005. Newark will see a 17-percent reduction in funds, from $14.9 million to $12.4 million. And, incredibly, Jersey City's homeland security funds will drop by 60 percent, from $17 million in 2004 to $6.7 million in 2005.

These cuts leave New Jersey home of countless companies and people who keep our economic engine moving; home of one of the most active and exposed ports in the country; home of one of the busiest airports in America; home of our Nation's new Homeland Security Secretary—36th in the Nation in per capita homeland security funding.

I was pleased that the President's budget called for an allocation of homeland security funding based on risk and vulnerability. This commonsense approach mirrors the recommendations of the 9/11 Commission.

Senator FRANK LAUTENBERG and I have introduced legislation that would require that homeland security funding be allocated along these lines. This bill grants the Department of Homeland Security the authority it needs to keep us safe and will allow Michael Chertoff to be an outstanding Secretary of Homeland Security.

Judge Chertoff also understands the critical importance of protecting our chemical facilities. Only a week ago, the former Deputy Homeland Security Advisor to the President testified to this committee that industrial chemicals are ''acutely vulnerable and almost uniquely dangerous,'' presenting a ''mass-casualty terrorist potential rivaled only by improvised nuclear devices, certain acts of bioterrorism, and the collapse of large, occupied buildings.'' He added that chemical plant security ''should be the highest critical infrastructure protection priority for the Department of Homeland Security in the next two years.''

There are other critical issues that the nominee will face and that I am confident he is prepared to take on. Our rail lines are woefully unprotected and recent accidents have demonstrated the risk that rail transport of toxic chemicals could be attacked by terrorists. There is important work remaining at TSA, where airport screening is far from complete and where too little attention has been paid to ground transportation.

And the Department of Homeland Security has not yet adequately confronted the vulnerabilities of our ports. The checklist is long and the issues complex. And in my view, Judge Chertoff is the best person to address them.

One of the critical issues to be addressed by the new Secretary of Homeland Security will be civil liberties. I strongly believe that we as a nation can be both secure and free. Given Judge Chertoff's work on racial profiling in New Jersey, I am confident that he will pursue law enforcement strategies that are both effective and unbiased. His stated commitment to respecting recent Supreme Court decisions on detainees assures me that he will always pursue terrorists within the context of our laws and treaty obligations. And his public as well as private calls for a new approach to detainees is indicative of a thoughtful and open-minded professional.

While I fully understand the concerns raised by my colleague from Michigan, I am disappointed that it delayed this confirmation vote. The Congress has an obligation to oversee how this administration is treating detainees, in Guantanamo and around the world. Access to FBI memoranda on this topic are critical to this oversight. But this particular document has nothing to do with Judge Chertoff's qualifications for this critical position. Indeed, I have confidence that Judge Chertoff—who has called for more open discussion on the topic of detention—will work closely with Congress so that we can come to a full understanding of what has happened and where we go from here.

No one knows what the future may bring. The terrorist threat shifts, and we are constantly learning about new vulnerabilities. At this critical moment, I believe that Judge Chertoff has the kind of commitment, intellect, and imagination that we need as someone who is focused on keeping us safe, as someone who understands that homeland security means identifying the greatest risks and vulnerabilities and making them a priority, as someone who recognizes that, in protecting ourselves, we cannot sacrifice our basic principles and values. Mr. President, I am confident that Michael Chertoff is that person.

Mr. DURBIN. Mr. President, I rise today in support of the nomination of Judge Michael Chertoff to be the new Secretary for the Department of Homeland Security.

Make no mistake, I believe the challenges facing Judge Chertoff at the 2-year-old Department are monumental. They include negotiating turf battles with other powerful Cabinet Secretaries and ensuring that 22 formerly

disparate Federal agencies, with a combined workforce of 180,000 employees, work together under one central structure. In addition, Judge Chertoff will be responsible for protecting our Nation's critical infrastructure and for improving information sharing among law enforcement agencies—without intruding unnecessarily on individual privacy rights. It is a daunting assignment, but I believe Judge Chertoff is up to it.

When Senator OBAMA and I met with Judge Chertoff last week, we discussed several issues of concern to us, and Judge Chertoff assured us that he will address these issues. Among my key concerns are the new personnel rules for Department of Homeland Security employees. I believe the new rules are far too restrictive when it comes to collective bargaining, pay negotiations, and adjudicating grievances. The situation at DHS has become even more important since the Bush administration announced its intention to give agencies across the Federal Government the option of creating similar human resource policies. Judge Chertoff said he would sit down with the workers who will be affected by the rules to listen to their concerns and suggestions. It is important that he do so. As Judge Chertoff told Senator OBAMA and me:

> It's important to have a happy and satisfied workforce. This is not going to work if people in the department feel like they're being wronged.

Another issue Judge Chertoff promised to look into is the effort to integrate the separate fingerprint data bases maintained by the Department of Homeland Security and the FBI. Merging these two systems into a single, integrated system is not simply a good idea, it is a congressional mandate. Yet, a recent report by the Justice Department's Inspector General concluded that the efforts to achieve a fully integrated biometric fingerprint ID system have stalled. As one who has pushed for such a system, I am deeply troubled by that assessment. More than three 3 years after 9/11, it is unacceptable that this critical improvement to our homeland security still had not been accomplished. Judge Chertoff said the American people ''would go ballistic if we can't get things to mesh.'' He is right and the American people have every right to be angry. This must get done. I take Judge Chertoff at his word when he says he will make development of an integrated biometric fingerprint ID system a priority.

Judge Chertoff also promised to look into another possible threat to our homeland security, and that is the apparent ease with which an ordinary citizen can obtain an airline pilot's uniform. This threat was documented recently by a Chicago TV reporter. Astonishingly, the reporter found that he could purchase an authentic pilot's uniform online—with no identification—and the uniform would be delivered to his doorstep in 48 hours. How can this happen in a post-9/11 world? Senator OBAMA and I have asked the Senate Homeland Security and Governmental Affairs Committee and the Transportation Security Administration to answer that question. We will be looking for answers.

I look forward to working with Judge Chertoff on several issues of particular importance to Illinois. Among them is a Microbial Risk Assessment Center, which has been proposed by the University of Chicago and would serve as the national clearinghouse to assess risks from anthrax, smallpox, plague, and other possible bioterror threats.

In addition, the city of Chicago has developed a state-of-the-art command center where personnel from the city's police, fire, and rescue departments and representatives of the city's business community work together in one room to monitor the city and, if necessary, respond jointly to disasters. I believe this command center could serve as a national model, and I encourage Judge Chertoff to examine its structure and successes.

My decision to support Judge Chertoff is the result of serious deliberation. While I am impressed by his record and his openness, I also have some concerns about the role Judge Chertoff played in developing certain administration policies while he served as the head of the Justice Department's Criminal Division. In that capacity, Judge Chertoff helped to craft high-profile initiatives that explicitly targeted Arabs and Muslims and resulted in the detention of thousands of people. In the aftermath of the 9/11 terrorist attacks, the Justice Department rounded up at least 1,200 immigrants, the vast majority of whom were Arab or Muslim. The Justice Department's Inspector General found that none of these detainees—not one—was charged with a terrorist-related offense, and that the decision to detain them was ''extremely attenuated'' from the 9/11 investigation. The Inspector General also found that detainees were subjected to harsh conditions of confinement and that some were subjected to ''a pattern of physical and verbal abuse.''

Judge Chertoff also was tangentially involved in the Justice Department's efforts to legalize abusive interrogation tactics. He reviewed the infamous Justice Department ''torture memo'' and provided advice on complying with the antitorture statute, but he told me that he did not provide advice on the legality of any specific interrogation methods.

The Justice Department's ''torture memo'' narrowly and, I believe, incorrectly redefined torture as limited only to abuse that causes pain equivalent to organ failure or death, and concluded that the antitorture statute does not apply to interrogations conducted under the President's so-called Commander in Chief authority.

This tortured effort to justify torture helped to create a permissive environment that made it more likely that abuses of detainees would take place and made it possible for the horrors we have since learned about at Guantanamo Bay, Cuba and the Abu Ghraib prison in Iraq. What happened in these places, I believe, has damaged our image and called into question our moral authority in some places and it has increased—not diminished—the dangers our troops and our citizens face in this age of terrorism.

Unlike many other administration officials, however, Judge Chertoff has acknowledged that the Government made mistakes in the aftermath of 9/11. He told me that he opposes ethnic and religious profiling and he is committed to treating all immigrants fairly and to complying with all laws regarding the humane treatment of detainees.

I take him at his word. I will expect Judge Chertoff, as Secretary of Homeland Security, to balance America's need for security and our respect for civil rights and our heritage as a nation of immigrants. There are practical reasons, in addition to the legal reasons, for seeking such balance. Detaining large numbers of Arab and Muslim immigrants involves a massive investment of law enforcement resources with little no return, and it creates fear and resentment of law enforcement in exactly the immigrant communities whose cooperation we need to defeat terrorism.

Finally, Judge Chertoff assured me that he will maintain open lines of communication with Congress so that Congress can fulfill its constitutional requirement to oversee whether, and how well, the Department is implementing the laws this body passes.

For all of these reasons and because of his record of public service and his candor during this confirmation process, I will support Judge Chertoff's nomination to be America's next Secretary of Homeland Security. I look forward to working with him to make America safer in ways that are consistent with our national values and heritage, and I wish Judge Chertoff the best of luck as he begins his important new assignment.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, this Senator from New Mexico has known Mr. Chertoff for a long time. I have been familiar with him professionally, primarily when he was legal counsel for a committee on which I served. In that capacity, I got to know his professional qualities, his intellect, his care in interpreting both the law and facts, and I am absolutely positive that he is going to make a superb head for this very complicated Department of Homeland Security.

Mr. Chertoff is a lawyer by trade and a judge by promotion within the profession of advocacy. Now, regardless of the profession or experiences of the person nominated to this position, there might have been some who asked: Why not some other particular area of

expertise? That could be asked in this case. But I am quite sure that when one looks at the myriad of problems addressed by and the kind of intellect, commitment, and most of all, integrity that Judge Chertoff has, it is clear that he is going to do a superb job on behalf of our country and the safety of our homeland.

My compliments to the President for sending this nomination to the committee, headed by Senator COLLINS, that reported him out quickly, and to the Senate for overwhelmingly voting for him today. I salute Judge Chertoff and wish him the best. I hope he is able to handle this job with the same kind of excellence that he has handled all the other jobs we have given him.

He has plenty of help, which he will need. This is not a job he can do alone. It is a very big agency, and I hope everybody who works there will be part of his team as he works to make Homeland Security operate in a way that is efficient and good for our country and for our people.

I yield the floor.

Mrs. CLINTON. Mr. President, when the time comes I intend to vote in favor of Judge Chertoff's nomination to be Secretary of Homeland Security. There is no position in government of greater importance to the security of our country and of my home State of New York. And so I am glad that the Senate has agreed to devote some time to a discussion of the important issues that the next Secretary of Homeland Security will face.

Let me say at the outset that I have some serious concerns about this nomination. These concerns have nothing to do with Judge Chertoff's personal abilities: his professional and intellectual qualifications are beyond question, as is his commitment to public service. Rather, my concerns are based on the misguided and constitutionally infirm policies that have been drafted by the Department of Justice and implemented by the Administration in its prosecution of the war on terror and in the conflicts in Afghanistan and Iraq. Judge Chertoff was a senior DOJ official at the time that these policies were created. Because he is being nominated to a position for which respect for Constitutional and treaty obligations is especially important, his role in the formation of these policies is therefore worthy of careful scrutiny.

My primary concern relates to those policies that have undercut and placed our men and women in uniform in greater danger and diminished our standing in the international community. I feel a particular personal obligation as a member of the Armed Services Committee to do my utmost to ensure that our government does not do anything that unnecessarily puts our troops in harm's way, that diminishes our standing among our allies, or that blurs the values that distinguish us from our depraved and nihilistic enemies.

The August 1, 2002 memo from the Department of Justice's Office of Legal Counsel, with its absurdly narrow definition of torture, is the most shocking and well-known example of the administration's attempt to radically weaken this country's commitment to treat all prisoners and detainees humanely and in accordance with international agreements. Another oft-cited example is Attorney General Gonzales' January 2002 advice to President Bush that the ''war on terrorism'' offers a ''new paradigm [that] renders obsolete'' the Geneva Convention's protections.

I am satisfied by Judge Chertoff's testimony that, as Assistant Attorney General for the Criminal Division, he did not provide legal advice that strayed below the standard that is expected from senior members of the Justice Department. He testified that executive branch officials sought his views on the practical application of laws prohibiting torture and on specific techniques. And he testified that torture is illegal and wrong and that he does not believe that the definition of torture in the August 1, 2002 OLC memo is broad enough. He testified that he told executive branch officials to ''be sure that you have good faith and you've operated diligently to make sure what you are considering doing is well within the law.'' Regarding specific techniques, Judge Chertoff testified that, ''I was not prepared to say to people, to approve things in advance, or to give people speculative opinions that they might later take as some kind of a license to do something.''

These responses suggest that Judge Chertoff appreciates the importance of upholding America's long tradition of treating prisoners humanely, and of respecting international agreements that protect our men and women in uniform as well as our standing in the international community. While I would have preferred that Judge Chertoff had argued his point to the administration more forcefully, I am satisfied that he did not actively promote these wrongheaded, immoral, and counterproductive policies.

Another important concern arises from the Justice Department's treatment of more than 750 aliens detained immediately following the attacks of September 11. The department's own inspector general released a report in 2003 that acknowledged the ''difficult circumstances'' in which the department found itself, but concluded there were ''significant problems in the way that the September 11 detainees were treated.'' Among those problems were significant delays in the FBI's clearance process, hindrances in access to legal counsel, and verbal and physical abuse of detainees. The report specifically finds that the Justice Department, including Judge Chertoff, was aware of the FBI's clearance problems at the time. In fact, Judge Chertoff testified that he inquired with the FBI about the clearance delays, but the FBI's resources were ''stretched.'' The inspector general found that the Justice Department should have done more once it learned of the detainee-related problems.

When asked about this report at his confirmation hearing, Judge Chertoff acknowledged that there were ''imperfections'' in the executive branch's response. He testified that he was unaware at the time of the hindrances in detainees' access to counsel, that he was unaware of the verbal and physical abuse, and that such mistreatment is inappropriate and should not have happened. He also stated the importance of learning from experience.

I am disappointed that Judge Chertoff did not express greater regret for the department's role in the mistreatment of detainees, and that he did not testify in detail as to the status of the implementation of the inspector general's recommended 21 reforms. Nonetheless, his responses to this line of questioning are not, in my view, sufficient to oppose his nomination. I hope that Judge Chertoff will bring to bear the lessons we have learned from this experience and work to ensure appropriate reforms are successfully carried out.

After careful consideration, I am satisfied by Judge Chertoff's answers to the Senate Homeland Security and Governmental Affairs Committee regarding his conduct at the Justice Department. Despite the egregious missteps the department made during his tenure, I do not believe that his performance there disqualifies him from serving as the next Secretary of the Department of Homeland Security. And in view of his testimony and of his exceptional record during his short time on the Federal bench, I believe that Judge Chertoff understands that the next Secretary of Homeland Security must be both unflagging in his efforts to protect us from terrorist attack and steadfast in his respect for our Constitutional order.

I also believe that Judge Chertoff has a good understanding of the issues and challenges facing the Department of Homeland Security. Perhaps the biggest challenge awaiting him is the taming of the enormous bureaucratic tangle that is the current department. If confirmed, Judge Chertoff will become the head of a department that was created via the integration of 22 separate agencies and 180,000 employees. These agencies and employees engage in a wide range of activities related to securing the homeland, and they need a steady and firm hand on the tiller. They also need a creative leader who can cut through bureaucratic entanglement and get things done. As Secretary, Judge Chertoff's central task will be setting priorities and getting a vast bureaucracy to work efficiently and in a unified fashion.

I am hopeful Judge Chertoff's well-documented intellectual abilities and his long experience as a public servant will serve him well as he moves from the role of Federal judge to the head of such a large and demanding Department. He pledged at his confirmation

hearing to work ''tirelessly'' to safeguard the nation. I hope he follows through on that pledge in a variety of areas of critical importance. He will need to devote substantial energy and political capital if he is to help this still nascent Department develop to its full potential and render all Americans as safe and as secure in their liberties as possible.

I am encouraged that Judge Chertoff and I agree on a number of specific challenges facing the Department of Homeland Security. One of these issues—Federal funding formulas for state and local preparedness—is essential to protecting the homeland. I have repeatedly called upon the administration and my colleagues to implement threat-based homeland security funding, so that homeland security resources go to the states and areas where they are needed most. I have introduced legislation in this regard and even developed a specific homeland security formula for administration officials to consider.

The latest iteration of that proposal is contained in my Domestic Defense Fund Act of 2005, which I introduced on the first legislative day of this Congress. Modeled on the Community Development Block Grant program, the Domestic Defense Fund of 2005 provides $7 billion in annual funding to local communities, States, and first responders. The act requires that all of that funding be allocated using threat, risk, and vulnerability-based criteria that homeland security experts—including the Homeland Security Independent Task Force of the Council on Foreign Relations, chaired by former Senators Gary Hart and Warren Rudman, and the National Commission on Terrorist Attacks Upon the United States—have long recommended.

I was heartened to hear Judge Chertoff testify at his confirmation hearing, that ''I think we have to have a formula for funding and a formula for lending assistance to State and local governments across the board that takes account of the reality of vulnerabilities and risks and making sure that we're making a fair allocation.'' Judge Chertoff also stated this view when I met with him. His unequivocal support for threat- and vulnerability-based funding is important for New York, and for the nation.

Another issue on which Judge Chertoff and I agree is the need for greater sharing of terrorist-related information between and among Federal, State, and local government agencies. In the immediate aftermath of the 9/11 terrorist attacks, I worked with a number of my colleagues in the Senate on a bi-partisan basis in focusing on this need. As I noted in my remarks on the passage of the Intelligence Reform and Terrorism Prevention Act of 2004, the sharing of critical intelligence information is vitally important if we are to win the War against terrorism. We need to ensure that our front line solders in the war against terrorism here at home—our local communities and our first responders—are as informed as possible about any possible threat so that they can do the best job possible to protect all Americans. It is vital for New York City and other local communities across New York State and the Nation to receive accurate and timely information from the department when a potential threat emerges. It is equally important that local communities on the front lines serve as valuable sources of information for the Federal Government.

I was pleased to learn that Judge Chertoff testified at his confirmation hearing that his personal experiences as an Assistant United States Attorney, a United States Attorney and as head of the Criminal Division on September 11, give him a thorough appreciation and respect for State and local perspectives. In his testimony, he described ''negotiating cooperation with our state and local government officials'' as one of ''the central elements of the war against terrorism. . . .'' He repeatedly referred to the need to work in partnership with State and local government.

I could not agree more. The Federal Government cannot, and should not, go it alone when it comes to securing the homeland. States and local communities must be full partners. Much more needs to be done, but Judge Chertoff's testimony demonstrates that he understands the importance of this area as a key to homeland security.

I also find it encouraging that Judge Chertoff testified that he is ''acutely aware'' of the importance of allocating resources to secure our ports. Needless to say, having a secretary of homeland security who understands the importance of the Port of New York and New Jersey is likely to be a good thing for New Yorkers, and for the entire country.

There has been little evidence to date that administration is interested in using a threat-based formula for allocating resources. Indeed, in Fiscal Year 2004, when the Administration had the opportunity to employ such a formula in allocating funds under the State Homeland Security Grant Program, SHGP, and the Law Enforcement Terrorism Prevention, LETP, grant program, it affirmatively chose not to do so, despite pleas from me and many members of Congress on both sides of the aisle. Again in Fiscal Year 2005, there was no significant effort on the part of the administration to use a threat-based formula.

I wrote President Bush imploring him to work with the House and Senate leadership on the issue of homeland security funding, but language was inserted in the Fiscal Year 2005 Homeland Security Appropriations Act to require that SHGP and LETP funds be allocated in that fiscal year as the administration chose to allocate funds in Fiscal Year 2004, which, unfortunately, was on the basis of population alone. Every homeland security expert I know has said that this makes no sense. If the terrorists are looking at things such as the presence and vulnerability of critical infrastructures as well as population and population densities, so should we.

This year, the administration is again talking a good game on homeland security grant formulas. The Fiscal Year 2006 budget request calls for more than $1 billion in grants to States for the purpose of enhancing capabilities to prevent, deter, respond to and recover from acts of terrorism, to be allocated by the Secretary of Homeland Security ''based on risks, threats, vulnerabilities, and unmet essential capabilities,'' with a 0.25 percent State minimum. In addition, more than $1 billion would go for grants to urban areas, for the same purpose, and on the same basis—minus, of course, a State minimum.

This is a step in the right direction, but we need to allocate much more funding for this purpose. Whether through direct funding—which I continue to believe is the best way to disburse homeland security funding to many communities—or funding that is sent to the states and passed through to local communities, the Federal Government should be disbursing the homeland security state and local funds to communities according to a threat- and vulnerability-based formula.

In addition, my Domestic Defense Fund Act makes it explicit that the funding provided for in my proposed legislation will not supplant or be in lieu of funding for traditional first responders programs, such as the Community Oriented Policing Services, COPS, program and the Assistance to Fire Fighters, FIRE, Act program. These Federal programs have proven successful in helping first responders perform traditional functions, such as fighting crime and responding to fires.

Unfortunately, the Fiscal Year 2006 budget request seeks to cut or eliminate a number of these essential first responder programs. Under the President's proposed budget, funding for the COPS program is reduced from $379 million to $118 million nationally, which comes on top of previous years' cuts for the COPS program, which once received more than $1.5 billion in funding. And absolutely no funding is proposed for the COPS Universal Hiring Program, the COPS MORE program, COPS in Schools program, or the COPS Interoperable Communications Technology Program.

The Fiscal Year 2006 budget request also proposes no funding for the Edward Byrne Memorial Justice Assistance Grant program, named after a New York City police officer killed in the line of duty, and the Local Law Enforcement Block Grant program. These programs in the past have provided states and local governments with Federal funds to support efforts to reduce crime and increase public safety, such

as enhancing security measures around schools, establishing or supporting drug courts, and preventing violent and/or drug-related crime.

I find that shameful, especially as our fire fighters, police officers, emergency service workers and other first responders continue to be on the front lines of our nation's homeland defense. It is imperative that Judge Chertoff, if confirmed, stand by his philosophy of risk-based allocation and appreciation for the role of state and local partners when he prepares his department's budget in coming years.

In fact, the outcome of a number of homeland security imperatives will depend to a significant extent on Judge Chertoff's willingness to fight hard during the budget process. A good example of this is the addition of new border patrol agents mandated in the recently enacted Intelligence Reform and Terrorism Prevention Act of 2004. If the goals of this legislation are realized, the security of the northern border would be improved, a result I have worked for since 2001. Among many provisions, the act calls for an increase of at least 10,000 border patrol agents from Fiscal Years 2006 through 2010, many of whom will be dedicated specifically to our northern border. And yet the FY06 budget request did not come close to seeking the 2,000 new border patrol agents authorized for this year. Judge Chertoff must be willing to fight hard for full funding of this and other programs essential to the department's mission.

I appreciate that Judge Chertoff understands the critical importance of securing chemical facilities. There are hundreds of chemical plants in the United States where a terrorist attack could threaten more than 100,000 Americans with exposure to toxic chemicals. This is a homeland security vulnerability that has been recognized by many, yet we still have no mandatory Federal standards for chemical plants, and the Department of Homeland Security lacks authority to put such standards in place. Until Congress provides the department with such authority, Americans will continue to rely on voluntary security measures at chemical plants, which have been repeatedly shown to be lax.

I believe that the best solution to this problem would be to enact the Chemical Security Act that I have sponsored with Senator CORZINE. However, in order to pass this or other chemical plant security legislation, we will need stronger support from the administration and from the Secretary of Homeland Security than we have had in the past. That is why I was encouraged by Judge Chertoff's testimony that he is aware of the significant risk of that sector based on his personal experience. He also testified that ''the Federal Government needs to be able to use a whole range of tools to bring the industry up to an appropriate standard'' and that ''the President has indicated that he supports, if necessary, the use of authorities to require chemical companies to come up to certain standards, with appropriate penalties if they don't do so.''

Thus, on balance, my personal exchange with Judge Chertoff—and the testimony he gave during his confirmation hearing—speak of his commitment to threat- and vulnerability-based funding, his keen awareness of other vital homeland security issues for New Yorkers, and his intent to work tirelessly. He is from New Jersey and knows the homeland security needs of the region from personal experience. Ultimately, his roots in the region, his personal experiences, and his expressions of commitment to policies that are essential to the security of New Yorkers, are decisive factors in my decision to vote to confirm.

One of the lessons we have learned since September 11 is that constant vigilance is required of the Congress; oversight and accountability must be our watch words. Oversight requires us to demand that the rule of law be respected by the executive branch, and that we do not countenance the flouting of the law or of treaties. It requires us to hold the executive branch truly accountable for its actions. If we have learned anything since that September day in 2001, particularly with respect to this administration, it is the timeless truth that ''eternal vigilance is the price of liberty.''

It has been said before, but it bears repeating—our Nation faces a new kind of challenge to our way of life. I have no doubt we will overcome this challenge, but it will only be overcome through maintaining and strengthening our civil society and our commitment to being a force for decency and respect for law in the world.

Judge Chertoff testified that, as Secretary, he will ''be mindful of the need to reconcile the imperatives of security with the preservation of liberty and privacy.'' I agree that one of the central dilemmas of our time is balancing security with liberty and privacy. As the 9/11 Commission said, ''Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend.'' I believe that Judge Chertoff is professionally qualified to be Secretary of Homeland Security, and that he understands and respects the values that the Secretary works to defend. Therefore, I will be voting in favor of his confirmation.

Mr. CORNYN. Mr. President, I thank Judge Michael Chertoff for having the courage to take on the challenging tasks of leading the Department of Homeland Security. He is an ideal nominee for this position, and I look forward to working with him and other department officials to ensure that we have the best possible border and port security, cyber security, and efficient distribution of DHS resources and personnel.

There are several issues that we need to address in the short term, particularly in the areas of state homeland security grants and cyber security.

For the last 4 years, the Department of Homeland Security has provided billions of dollars throughout the country to prevent, prepare for, and respond to acts of terrorism. There are several effective first responder grant programs that have raised our nation's overall level of preparedness and ability to react to all manner of disasters.

However, many of the funds distributed to states and local Governments have been allocated by formulas that fail to take into consideration actual needs or are not based on real risks of terrorism. It is time that Congress reexamine the methods of distributing these critical preparedness funds. In order to adequately secure the nation against terrorist attacks, the Federal Government must strategically distribute grants to states and local governments in an efficient manner and to the places where they will be most effective. Congress must take the lead in reforming the system for distributing these funds based on actual threats and vulnerabilities and enable Federal agencies to target critical gaps in state and local terrorism prevention and preparedness capabilities.

We know that terrorists seek to strike the U.S. where it will do the most damage, either in terms of American lives or our country's economy and vital assets. Of course, we should make sure that our population centers are protected, but that does not mean that funds should only go to urban areas. When it comes to protecting our economy and vulnerable critical infrastructure, we need to be mindful of protecting all the vital components of these systems. Taking the U.S. food supply as an example, this would mean securing both up and down stream components, from agriculture and food production systems to the ports that ship products in and out of the country.

By targeting terrorism preparedness funds to the communities and components of the economy that are most at risk, the whole country benefits.

And looking beyond traditional terrorism preparedness, in this age of the Internet and globally interconnected computer systems, securing the Nation's borders no longer includes just land, air and sea, but also cyberspace. As a result, it is critical that the federal government provide strong leadership in cyber security by securing its computer systems and adequately safeguarding key components in our national infrastructure—including the systems the country relies upon that link water, utility, communications, transportation and financial networks.

I am encouraged that Judge Chertoff, has committed to closely examining the agency's role in cyber security to ensure it is doing everything possible in this critical mission. Toward that goal, we should elevate the issue of cyber security within the agency and create the position of Assistant Secretary of Cyber Security.

We made important strides toward making America safer with the recently enacted Intelligence Reform Bill, but we cannot claim to have finished the job of improving our intelligence capability and homeland security until we deal comprehensively with the need for enhanced cyber security. An organized cyber attack would disrupt national security, halt the production and distribution of needed goods and services, and threaten the very fabric of our Nation's economy.

Unfortunately, cyber security is an area that tends to be overlooked in the discussion of homeland security. First responders to a cyber security attack on America have far different needs and functions than traditional first responders. They require a clear and visible leadership within DHS to organize and maintain our security. Given the dynamic and ever-expanding threats in the area of cyber security, an Assistant Secretary of Cyber Security will provide DHS with an enhanced ability to interact, influence, and coordinate targeted cyber security missions across all areas of our infrastructure.

The effort to secure our nation will not be complete until all aspects of vulnerability to terrorists are recognized. This is true for all our national borders; on land, air, sea, and cyber space. Recognizing that threat is an important step, but we must now make every effort to prevent the threat from becoming a crippling reality.

I am proud to vote for Judge Chertoff. He has well-deserved bipartisan support, and I am confident he will be able to do the job. As Assistant Attorney General for the Criminal Division of the U.S. Department of Justice, he worked tirelessly following the September 11th attacks, prosecuting those whose specific goal was to kill innocent citizens in New York, Virginia and elsewhere in this country. I look forward to working alongside him on these critical issues, and I am sure he will bring courage and commitment to the serious tasks at hand.

Ms. CANTWELL. Mr. President, the Constitution provides the Senate with a responsibility to evaluate Presidential nominations. This is a responsibility that I take very seriously because the Senate's role ensures strong leadership at the very highest levels of the Federal Government.

Today, the Senate considers the nomination of Judge Michael Chertoff to be Secretary of the Department of Homeland Security. Leading the Department of Homeland Security is not an easy job, and requires an individual with tireless dedication, unending perseverance, and strong leadership.

The Senate Committee on Homeland Security and Governmental Affairs, led by Chairman COLLINS and ranking member LIEBERMAN, conducted a thorough examination of Judge Chertoffs record, and I support the committee's recommendation to endorse his nomination.

The Secretary of the Department of Homeland Security is tasked with a serious responsibility—leading our country's unified effort to secure America and protect the homeland from terrorist attacks. To take this job, Judge Chertoff has walked away from a lifetime appointment to third circuit, a position for which I supported him. I commend him for embracing this new responsibility and answering the call of the President and of all American citizens.

In the wake of the attacks on September 11, our Nation was confronted with a challenge to revamp our homeland security posture and adopt a strategic plan to defend America from global threat of terrorism. Many of our efforts to strengthen homeland security have been successful, and were long overdue. But there are critical networks and infrastructure that need additional attention to reduce their vulnerability to terrorist attacks, such as: our food supply, telecommunications and financial networks, rail transportation infrastructure, and chemical facilities.

In Washington State, we have looked to the Department of Homeland Security to assist us in preparing our first responders and providing them with the financial, training, and information resources they need to meet new security requirements. I would urge Judge Chertoff to continue to work closely with local first responders from my state who are on the front lines of ensuring that Washington's ports, borders, and critical infrastructure are secure.

I am confident that Judge Chertoff will be confirmed today. I am eager to begin working with him to continue to improve the security of Washington State and all of America's homeland.

Mr. LEAHY. Mr. President, today the Senate will complete the consideration of the nomination of Michael Chertoff to head the Department of Homeland Security.

Judge Chertoff currently serves as a Federal judge on the Court of Appeals for the Third Circuit. This is a lifetime appointment that he has held for a relatively short time and that he will be abandoning to return to executive branch service. I helped expedite and voted in favor of Judge Chertoff when his nomination to the third circuit came to the Senate in 2003.

Before that he was the Assistant Attorney General in charge of the Criminal Division at the Department of Justice. I helped expedite and voted in favor of that nomination in 2001.

I have worked with Mike Chertoff and appreciate his background as a prosecutor. He is very capable. He works hard. What one sees when you consider his career is that much of the time he acts as a consummate professional in our best tradition. Although there have been times when he has shown partisanship in an apparent effort to ''earn his spurs'' with those on the extreme right, it is my hope and expectation that he will bring his better angels with him as he embarks on his new role as Secretary of the Office of Homeland Security. That is not a position that needs or deserves even a hint of partisanship. Indeed, one of the moments that marred Secretary Ridge's tenure was when he stepped out of character to make a blatantly partisan pitch during the run-up to the recent presidential election.

I was astonished when President Bush announced that he had chosen Bernie Kerik to replace Secretary Ridge. When newspapers and news magazines began looking at that nomination, it became apparent that the vetting of that nomination was shoddy and that Mr. Kerik was an unacceptable choice on a number of grounds. That misadventure cost us time and led to Judge Chertoff's nomination being made later than it should have been by the administration.

The Senate has expedited consideration of this nomination. In what I hope is a sign of better days to come and of increased responsiveness, I note that this nominee has responded in kind by seeking to answer in one day's time a letter I sent to him. I appreciate that kind of responsiveness.

In light of his effort, I will excuse his missing the point in failing to respond directly to my first question. I raised with the nominee an aspect of his conversations with representatives of the intelligence community while he was serving as a principal law enforcer charged with prosecutions under the anti-torture law. My question to Judge Chertoff was an opportunity for him to reflect on the inappropriateness of the chief prosecutor advising lawyers for possible investigatory targets regarding how he would apply the law and what might provide a safe harbor when it came to torture.

I commend Senator LEVIN for trying to get to the substance of those conversations during confirmation hearings. Sadly but all too characteristically, the Bush administration has refused to provide him or the Senate with the relevant materials in this regard. I am, likewise, concerned that Mr. Chertoff was not more assertive during discussions with the Office of Legal Counsel as it headed down the wrong road in trying artificially to narrow the definition of torture to provide latitude that contributed to widespread international scandals in our wrongful treatment of prisoners. I wish someone within the Bush administration at the time had stood up for the rule of law and had succeeded in derailing the search directed by Judge Gonzales to create loopholes in our law.

I appreciate that Judge Chertoff has committed to implementing the recommendations of the inspector general with respect to preserving the civil rights of those detained by the Government in his answer to my second question. That inquiry derived from his testimony to the Judiciary Committee in November 2001.

Finally, I asked a series of questions about the so-called ''wall'' between law

enforcement investigations and intelligence. The 9/11 Commission report went a long way toward dismantling the myth that former Attorney General Ashcroft had tried to perpetuate. I recall when even President Bush upbraided Attorney General Ashcroft following his assault upon Commissioner Gorelick at the 9/11 Commission hearings.

I pointed out that during the Clinton administration almost one year before September 11, 2001, the Department of Justice Office of Legal Counsel had issued an official memorandum noting the Government's position on ''Sharing Title III Electronic Surveillance Material with the Intelligence Community,'' which concluded that law enforcement officials may share surveillance information with the intelligence community to obtain assistance in preventing, investigating or prosecuting a crime, or where the information was of overriding importance to national security or foreign relations.

As Judge Chertoff recalls, it was Attorney General Ashcroft who adopted measures on January 21, 2000, and it was the memorandum issued by Deputy Attorney General Thompson on August 6, 2001, that governed information sharing in the days leading to the disaster that was September 11. Indeed, Judge Chertoff notes: ''When it was deemed to be appropriate, additional procedures were put in place in specific cases, or in sets of related cases.'' He proceeds to concede that without any change in the law, in the time between September 11 and enactment of the USA PATRIOT Act: ''With court approval, some of these procedures were modified between 9/11 and October 26, 2001, the effective date of the USA PATRIOT Act.''

The 9/11 Commission established during its investigation that in the days and months before September 11, 2001, information sharing requirements and procedures were misunderstood and misapplied at the Department of Justice. I appreciated Judge Chertoff's offering a glimpse into the inner workings of the Ashcroft Justice Department in the days that led up to 9/11 when he noted that there was a ''vigorous internal debate about the appropriate procedures for sharing information collected in foreign intelligence and counterterrorism investigations with criminal agents and prosecutors.'' That ''internal debate'' was unresolved on September 11, 2001, when terrorists struck in New York and at the Pentagon and were thwarted in the sky over Pennsylvania.

When the Justice Department came forward to work with the Senate in the weeks following the attacks, I worked with Mr. Chertoff to ensure that law enforcement and intelligence efforts were better coordinated, and I urged him, the Attorney General and the Director of the FBI to change the culture that had led to destructive and dysfunctional hoarding of essential security information.

I ask unanimous consent that copies of my letter to Judge Chertoff and his response be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, February 7, 2005.

Hon. MICHAEL CHERTOFF,
United States Court of Appeals for the Third Circuit, Martin Luther King, Jr. Federal Building & U.S. Courthouse, Walnut Street, Newark, NJ.

DEAR JUDGE CHERTOFF: Congratulations on your nomination to head the Department of Homeland Security. While I am somewhat surprised to be considering your nomination to an Executive Branch position so soon after your confirmation to the Federal bench, I respect your commitment to public service. The work of the Department of Homeland Security is crucial to the safety and security of the American people, and there are lingering problems in integrating all of the elements of the department and in making them as effective as we need them to be. Managing DHS is one of the toughest assignments in Washington, and I admire and appreciate your willingness to take it. I feel confident that the vetting problems we saw with respect to the Kerik nomination will not plague yours.

It is regrettable that the Judiciary Committee has not held a hearing and was not even allowed to participate in a hearing on your nomination. Much of the work of the Department of Homeland Security remains of importance and interest to the Judiciary Committee and within its jurisdiction and expertise.

In connection with our committee's oversight responsibilities as the Senate prepares to debate and vote on your nomination, I would ask you to respond regarding three principal matters.

First, at your confirmation hearing last week, you acknowledged that while serving as head of the Criminal Division, you consulted with lawyers for the intelligence community regarding specific interrogation techniques. I ask that you reflect upon your conduct in which you were apparently discussing the possible application of the criminal anti-torture statute with representatives of agencies whose personnel might be involved in conduct that you might later be called upon to evaluate for prosecution. In hindsight, should you not have refused to engage in those discussions, or referred the agencies to a non-prosecutorial office of the government such as the Office of Legal Counsel?

Second, in your testimony before the Senate Judiciary Committee in November 2001, you stated that the Department of Justice, in its investigation into the September 11 attacks, acted in complete accordance with all statutory and constitutional requirements in place before or after the attack. With what has come to light since then about the treatment of detainees, including the Inspector General's highly critical June 2003 report on that topic, what would you now say about government practices in the months following the 9/11 attacks and how they went wrong? Is it not also true, as indicated in the 9/11 Commission report that information sharing legal requirements and procedures were misunderstood and misapplied before September 11, 2001? Before September 11, 2001, what did you do to improve information sharing between the law enforcement and intelligence communities?

Third, what were the policies and practices of the Department of Justice with respect to information sharing between law enforcement and intelligence functions during the period that you headed the Criminal Division? In particular, what were those policies and practices before September 11, 2001, and how if at all did they change between September 11, 2001, and October 26, 2001, when the USA PATRIOT Act was signed into law? Is it not true that in 2000 the Department's Office of Legal Counsel issued an official memorandum on ''Sharing Title III Electronic Surveillance Material with the Intelligence Community,'' which concluded that law enforcement officials may share surveillance information with the intelligence community to obtain assistance in preventing, investigating or prosecuting a crime, or where the information was of overriding importance to national security or foreign relations?

I look forward to your prompt response.

Sincerely,

PATRICK LEAHY,
Ranking Democratic Member.

POST-HEARING QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR PATRICK LEAHY FOR THE NOMINATION HEARING OF JUDGE MICHAEL CHERTOFF TO BE SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY

Question: First, at your confirmation hearing last week, you acknowledged that while serving as head of the Criminal Division, you consulted with lawyers for the intelligence community regarding specific interrogation techniques.

I ask that you reflect upon your conduct in which you were apparently discussing the possible application of the criminal anti-torture statute with representatives of agencies whose personnel might be involved in conduct that you might later be called upon to evaluate for prosecution. In hindsight, should you not have refused to engage in those discussions, or referred the agencies to a non-prosecutorial office of the government such as the Office of Legal Counsel?

Answer: As I stated at my confirmation hearing, I was asked to provide my views to other attorneys on how the anti-torture statute would be applied by a prosecutor. My position in response was not to give advance, speculative advice about what could be done; rather, it was to make sure that the lawyers understood that what is likely to be critical to a prosecutor evaluating a potential charge is the honest, good-faith assessment by any interrogators of the effects of what they are doing and how those effects measure against the statute.

I believe it would have been a dereliction of my duty to refuse to assist the Office of Legal Counsel and lawyers from other government agencies. The Office of Legal Counsel, a component separate and distinct from the Criminal Division, was the primary Department of Justice Component responsible for the guidance on the meaning of the anti-torture statute. I understand that, depending on the legal question under analysis, OLC or lawyers from other government agencies on occasion solicit the views of components of the Department that have expertise in the matter under consideration. I believe it was appropriate for the Criminal Division to offer general guidance on application of the law.

Question: Second, in your testimony before the Senate Judiciary Committee in November 2001, you stated that the Department of Justice, in its investigation into the September 11 attacks, acted in complete accordance with all statutory and constitutional requirements in place before or after the attack.

With what has come to light since then about the treatment of detainees, including the Inspector General's highly critical June

2003 report on that topic, what would you now say about government practices in the months following the 9/11 attacks and how they went wrong?

Answer: As explained in the OIG report, I believed that if individuals linked through investigation to the hijackers or terrorism were chargeable with violations of our criminal laws or immigration laws, as enacted by Congress, the government should seek detention in accordance with the applicable law while were investigating to determine if the charged individuals posed an actual threat. In these discussions, I repeatedly emphasized that this policy applied only to those properly chargeable with breaking the law and that detention should be sought consistent with relevant law and regulations.

My understanding is that those detained in the course of the 9/11 investigation were detained with an individualized predicate, meaning, a criminal charge, an immigration violation, or a judicially-issued material witness warrant. There was a legal basis for each detention. The top priority of the Justice Department was preventing another terrorist attack against the American people, and the lawful detention of individuals who were known to have violated immigration laws—like the September 11 attackers themselves—was a reasonable policy.

I acknowledge that the policy could have been implemented better and it will be in the future. I believe that the Government faced an unparalleled challenge on September 11: How to prevent devastating terrorist attacks that might arise at any moment from al-Qaeda ''sleepers'' who had been specifically programmed to disguise themselves, blend into ordinary life, and to exploit existing networks for obtaining phony documents and other means of support. That challenge was compounded by the fact that the September 11 attacks physically crippled the FBI and U.S. Attorney's Office in New York (which were the repositories of much of the Department's antiterrorism expertise at the time) and impaired communication between New York and Washington for a period of time. Furthermore, because the 9/11 conspirators operated in cities and towns across the country, the 9/11 investigation necessitated following and analyzing many thousands of leads generated by numerous FBI field offices, some of which had little previous experience in conducting terrorism investigations. Looking for a terrorist under these circumstances was akin to looking for a needle in a nationwide haystack, but with the needle masquerading as a stalk of hay.

The OIG report identifies concerns that FBI investigative delays or lack of precision in turn led to delays in processing of immigration detainees. In the aftermath of the surprise attack on September 11, the FBI labored under physical and resource constraints in the face of an urgent investigative demand of unprecedented scope. Now, additional resources, training enhancements and reorganizations within the Department and the FBI, as well as the Intelligence Reform Bill—are designed to—and should continue to—increase FBI expertise and capability and streamline coordination, so that in any future nationwide terrorism investigation delays and imprecision will be minimized. Furthermore, I believe that the FBI and DHS should and will continue to build upon their experience to develop and firmly establish appropriate protocols for classifying subjects of terrorism investigations at the appropriate level of concern, setting up appropriate deadlines for notification that a particular detainee is or is no longer a terrorism risk; sharing information between law enforcement and immigration agencies; and finalizing a crisis management plan that clearly delineates each agencies procedures and responsibilities in the event of a national emergency. These enhancements would further reduce the potential for impinging on civil liberties.

Finally, so far as the OIG report identified acts of misconduct by guards at detention facilities these were, of course, wrong, and steps should be taken to assure no such behavior occurs in the future. I believe that DHS and DOJ have implemented some of these proposals and, if confirmed, I will work to further increase their successful implementation.

Question: Is it not also true, as indicated in the 9/11 Commission report that information sharing legal requirements and procedures were misunderstood and misapplied before September 11, 2001? Before September 11, 2001, what did you do to improve information sharing between the law enforcement and intelligence communities?

Answer: I began at the Criminal Division on approximately June 1, 2001. My activities date from that point.

Prior to 9/11, the Department—including the Criminal Division under my leadership—was engaged in a vigorous internal debate about the appropriate procedures for sharing information collected in foreign counterintelligence and counterterrorism investigations with criminal agents and prosecutors, and the proper role for prosecutors in such investigations. I understand that the procedures in effect on 9/11 were those that had been adopted by the Attorney General on July 19, 1995 (including an annex concerning the Southern District of New York), the interim measures approved by the Attorney General on January 21, 2000, and the memorandum issued by the Deputy Attorney General on August 6, 2001.

Question: Third, what were the policies and practices of the Department of Justice with respect to information sharing between law enforcement and intelligence functions during the period that you headed the Criminal Division? In particular, what were those policies and practices before September 11, 2001, and how if at all did they change between September 11, 2001, and October 26, 2001, when the USA PATRIOT Act was signed into law? Is it not true that in 2000 the Department's Office of Legal Counsel issued an official memorandum on ''Sharing Title III Electronic Surveillance Material with the Intelligence Community,'' which concluded that law enforcement officials may share surveillance information with the intelligence community to obtain assistance in preventing, investigating or prosecuting a crime, or where the information was of overriding importance to national security or foreign relations?

Answer: As discussed above, prior to 9/11, the Department—including the Criminal Division under my leadership—was engaged in a vigorous internal debate about the appropriate procedures for sharing information collected in foreign counterintelligence and counterterrorism investigations with criminal agents and prosecutors, and the proper role for prosecutors in such investigations. The procedures in effect on 9/11 were those that had been adopted by the Attorney General on July 19, 1995 (including an annex concerning the Southern District of New York), the interim measures approved by the Attorney General on January 21, 2000, and the memorandum issued by the Deputy Attorney General on August 6, 2001. Where it was deemed to be appropriate, additional procedures were put in place in specific cases, or in sets of related cases. With court approval, some of these procedures were modified between 9/11 and October 26, 2001, the effective date of the USA PATRIOT Act. On March 6, 2002, the Attorney General adopted new information sharing procedures that replaced all of the above-referenced procedures. The March 6th procedures, however, did not take full effect until the Foreign Intelligence Court of Review issued a ruling regarding these matters on November 18, 2002.

Mr. LEAHY. Heading the Department of Homeland Security is a position that may be one of the more difficult assignments in Washington and in Government. The work of the Department of Homeland Security, DHS, is crucial to the safety and security of the American people. There remain many problems in integrating the elements of the Department and in making them as effective as we need them to be. I remain concerned with a number of issues in need of greater attention at DHS and much more significant support from the highest levels of the Bush administration. Working with Secretary Chertoff, maybe we will be able to get that attention and support.

The Bush administration has failed to provide the necessary assistance for first responders throughout our Nation. As the costs borne by law enforcement agencies across the country continue to rise, we need to increase the partnership help offered to our nation's first responders. Instead, in the President's new budget, he has proposed cutting overall funding for first responders by $670 million. These cuts target vital emergency services affecting every State, regardless of size or population. The President also proposed cutting the all-State minimum for first-responder grants from 0.75 percent to 0.25 percent. That new formula would result in the loss of funds to police, firefighters and emergency rescue squads in dozens of states from coast to coast. In Vermont, this would mean a loss of at least $10 million dollars in fiscal year 2006—grant funds that are used to provide security services along thousands of miles of our border with three states. Vermont's border with Canada spans approximately 95 miles, but the Swanton Border Patrol is charged with protecting 24,000 square miles, which includes not only the entire State of Vermont, but also numerous counties in New York and New Hampshire. Within this area, the Swanton Border Patrol is required to patrol more than 261 miles of International Boundary.

Our approach to port security is also insufficient. More than 90 percent of the world's trade is moved in cargo containers. The Government Accountability Office has found that the information that the Bureau of Customs and Border Patrol uses to determine which cargo should be searched is ''one of the least reliable or useful for targeting purposes.'' In addition, our government has been slow to install radiation detection portals at our ports, leaving us vulnerable to the smuggling of a nuclear or radiological weapon.

Mass Transit Measures Idle. Our mass transit systems are similarly at risk. While we spent about $4.5 billion on aviation security last year, we devoted only $65 million to rail security, even though five times as many people take trains as planes every day. The

Madrid bombing vividly demonstrated the potential vulnerability of mass transit, and I am concerned that the administration is not responding effectively enough to this threat. This needs to be a higher priority than the administration has made it. The TSA has been slow in developing security procedures at port and rail facilities around the country, and our transit and freight transportation systems remain at risk. The recent DHS budget submission cuts funding for the following essential security programs: port security grants, port security incident response, intercity bus grants, container threat assessments, nuclear detection and monitoring, hazmat truck tracking and training, and rail security inspectors.

Air Security Concerns Linger. Despite the dedicated resources to aviation security, problems remain. There have been several reorganizations of the TSA's airport screeners program, but reports from the GAO and the DHS Office of Inspector General suggest that the screening programs for baggage and passengers at our nation's airports are not as effective as they should be. We need to ensure that the $4,734,784,000 budget request for aviation security this year is spent wisely and properly.

Secretary Chertoff, if he is confirmed, will oversee both the enforcement of our immigration laws and the granting of immigration benefits. We face a number of important choices on immigration in the coming years, and I hope that he will play a constructive role.

I urge him to support the bipartisan efforts in Congress to improve the H–2B visa program, so we can meet the needs of small employers around our nation who depend on seasonal immigrant labor to stay in business. I hope he will support the bipartisan ''AgJOBS'' bill, which provides relief both to the agriculture industry and to the immigrant farm workers who make up a majority of the farm workforce in our nation. And as the Congress debates fundamental immigration reform, I hope that Judge Chertoff will work to help ensure that any reform efforts recognize and embrace the tremendous contributions of immigrants to our economy and our culture.

I would like to note the release last week of a report by the U.S. Commission on International Religious Freedom, a bipartisan commission created by Congress that we asked to study the expedited removal system and its effect on asylum seekers. In his response to me last week, Judge Chertoff showed a commendable concern for the civil rights of those who were detained due to alleged immigration violations during the 9/11 investigation. His concern should be even more pronounced here, where the Commission found that DHS detains people who seek refuge in the United States—and are not even accused of committing any criminal or civil violation—under conditions that ''are entirely inappropriate for asylum seekers fleeing persecution.''

If we are to recapture America's rightful place as a haven for the oppressed, the tragic situation of asylum seekers must be rectified. The Commission offered a number of recommendations that can be implemented through administrative action, such as establishing an office within DHS to oversee the treatment of refugees and asylum seekers and issuing formal regulations governing when asylum seekers should be released from detention. I urge Judge Chertoff to begin the process of making these changes immediately.

As secretary, Judge Chertoff will also supervise a number of outstanding Federal employees who are Vermonters and work for various components of the Department, particularly in DHS' immigration agencies. I believe he will be pleased with their efforts and their expertise.

Secretary Ridge and I have disagreed strongly about DHS' efforts to privatize Immigration Information Officer, IIO, and other positions at the agency, and Congress has barred that privatization for the current fiscal year. Among other duties, IIOs perform background checks on applicants for immigration benefits, a function that should be performed by government employees. I urge Secretary Chertoff to consider the repeated votes of both the House and Senate to maintain these positions as government employees and to make no effort to revisit the unwise and unpopular efforts of his predecessor.

I will support this nomination. Secretary Chertoff will face great challenges ahead. I hope that he will work with me and others, on both sides of the aisle, in finding the best solutions in meeting them.

Mr. INOUYE. Mr. President, I rise today in support of the nomination of Michael Chertoff to be Secretary of the Department of Homeland Security, DHS. Chairman STEVENS and I had the opportunity to meet with Judge Chertoff, and I was encouraged by his desire to work with Congress to address the nation's homeland security needs. I believe that his stated goal of resolving the internal disputes that have plagued DHS since its founding and his commitment to reduce the vulnerability of all our transportation systems to terrorist attack will serve him well in this new capacity.

Though I support Judge Chertoff's nomination, I want to take this opportunity to express some of my thoughts and concerns about the current state of DHS and the Transportation Security Administration in particular.

In the days following September 11, we all recognized the many serious flaws in our homeland security efforts. We were exposed to new and unexpected threats in ways we had never before thought possible. We committed to do everything in our power to ensure that a tragedy like September 11 would never happen again. We took bold, speedy, and necessary action. We made transportation security a national security function by enacting the Aviation Transportation Security Act and the Maritime Transportation Security Act, both considered landmark legislation.

Although a number of high profile actions have been taken to strengthen aviation security, I fear that the same zealous effort to adequately strengthen security across all modes of transportation has stalled. In the more than three years since September 11, very little has been done to aggressively promote security of our ports, our passenger and freight rail system, motor carriers, pipelines, and hazardous materials, despite very specific congressional direction.

Meanwhile, the threats to our transportation security are as serious as they have always been. From the train bombing in Madrid to the maritime attack off the coast of Yemen, the threats have not waned in the slightest.

But, based on the President's Budget, there are apparently some in the Administration who seem to believe that our work is done. The President's Budget recommends shifting critical work away from the Transportation Security Administration, TSA, to other organizations within DHS that have neither the expertise nor the necessary authority to be effective. In my view, further decentralizing the responsibilities of TSA will destroy the remaining, limited accountability that TSA provides for transportation security.

I recognize that consolidating 22 Federal agencies into one department presents significant management challenges and that growing pains are to be expected as different agencies come together. However, growing pains are not a license to continue the stovepipe behavior that existed prior to September 11. When Congress created the Department of Homeland Security and, more specifically, the Transportation Security Administration, it made clear that ''business as usual'' was not acceptable. The Department and TSA need to reread the underlying statutes and start functioning as Congress directed. It is my hope that Judge Chertoff will be a leader who understands that necessity.

Let me speak for a few minutes about the particulars of TSA and the President's budget. In truth, the difficult work of securing all of our major modes of transportation, including ports, shipping, railroads, intercity buses, motor carriers, and pipelines is just beginning, and the nation must have a robust agency within the Department dedicated to that task.

Security funding for all modes of transportation beyond aviation has been desperately lacking. The 9/11 Commission found, ''over 90 percent of the nation's $5.3 billion annual investment in the TSA goes to aviation . . . [and] . . . current efforts do not yet reflect a forward-looking strategic plan.''

According to Senate Banking Committee estimates, the Federal Government has spent $9.16 per airline passenger each year on enhanced security measures, while spending less than a penny annually per person on security measures for other modes of transportation.

Port security and safe maritime transportation is of particular interest to me. They are absolutely essential for my state of Hawaii, its economic health, and the life and livelihood of its citizens. Chairman STEVENS' state of Alaska is similarly situated, and I know port security is of great importance to him as well.

Apparently, though, we need to remind the Administration—and perhaps the nominee—that 95 percent of the Nation's cargo comes through the ports. The security initiatives at most ports have been, to this point, woefully underfunded, and most are ill prepared for an attack. Unfortunately, our maritime system is only as strong as its weakest link. If there is an incident at any one port, the whole system will screech to a halt, as we scramble to ensure security at other ports. If we had to shut down our entire port system, the economic damage would be widespread, catastrophic and possibly irreversible.

Judge Chertoff has many tools at his disposal to protect our maritime and shipping interests, both through the TSA and the U.S. Coast Guard. Our national shore line extends for thousands of miles, with key cities and facilities located all along the coasts. Whether it is monitoring, credentialing, or inspecting cargo, there is no doubt, port security is a daunting and difficult task.

If Judge Chertoff has difficulty understanding the importance of improved port security, there are 14 members of our committee with major ports in their State, and I am sure each would be more than willing to help provide greater clarity.

Even though we all recognize the overwhelming task of port security, the President's Budget does not do enough. It is true that the Coast Guard increases 7.5 percent over the previous fiscal year, which seems laudable. However, when you look at the numbers, it becomes clear that the administration's request—for the third year in a row—does not recognize that in addition to the Coast Guard's ever-increasing port securities duties, it must still continue critical functions like search and rescue efforts and enforcement of coastal and fisheries laws. There is no question that we must provide for increased security, but there is also no question that other critical missions also impact the free flow of maritime commerce.

In addition to not providing enough funding for Coast Guard activities, the President's budget also proposes to develop a Targeted Infrastructure Protection Program, TIPP, within the Office of State and Local Government Coordination and Preparedness to administer $600 million in integrated grants for the protection of transit, railroads, ports, highways and energy facilities.

This odd realignment of the grant process adds layers of bureaucracy, further diminishes accountability and distribution of these critical funds, and it is directly contrary to the law Congress enacted just 6 months ago. It also shields the fact that the administration is using the same limited pot of money, extending it to a wider range of grantees, and making them compete against one another when each of their projects merit grant funding.

The administration also proposes establishing a new Office of Screening Coordination and Operations, SCO, within the Border and Transportation Security, BTS, Directorate. This new entity would purportedly coordinate procedures to identify and interdict people, cargo and other entities that pose a threat to homeland security.

This short-sighted proposal calls for cutting over 70 percent of TSA's funding for rail, trucking, pipeline, and hazmat security-related initiatives. The ''streamlining of duplicative programs and activities'' effectively eliminates TSA's role in allocating transportation security grants, maritime research and development grants, and cedes its regulatory authority to develop the Transportation Worker Identity Credential, TWIC, program. In short, this budget ignores congressional direction, transfers these functions back to agencies that operate in a stovepipe manner and do not have regulatory authority for credentialing, and decimates TSA's Office of Maritime and Land.

Regarding rail security, the administration's budget fails to propose any dedicated funding or specific programs to address rail security, and given their proposal to eliminate support for Amtrak, it is clear that the administration is not interested in rail service let alone rail security. The recent rail accident in South Carolina and the resulting chlorine gas spill remind us that our rail system presents unique vulnerabilities that, if exploited, could cause irreparable economic and physical damage to communities across the country.

TSA has undertaken several small-scale, ad hoc, efforts to strengthen rail security, from rail passenger screening pilot tests to rail corridor threat assessments in specific corridors. But the administration's lack of support for dedicated funding or programs—beyond what the Congress has forced upon the agency through the appropriations process—reflects the low priority that TSA leadership and the administration place on this important work. They behave as if September 11 never happened.

The budget proposal for aviation security appears on paper to increase by $156 million, but this funding depends on $1.5 billion in new revenues raised through increased security fees on airline passengers.

We can debate how much we need for security, but it does not make any sense to place the burden for new DHS revenue on an airline industry that is bordering on total bankruptcy, when at the same time the administration is demanding that its unaffordable tax cuts be made permanent.

The airlines have argued convincingly that they cannot pass along increased security fees to the passengers in their highly competitive industry. Few of the carriers have managed even modest periods of profitability since September 11. I must remind people in this town, who often have a short and selective memory, that by a vote of 100 to 0 in the Senate and 410 to 9 in the House, this Congress chose to make transportation security a national security function. Funding homeland security is a Federal responsibility.

Given the many misplaced priorities that I see in the President's Budget proposal, it is clear that the Congress needs to help refocus the Department.

Let me state here before my colleagues and for the record, the Senate Commerce Committee will not stall in its efforts to continue developing comprehensive, bipartisan legislation to strengthen port, rail, and intercity bus security, regardless of the Bush administration's repeated refusal to support or properly address these critical initiatives. Our national transportation system remains an inviting target for terrorists. The system is vulnerable, and an attack could cause widespread, catastrophic economic damage. In fact, in his most recent video tape, Osama bin Laden stated plainly that bankrupting the United States was a primary, al-Qaida goal, and given al-Qaida's previous attacks, it is clear that transportation systems are high on their target list.

So I come to the floor today to inform my colleagues and the administration that, I, along with many of my fellow Commerce Committee members, will be introducing a transportation security reauthorization proposal, which will provide further direction to the Department's cargo security functions, strengthen aviation, maritime, rail, hazardous materials, and pipeline security efforts, and improve interagency cooperation.

The proposal will incorporate several Commerce Committee-reported and Senate-passed bills from the prior Congress and will also put forth new ideas to enhance transportation security across all modes of transportation.

For port security, we will seek to improve interagency cooperation by further developing joint operation command centers. Additionally, our bill will clarify the roles and responsibilities for cargo security programs, while establishing criteria for contingency response plans. Our legislation will further encourage the development of effective technologies that detect terrorist threats by setting a minimum level of R&D funding related to maritime and land security.

To address aviation, we will take several steps to strengthen the existing, professional, screening workforce through improved training of personnel and by directing a more appropriate use of TSA's resources. Additionally, we will seek to streamline and improve collection of airline and passenger security fees to promote a more efficient and healthy aviation industry.

For rail security, we will incorporate an updated version of the Rail Security Act of 2004, which the Senate passed by unanimous consent last year, and we will feature new efforts to ensure the security of hazardous materials that are shipped by rail.

To address the security needs of our other surface transportation modes, the proposal will include funding to improve intercity bus security, strengthened hazardous material transportation security efforts, new security guidelines for truck rental and leasing operations, and the development of pipeline security incident recovery plans.

I look forward to working with Judge Chertoff, the TSA, and the administration on this effort, and I remain hopeful that his new leadership at DHS will inspire the requisite commitment and dedication necessary to meet the security challenges ahead. The work will not be easy. While most of us recognize the improvements that have been made in airline security over the last few years, others are pushing to roll back the progress that we have made.

Despite that progress, there are some that continue to urge TSA to return to the days of private security screening companies, like Argenbright Security and its underpaid, poorly trained workforce. These efforts are not just shortsighted, they disregard a national imperative to treat transportation security as a national security function, and they should be quickly dismissed by the administration. I call on Judge Chertoff to clarify DHS's position on this matter quickly, so the country can continue to have faith in the security efforts we have come to expect when flying.

Similarly, TSA needs more resources and attention paid to port, rail, motor carrier, hazardous materials, and pipeline security matters, not less, and I am hopeful that Judge Chertoff will make strengthening all areas of transportation security one of his top missions.

We must take this opportunity to continue moving in the right direction and avoid taking steps backward. I support the nomination of Michael Chertoff as Secretary of Homeland Security and look forward to working with him to ensure that the American people can depend on a national transportation system that is as safe and secure as possible.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, earlier today, the senior Senator from Massachusetts spoke on this nomination. I have enormous respect and affection for my colleague from New England, but on this occasion I believe his comments were well off the mark. Here are some of the words my colleague spoke:

> Our problems with the administration on this nomination pale in comparison with the failure of the Senate Republican majority to carry out its own constitutional responsibilities on this nomination. Instead of insisting on adequate answers to questions raised by the documents, they have acquiesced in the Government's coverup and abdicated their own independent constitutional responsibility to provide advice and consent.

I sincerely believe that were I fortunate enough to have the senior Senator from Massachusetts serve on the committee the Presiding Officer and I serve on, he would never have said those words or reached such a harsh judgment.

He went on in his statement to call these proceedings ''a blatantly defective consent.'' Again, I so wish that the senior Senator from Massachusetts had had the opportunity to participate in our committee's process. He would have found that our committee has the most thorough process for considering nominations of any committee in the entire Senate. I believe our committee is the only one, for example, that has the staff on both sides of the aisle interview the nominee. We posed to Judge Chertoff 250 written questions, both before the hearing and after the hearing. We had a lengthy hearing in which members on both sides of the aisle were free to ask the toughest questions possible to the nominee.

There was no limit on the questions that could be submitted for the record, and the nominee sat for hours patiently, fully, and candidly answering the questions posed to him by the members of the committee. So I believe that the judgment of the Senator from Massachusetts does not reflect the process we undertook for this nominee. I truly wish he could have seen the process because I think he would have reached a different conclusion. And I say that with a great deal of personal affection for my friend from Massachusetts.

The fact is, first, that Judge Chertoff has undergone intense scrutiny by the Homeland Security and Governmental Affairs Committee. I cannot imagine how anyone could conclude, given the number and the scope of questions posed to the judge, that this was somehow ''defective consent.''

Second, on the issue of the e-mails and the nominee's knowledge of questionable interrogation techniques used by certain DOD personnel at Guantanamo, Judge Chertoff's testimony could not have been clearer. He told the committee under oath that he was ''not aware'' of any practices at Guantanamo that ''even approach[ed] torture.'' He said he had ''no knowledge'' of any interrogation techniques other than those that he described as ''plain vanilla.'' These are straightforward, plain words—''I was not aware''; ''I had no knowledge.'' They are not susceptible to multiple interpretations. They are not ambiguous. They do not suggest the need to refresh the nominee's recollection. They do not invite speculation as to what the nominee meant. And there is only one reason why some of our colleagues would feel the need to ask other people about what they said to Judge Chertoff, and that is, if we did not believe him.

This is a distinguished public servant, a sitting Federal judge who is testifying before our committee under oath. There is no reason to doubt his testimony. His testimony was clear, it was forthright, it was candid. It is demeaning to suggest that somehow we need to probe this further because we do not believe this distinguished public official.

I asked this question yesterday, but I am going to repeat it again: Since when have we become so cynical about good people who are willing to step forward, sacrifice, and serve our country? How could our colleagues from Michigan and Massachusetts come to this floor, praise Judge Chertoff, pledge to vote to confirm him, and then condemn the nomination process when we have concluded that the judge gave us truthful, straightforward answers, and we have no reason to doubt the answers he gave us? He was not evasive. He was straightforward. It does not make sense to criticize the process because the committee refuses to engage in an exercise that, at its core, is built upon the premise that Judge Chertoff is somehow being less than truthful with the committee. I reject that premise. There is no basis for it.

Let me close these remarks by saying a word about the Senate's constitutional role of advise and consent because I think a lot that has been said about this role misses an essential point.

We, the Senate, advise and consent. It is the President who appoints. We do not appoint. Sometimes I think some of my colleagues believe the Senate should do all of the appointing for the President, but that is not how the system works. That is not how our Constitution works. Indeed, as Professor Laurence Tribe has noted—and he is a liberal law scholar, not a conservative one—the appointments clause ''seeks to preserve an executive check upon legislative authority in the interest of avoiding an undue concentration of power in Congress''—in Congress—''in executing our responsibilities.''

We should do well to remember that it is the President who is appointing these positions. It is our job to advise and consent. We have performed that job well in this case. We subjected this nominee to extraordinary scrutiny, despite the fact that he has already been confirmed by this body three previous times. Nevertheless, as is appropriate, we went through a full confirmation process with a review of his biographical questionnaire, his finances, with a full FBI check, with an extensive public hearing that stretched several

hours, and with 250 written questions, primarily from Democratic members, submitted to him for response. What more can we ask? What more can we ask of a nominee who is simply stepping forward to answer the call to serve his country? And what more can we ask of a Senate committee in carrying out this solemn duty with which we are vested?

As much as I have respect and affection for my colleague, the senior Senator from Massachusetts, I cannot let his comments pass. That is why I felt compelled to explain to all of my colleagues what the process was and that the Senator's description simply does not reflect what was done. I am certain—absolutely certain—that had he been a member of the committee, had he joined with us in the nomination hearing, he would have reached an entirely different conclusion about the integrity and thoroughness of the process.

I thank the Chair.

Mr. President, I do anticipate that further of my colleagues will be coming to the floor. I will yield to them when that happens.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 380 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Ms. COLLINS. 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. REID. 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. REID. Mr. President, how much time is left on this side?

The PRESIDING OFFICER. The Senator has 22 minutes 30 seconds.

Mr. REID. Mr. President, I, first, want to express my appreciation to someone I believe a star of the Senate and that is CARL LEVIN. CARL LEVIN is such a good example to every Senator. When you work on something with CARL LEVIN, you can rest assured that he has read every word of it. He is someone who I am sure, before he came to the Senate, was an outstanding lawyer. I am so impressed with his ability to do legal analysis, and I am so impressed with his understanding of government generally.

What we have here is something that is very typical for Senator LEVIN. The nomination of Michael Chertoff to be Secretary of Homeland Security is very important. This new Cabinet level office that has been created is so important. I think it has become one of the most important posts that the President has. We know how important the Secretary of Defense is, we know how important the Secretary of State is, but this is so important.

Judge Chertoff will be called upon to manage some 180,000 employees, 22 different agencies, all important to protect this Nation in one way or the other. He will be called upon to bolster the efforts of our State and local law enforcement officers, firefighters, emergency response personnel, and in the process of managing these 180,000 employees, he doesn't have enough people. Many of these 22 different agencies he is responsible to manage are understaffed. So he will have a tremendous burden.

The people who work in these agencies are public servants first in any designation you want to make. They are the frontline protection for communities across the Nation.

Over the course of the last year, I have held in Nevada what I call Frontline Focus roundtables. I am meeting with firefighters, sheriffs, and emergency response personnel. It has been tremendously enlightening to me to talk to them about the problems that we have, from the communication and resource challenges facing urban centers such as Las Vegas and Reno, but also rural communities all over the State of Nevada. They have special needs, special demands.

Of course, I mentioned already Las Vegas with its booming tourist industry. About 20 people an hour are moving into Las Vegas. It is growing and the growth has not stopped. So Nevada's homeland security needs run the gamut. Our State and local officials will need the support and help of Judge Chertoff and the Department of Homeland Security in the work they do. His job is a tough and challenging job, and that is an understatement.

I have confidence in Judge Chertoff. I am confident he will meet these challenges. It was less than 2 years ago that we approved him by an overwhelming vote of 88 to 1 to a lifetime appointment on the Court of Appeals of the Third Circuit. But he was willing to give up this lifetime appointment for a job that will last probably 4 years.

Since his confirmation, the administration has been mired in controversy over its handling of prisoners and detainees. The administration policies have come under great scrutiny and we need to learn, during the course of this confirmation hearing, and we tried to do that, what role he may have played in crafting these policies.

Judge Chertoff has testified before the Homeland Security and Governmental Affairs Committee that he was not directly involved in the administration's decision to gut the Geneva Conventions and set out on a new and dangerous path with regard to interrogations. We have to take Judge Chertoff at his word, because the document proof has either been denied to Senators or otherwise has been so heavily redacted that it raises questions about the role of the Criminal Division overseen by Judge Chertoff.

The debate over his nomination, as my colleague, Senator LEVIN, has brought to the attention of the American people, as he discussed this yesterday on the floor, is a debate over the right of the Senate and the American people to have information about the way our Government does business.

The information sought in the context of his nomination by Senator LEVIN would help us understand how the administration arrived at those policy decisions and would help prevent similar mistakes in the future.

No one would disagree—I shouldn't say that. Very few people would disagree that the policies undertaken in Guantanamo Bay, Afghanistan, and Iraq dealing with interrogation which led to these brutal acts, the acts of torture, were wrong. These policies were used to justify forced nakedness. Keep in mind we live in a different environment than the people of Iraq. The shaving of the beards was demeaning to these men, but it was done many times. They were placed in stressed positions. They were intimidated with dogs, and on and on. We learned of these torture policies and their impact not from this administration, as is our right, but through leaks and lawsuits. Leaks and lawsuits, unfortunately, is the way we have to learn much of what is going on today.

The shocking abuses—and there is no other way you can describe it—at Abu Ghraib were revealed when the photographs were released to the news media. I can remember going upstairs to S. 407 with other Senators and looking at the brutality and the pornographic nature of those pictures. Even for someone who has seen other acts of torture and terror in the work that we do, it was overwhelming. I had no idea that is what I would see that day. I waited not too long before I left. I saw enough in about 15 minutes, but I saw a lot.

Major General Taguba's report investigating the abuse at Abu Ghraib was discovered after it, too, was leaked to the press. Judge Gonzales's January 25th, 2002, memo advising the President that the Geneva Conventions were ''quaint and obsolete'' was not known until it was leaked to the press 2 years later. The Senate only learned of the August 1, 2002, Bybee torture memo when it was leaked to the press in June of that year.

I ask my colleagues, if this information had not come to light, would the administration disavow these practices? I regret that in the context of this nomination the administration will again deny the Senate and the American people a full understanding of how we embarked on a policy which has imperiled our soldiers and our Nation.

In Judge Chertoff's case, we know during his tenure that torture policies authorized by Justice and given effect by the Department of Defense were hotly debated by DOD, Justice Department, and FBI officials. We know this only because a private group filed a freedom of information request for such information. The request produced a series of redacted FBI emails

that gave voice to the dissenters this administration has tried to muzzle. The redactions prevent us from fully understanding that debate and how Criminal Division lawyers under Judge Chertoff's supervision dealt with the FBI concerns that the torture policies were not only immoral but ineffectual. It prevents us from truly understanding Judge Chertoff's role and whether attorneys under his supervision raised the issue with him directly. He said he does not remember. I accept the judge's statement in that regard. But that does not take away from the necessity of being able to have this information.

In response to Senator LEVIN's request for an unredacted version of the FBI emails, the administration issued its broadest assault against the Senate's duty to evaluate a nominee to get oversight of this administration. The administration claimed it would not turn over the unredacted emails because to do so would violate the Privacy Act, even though, through Senate security, any classified information would be protected. The Privacy Act is designed to prevent the Government from disclosing personal information about private individuals who have not consented to disclosure. It is not a tool to conceal identities of public officials engaged in this Nation's business.

As my colleague from Michigan, Senator LEVIN, has so forcefully stated, the administration's penchant for secrecy threatens each and every Senator's ability to do the people's business and undermines our role in providing advice and consent to the President's nominees and undermines our role in conducting oversight into this administration. In the end, what is most troubling is that the administration's culture of secrecy may breed further abuses, abuses we know of today, not because of but in spite of the administration's effort.

We must overcome these roadblocks put up by the administration because the job of protecting the homeland is too important. Judge Chertoff will have enormous challenges if he assumes his new position, which I am confident he will. Border security, immigration, port security, airport screening, protecting America's critical infrastructure, and so much more will now fall under his purview. He has pledged to work with the Congress in crafting the Department's policies. As much as possible, this must be a nonpartisan exercise. Working together, we can and we must put our country in the strongest possible position to defend itself for the many threats we face.

In short, what I am criticizing and complaining about, we have some emails from the FBI to the Justice Department, saying, in effect, how we conduct our interrogations is appropriate. What the Department of Defense is doing with their brutality and their torture is wrong. I am convinced that is true; the FBI was right. I hope somehow we will be able to get the names of these individuals and pursue it more carefully and also find out what the real words were; I am confident it was torture. One thing we know clearly from these memos is that the FBI says using our methods, the normal methods of interrogation, we are getting more information from the enemy than you are while using your acts of violence.

I close by saying, again, I want this record spread with the fact that Senator LEVIN has done a good thing for this country. He has done good work again in allowing us to look at an issue that should be a simple issue that has been made complicated by this administration by virtue of their hiding what it should not.

Ms. COLLINS. Mr. President, I ask unanimous consent the quorum call I am about to invoke be charged equally to both sides.

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

Ms. COLLINS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. FRIST. Mr. President, in a few moments we will be voting on the nomination of Judge Michael Chertoff to lead the Department of Homeland Security. I applaud President Bush for his outstanding choice, and I am confident that Judge Chertoff will receive overwhelming support from both sides of the aisle, making this his fourth confirmation by this body, the Senate.

Judge Chertoff has a long and distinguished career in public service and law enforcement.

The Harvard Law magna cum laude first made his name in the mid-1980s putting away five of the biggest Mafia bosses in New York.

His success brought him the job of U.S. attorney in New Jersey where he oversaw high-profile and politically sensitive prosecutions.

In 2001, Judge Chertoff was chosen by President Bush to lead the Justice Department's Criminal Division. It was there that Judge Chertoff would show his full mettle. For the 20 hours following the attacks on 9/11, Judge Chertoff was central in directing our response.

His team in the Criminal Division traced the 9/11 killers back to al-Qaida. And for the next 2 years, Judge Chertoff helped craft our antiterrorism policy.

His experience working directly with law enforcement, his expertise in homeland and national security, and his proven ability to lead in times of national crisis make him overwhelmingly qualified to direct our homeland security.

Judge Chertoff has said he will be proud to stand again with the men and women who form our front line against terror. I know I speak for many when I say we are proud to have a man of his caliber and talent serving and protecting the American people.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Michael Chertoff, of New Jersey, to be Secretary of Homeland Security? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Pennsylvania (Mr. SPECTER).

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS), is necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 10 Ex.]

YEAS—98

Akaka	Dole	Martinez
Alexander	Domenici	McCain
Allard	Dorgan	McConnell
Allen	Durbin	Mikulski
Bayh	Ensign	Murkowski
Bennett	Enzi	Murray
Biden	Feingold	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Bond	Frist	Obama
Boxer	Graham	Pryor
Brownback	Grassley	Reed
Bunning	Gregg	Reid
Burns	Hagel	Roberts
Burr	Harkin	Rockefeller
Byrd	Hatch	Salazar
Cantwell	Hutchison	Santorum
Carper	Inhofe	Sarbanes
Chafee	Inouye	Schumer
Chambliss	Isakson	Sessions
Clinton	Jeffords	Shelby
Coburn	Johnson	Smith
Cochran	Kennedy	Snowe
Coleman	Kerry	Stabenow
Collins	Kohl	Stevens
Conrad	Kyl	Sununu
Cornyn	Landrieu	Talent
Corzine	Lautenberg	Thomas
Craig	Leahy	Thune
Crapo	Levin	Vitter
Dayton	Lieberman	Voinovich
DeMint	Lincoln	Warner
DeWine	Lott	Wyden
Dodd	Lugar	

NOT VOTING—2

Baucus	Specter

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

The majority leader.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a

period for morning business with Senators permitted to speak for up to 10 minutes each, with the exception of Senator HAGEL who will follow my remarks for up to 15 minutes.

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

The Senator from Nebraska.

(The remarks of Mr. HAGEL, Mr. CRAIG, and Mr. ALEXANDER pertaining to the introduction of S. 388 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.)

Mr. ALEXANDER. I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

NOTICE OF PROPOSED RULEMAKING

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be printed in the RECORD today pursuant to section 304(b)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)(1)).

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

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

Notice of Proposed Rulemaking, and Request for Comments From Interested Parties

NEW PROPOSED REGULATIONS IMPLEMENTING CERTAIN SUBSTANTIVE EMPLOYMENT RIGHTS AND PROTECTIONS FOR VETERANS, AS REQUIRED BY 2 U.S.C. 1316a, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED (CAA).

Background

The purpose of this Notice is to issue proposed substantive regulations which will implement the 1998 amendment to the CAA which applies certain veterans' employment rights and protections to employing offices and employees covered by the CAA.

What is the authority under the CAA for these proposed substantive regulations? In 1998, the CAA was amended through addition of 2 U.S.C. 1316a, a provision of the Veterans' Employment Opportunities Act of 1998 (VEOA), which states in relevant part: ''The rights and protections established under section 2108, sections 3309 through 3312, and subchapter I of chapter 35 of Title 5, shall apply to covered employees.'' As will be described in greater detail below, these sections of Title 5 accord certain hiring and retention rights to veterans of the uniformed services. Section 1316a(4)(B) states that ''The regulations issued . . . shall be the same as the most relevant substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions . . . except insofar as the Board may determine for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

Will these regulations, if approved, apply to all employees otherwise covered by the CAA? No. Subsection (5) of 2 U.S.C. 1316a, states that, for the purpose of application of these veterans' employment rights, the term ''covered employee'' shall not apply to any employee of an employing office: (A) whose appointment is made by the President with the advice and consent of the Senate; (B) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress; or (C) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position. . . .'' These regulations would apply to all other covered employees.

Do other veterans' employment rights apply via the CAA to Legislative Branch employing offices and covered employees? Yes. Another statutory scheme regarding veterans' and armed forces members' employment rights is incorporated in part through section 206 of the Congressional Accountability Act of 1995 (CAA). Section 206 of the CAA, 2 U.S.C. 1316, applies certain provisions of Title 38 of the U.S. Code regarding ''Employment and Reemployment Rights of Members of the Uniformed Services.'' Section 206 of the CAA also requires the Board of Directors to issue substantive regulations patterned upon the regulations promulgated by the Secretary of Labor to implement the Title 38 rights of members of the uniformed services. As of this date, the Secretary of Labor has not finally promulgated any such regulations. Therefore, regulations implementing CAA section 206 rights will not be proposed by the Board until the Labor Department regulations have been promulgated. The proposed regulations in this Notice are not based on section 206 of the CAA, but solely on the other veterans' rights referenced in 2 U.S.C. 1316a.

What are the veterans' employment rights applied to covered employees and employing offices in 2 U.S.C. 1316a? In recognition of their duty to country, sacrifice, and exceptional capabilities and skills, the United States government has accorded veterans a preference in federal employment through a series of statutes and Executive Orders, beginning as the Civil War drew to a close. While interpreting regulations have been modified over time, many of the current core statutory protections have remained largely unchanged since they were first codified in the historic Veterans' Preference Act of 1944, Act of June 27, 1944, ch. 287, 58 Stat. 387, amended and codified in various provisions of Title 5, U.S.C. In 1998, Congress passed the Veterans Employment Opportunities Act (''VEOA''), Pub. L. 105–339, 112 Stat. 3186 (October 31, 1998), which ''strengthen[s] and broadens''(Sen. Rept. 105–340, 105 Cong., 2d Sess. at 19 (Sept. 21, 1998)) the rights and remedies available to military veterans who are entitled to preferred consideration in hiring and in retention during reductions in force (''RIFs''). Among other provisions of the VEOA, Congress clearly stated, in the law itself, that henceforth the ''rights and protections'' of certain veterans' preference law provisions, originally drafted to cover certain Executive Branch employees, ''shall apply'' to certain ''covered employees'' in the Legislative Branch. VEOA §§4(c)(1) and (5) (emphasis added).

The selected statutory sections which Congress determined ''shall apply'' to covered employees in the Legislative Branch include, first, a definitional section describing the categories of military veterans who are entitled to preference (''preference eligibles''). 5 U.S.C. §2108. Generally, a veteran must be disabled or have served on active duty in the Armed Forces during certain specified time periods or in specified military campaigns to be entitled to preference. In addition, certain family members (mainly spouses, widow[er]s, and mothers) of preference eligible veterans are entitled to the same rights and protections.

The VEOA also makes applicable to the Legislative Branch certain statutory preferences in hiring. In the hiring process, a preference eligible individual who is tested or otherwise numerically evaluated for a position is entitled to have either 5 or 10 points added to his/her score, depending on his/her military service, or disabling condition. 5 U.S.C. §3309. Where experience is a qualifying element for a job, a preference eligible individual is entitled to credit for having relevant experience in the military or in various civil activities. 5 U.S.C. §3311. Where physical requirements (age, height, weight) are a qualifying element for a position, preference eligible individuals (including those who are disabled) may obtain a waiver of such requirements in certain circumstances. 5 U.S.C. §3512.

For certain positions (guards, elevator operators, messengers, custodians), only preference eligible individuals may be considered for hiring so long as such individuals are available. 5 U.S.C. §3310. (These statutory provisions on hiring in the Executive Branch apply specifically to the competitive service; this point will be discussed further below.)

Finally, in prescribing retention rights during Reductions In Force for Executive Branch positions (in both the competitive and in the excepted service), the sections in subchapter I of chapter 35 of Title 5, U.S.C., with a slightly modified definition of ''preference eligible,'' require that employing agencies retain an employee with retention preference in preference to other competing employees, provided that the employee's performance has not been rated unacceptable. 5 U.S.C. §3502(c) (emphasis added).

Along with this explicit command to retain qualifying employees with retention preference, agencies are to follow regulations governing the release of competing employees, giving ''due effect'' to the following factors: (a) employment tenure (i.e., type of appointment); (b) veterans' preference; (c) length of service; and, (d) performance ratings. 5 U.S.C. §3502(a). 5 U.S.C. §3502 also requires certain notification procedures, providing, inter alia, that an employing agency must provide an employee with 60 days written notice (the period may be reduced in certain circumstances) prior to being released during a RIF. 5 U.S.C. §3502(d)(1). Certain protections also apply in connection with a transfer of agency functions from one agency to another. 5 U.S.C. §3503. In addition, where physical requirements (age, height, weight) are a qualifying element for retention, preference eligible individuals (including those with disabilities) may obtain a waiver of such requirements in certain circumstances. 5 U.S.C. §3504.

Are there veterans' employment regulations already in force under the CAA? No.

Procedurals Summary

How are substantive regulations proposed and approved under the CAA? Pursuant to section 304 of the CAA, 2 U.S.C. 1384, the procedure for promulgating such substantive regulations requires that: (1) the Board of Directors adopt proposed substantive regulations and publish a general notice of proposed rulemaking in the *Congressional Record*; (2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking; (3) after consideration of comments by the Board of Directors, that the Board adopt regulations and transmit notice of such action together with the regulations and a recommendation regarding the method for Congressional approval of the regulations to the

Speaker of the House and President pro tempore of the Senate for publication in the *Congressional Record*; (4) committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and (5) final publication of the approved regulations in the *Congressional Record*, with an effective date prescribed in the final publication. For more detail, please reference the text of 2 U.S.C. 1384. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the House of Representatives, and the Deputy Executive Director for the Senate? As required by section 304(b)(1) of the CAA, 2 U.S.C. 1384(b)(1), the substance of these regulations is also recommended by the Executive Director, the Deputy Executive Director for the House of Representatives and the Acting Deputy Executive Director for the Senate.

Has the Board of Directors previously proposed substantive regulations implementing these veterans' employment rights and benefits pursuant to 2 U.S.C. 1316a? Yes. On February 28, 2000, and March 9, 2000, the Office published an Advanced Notice of Proposed Rulemaking (''ANPR'') in the *Congressional Record* (144 Cong. Rec. S862 (daily ed., Feb. 28, 2000), H916 (daily ed., March 9, 2000)). On December 6, 2001, upon consideration of the comments to the ANPR, the Office published a Notice of Proposed Rulemaking (''NPR'') in the *Congressional Record* (147 Cong. Rec. S12539 (daily ed. Dec. 6, 2001), H9065 (daily ed. Dec. 6, 2001)). The Board has not acted further on those earlier Notices, and has decided to issue this Notice as the first step in a new effort to promulgate implementing regulations.

As noted above, 2 U.S.C. 1316a mandates application to the Legislative Branch of certain statutory provisions originally drafted for the Executive Branch. In its initial proposed rules, the Board noted that this statutory command raised the quandary of determining which Legislative Branch employees should be covered by which statutory provisions. There are longstanding and significant differences between the personnel policies and practices within these two branches. For instance, the Executive Branch distinguishes between employees in the ''competitive service'' and the ''excepted service,'' often with differing personnel rules applying to these two services. The Legislative Branch has no such dichotomy.

When Congress directed in the VEOA that certain veterans' employment rights and protections currently applicable to Executive Branch employees shall be made applicable to Legislative Branch employees, the Board took note of a central distinction made in the underlying statute: certain veterans' preference protections (regarding hiring) applied only to Executive Branch employees in the ''competitive'' service, while others (governing reductions in force and transfers) applied both to the ''competitive'' and ''excepted'' service.

The Board's initial approach in 2000 was to maintain this distinction by attempting to discern which Legislative Branch employees should be considered as working in positions equivalent to the ''competitive'' service, and which should be considered equivalent to the ''excepted'' service. At that point, the Board concluded that all Legislative Branch employees, with certain possible exceptions (such as those of the Office of the Architect of the Capitol) should be considered excepted service employees. The Board therefore issued regulations, closely following Office of Personnel Management (''OPM'') regulations for the various statutory provisions, with the caveat that the regulations governing hiring would apply only to those employees whom the Board currently deemed working at jobs equivalent to the competitive service (e.g. the Office of the Architect of the Capitol). The NPR acknowledged: ''The Board recognizes that the adoption of these definitions (e.g., competitive and excepted services], consistent with the mandate of section 225 [of the CAA], yields an unusual result in that no ''covered employee'' in the Legislative Branch currently satisfies the definition of ''competitive service.'' Moreover, as the substantive protections of veterans'' preference in Legislative Branch appointment apply only to ''competitive service' positions, the regulations which the Board proposes regarding preference in appointment would with one noted exception [employees appointed under the Architect of the Capitol Human Resources Act], currently apply to no one. . . .'' This left the Board in the position of drafting intricate regulations that may have applied to only a minority of ''covered employees,'' or perhaps even to no ''covered employees'' at all—a result in obvious tension with the VEOA's statutory mandate that these veterans' protections ''shall apply'' to ''covered employees'' in the Legislative Branch.

The Board received Comments to its initial proposed regulations from the Office of the Architect of the Capitol, the Office of House Employment Counsel, and the Office of the Senate Chief Counsel for Employment, all finding fault with the initial approach. The Comments generally included the following observations. First, commenting offices noted that the Board's approach of drafting intricate regulations that may not apply to any covered employees creates more problems than it solves. This approach was seen as ''impracticable,'' ''obfuscating'' the true sense of the VEOA and what requirements in fact must apply to employing offices; it was seen, in effect, as an attempt to ''place a square peg in a round hole.'' Others charged that the adoption of such regulations went beyond the Board's statutory authorization, and would require, without basis in law, the employing offices to adopt complicated procedures, some governing employment decisions that affected only non-veteran applicants or employees. A commenting office also complained about the application of terms ''foreign and inapplicable'' to its personnel system. Employing offices also submitted that statutes drafted for the Executive Branch competitive service should not apply at all to any Legislative Branch employee.

Furthermore, one employing office commented that such modification of OPM regulations does not constitute an adoption of the ''most relevant regulations,'' as regulations that apply to no covered employees can not possibly be the most relevant regulations applicable. As another commenting office aptly put it, ''Unfortunately, the unintended result could very well be that the underlying principles of the veterans' preference laws would lie fallow while the affected legislative branch entities struggle with the task of adopting civil-service type personnel management systems.'' Comments of the Office of House Employment Counsel, Feb. 6, 2002 at 9. Additionally, all three employing offices argued that the Board should issue three individual sets of regulations (to pertain to the Senate, House, and covered Congressional instrumentalities), rather than one set. Finally, the Office of the Architect of the Capitol also argued that the Architect of the Capitol Human Resources Act did not create a competitive service in the sense of the veterans' preference laws.

How are the regulations being proposed in this Notice different from those regulations which the Board previously proposed? In the period since the initial proposed regulations were issued by the Board of Directors and commented upon by various stakeholders, the Office of Compliance has engaged in extensive informal discussions with various stakeholders across Congress and the Legislative Branch, in an effort to ascertain how best to effect the basic purposes of veterans' employment rights in the Legislative Branch.

After careful consultation and deliberation, the Board is issuing new proposed regulations which differ in many respects from the initial proposed regulations. The new approach is responsive to the clear statutory mandate contained in the VEOA, and to various Comments regarding the initial proposed regulations. This approach also applies insights gained from the informal discussions with stakeholders.

The Board has decided to apply the plain language of the statutory provisions to all covered employees in the Legislative Branch. By doing so, the Board avoids what commenting employing offices styled as the ''anomaly'' of complicated regulations which would practically apply to no employees, an anomaly which not only poorly served the clear Congressional intent that protections ''shall apply to covered employees,'' but which also created confusion for the employing offices.

Not only is application of these rights to all covered employees compelled by the plain language of the statute, the legislative history of the VEOA also clearly indicates that the principles of veterans' preference protections must be applied in the Legislative Branch. The authoritative report of the Senate Committee on Veterans' Affairs (Senate Report 105–340, pages 15 & 17), recognized that the competitive service did not exist in the Legislative Branch, and that 2 U.S.C. 1316a did not require the establishment of such a competitive service. Nonetheless, the Committee noted that veterans' preference principles should be incorporated into the Legislative Branch personnel systems.

For these reasons, the Board is persuaded that Congress, in enacting the VEOA's extension of veterans' employment rights to the Legislative Branch, intended a broad application to all CAA covered employees, except for the staff of those employing offices in the House of Representatives and the Senate which Congress specifically excluded from coverage in section 206a(5) of the CAA (2 U.S.C. §1316a(5)).This result is faithful to the statutory language. Furthermore, the Board has concluded, for the reasons stated above, that the most relevant substantive Executive Branch OPM regulations are at times inapposite to a meaningful implementation of the VEOA in the Legislative Branch, such that a modification of the regulations is necessary for the effective implementation of the rights and protections under the VEOA. As a result, the Office is proposing regulations that reflect the principles of the veterans' preference laws, as discussed by the Senate Committee on Veterans Affairs, without linking such coverage to employees or positions with competitive service status.

Furthermore, the Board has also taken note of the legislative history suggesting that employing offices with employees covered by the VEOA should create systems incorporating these veterans' preference principles: ''The Committee notes that the requirement that veterans' preference principles be extended to the legislative and judicial branches does not mandate the creation of civil service-type evaluation or scoring systems by these hiring entities. It does require, however, that they create systems that are consistent with the underlying principles of veterans' preference laws.'' Sen.

Comm. Report at 17. The implementation of that provision in the Senate Report can only be accomplished by the employing offices.

In their Comments, employing offices strongly expressed their need to preserve their autonomy in determining and administering their respective personnel systems. For example, the Office of the Architect of the Capitol commented that it was incumbent upon the employing offices to create ''systems that are consistent with the underlying principles of veterans'' preference laws,'' pursuant to the Senate Committee Report. The Board agrees, and the newly proposed regulations allow employing offices to do so. What the regulations also do is clearly define the ''underlying principles of veterans'' preference laws'' made applicable to these employing offices, so as to provide a benchmark for the employing offices, applicants, and covered employees, as to whether the systems developed are consistent with these principles.

What is the approach taken by these revamped proposed substantive regulations? The Board has taken great heed to avoid the intricate, OPM-like regulations that formed the basis for its first proposed regulations. Under the current proposed regulations, employing offices will retain their wide latitude, not similarly enjoyed by many employing agencies in the Executive Branch, to devise and administer their own unique and often flexible personnel systems. However, employing offices with covered employees must incorporate into these individual personnel systems the basic veterans' preference protections under the specific statutory mandate that Congress issued in the VEOA, and they must carry out the administration of these veterans' preference provisions in a manner consistent with the Board's commitment to promoting administrative transparency and accountability.

Under this approach, employing offices with the specified covered employees must meet the requirements contained in the statutory mandate of the VEOA, but need not necessarily adopt any of the trappings of an OPM-like personnel system. Thus, should such an employing office choose to administer numeric evaluations of applicants for a position, it must add to a preference eligible's evaluation the points called for in the veterans' preference statutes. If it does not numerically evaluate applicants, it must determine how it will factor veterans' preference status into its employee evaluations and hiring decisions at a level commensurate with the statutory directive. Similarly, should an employing office currently have a policy of placing covered employees who may be potentially subject to a reduction in force on a retention register, it must rank said employees taking into account the directives of the veterans' preference statute. Should an employing office elect not to keep formal retention registers, nothing in these regulations requires it to start doing so. It still must, however, follow the statutory mandate to provide certain veterans' preferences in the course of a reduction in force that affects employees covered by the VEOA.

The goal of preserving employing office autonomy in fashioning personnel systems has further compelled the Board to minimize the impact of these proposed regulations on employment decisions not directly involving preference eligibles. Thus, unlike the initial proposed regulations, should an employing office properly determine that no preference eligibles are qualified applicants, or that no preference eligibles are subject to a RIF, these proposed regulations are designed so as not to govern the employment decisions taken by the employing office. By allowing for such employing office autonomy, the Board hopes to allay the concerns of some of the employing offices, expressed in the initial Comments, that a ''morass'' of intricate regulations would apply to decisions that did not affect preference eligibles. (One isolated, but necessary exception to this approach limiting the effect of the regulations to personnel actions involving preference eligibles is proposed §1.115, governing the transfer of functions between one employing office and another, and the replacement of one employing office by another. This section provides protections for all covered employees, as the term is defined and limited in the VEOA, including non-preference eligibles. The clear statutory language of 5 U.S.C. §3503 (applying to both the competitive and excepted services) commands this result. Congress chose to include this broad statutory provision in the set of provisions made applicable to the Legislative Branch in the VEOA.)

The overall discretion and autonomy reserved to employing offices to administer veterans' preference protections within the context of their personnel systems comes with a responsibility on the part of the employing offices to provide all applicants for covered positions and all covered employees with certain notice and informational rights, as discussed below. This is to ensure that employing offices are equipped with all information necessary to determine and administer veterans' preference eligibility and that such applicants and employees are properly informed of how their employing office has chosen to give life to the veterans' preference protections.

In sum, should an employing offices already use personnel policies and procedures similar to those in the competitive service, it must factor in the various veterans' preference protections with respect to applicants for covered positions and covered employees. If an employing office chooses to follow more flexible, or merely different, personnel policies from those referenced in the competitive service, it may do so—but may not refuse to apply the veterans' preferences called for in the statute. This would contravene the clear statutory directive to affirmatively apply the veterans' preference protections to the specified covered employees in the Legislative Branch.

In proposing these regulations, the Board has sought to remain faithful to the explicit statutory language of the VEOA. In some cases, we have been guided by OPM veterans' preference implementing regulations. In many cases, ''for good cause shown,'' we have not adopted the OPM regulations so as to tailor simpler and more streamlined regulations. We have issued proposed regulations based on the direct statutory language whenever possible, reserving implementation to the individual employing offices, who then are charged with crafting their own processes and procedures for integrating veterans' preference protections within their personnel systems.

Therefore, in accord with 2 U.S.C.1316a(4)(B), which mandates that ''the Board may determine, for good cause shown and stated . . . a modification of such regulations would be more effective for the implementation of the rights and protections under this section,'' these proposed regulations may not track the most relevant substantive regulations applicable with respect to the Executive Branch. However, the proposed regulations endeavor, to the maximum practical extent, to effect the veterans' preference principles that Congress made applicable to the Legislative Branch through section 206a(2) of the CAA, 2 U.S.C. §1316a(2).

What responsibilities would employing offices have in effectively implementing these regulations? The Board is charging the employing offices with the responsibility of duly factoring the veterans' preference principles into their individualized hiring and retention processes. We will require that such measures be substantive and verifiable. Otherwise, VEOA implementation would be illusory and the Office's remedial responsibility under 2 U.S.C.1316a(3) might be compromised.

Therefore, the proposed regulations would require that all employing offices with covered employees or seeking applicants for covered positions develop a written program, within 120 days of the Congressional approval of the regulations, setting forth each employing office's modality for effecting the veterans' preference principles in its hiring and retention systems. These programs would demonstrate each employing office's efforts to comply with the VEOA. However, technical promulgation of such procedures does not per se relieve an employing office of substantive compliance with the VEOA.

Similarly, Subpart E of the proposed regulations contains various important provisions governing recordkeeping, dissemination of VEOA policies, written notice prior to a RIF, and informational requirements regarding veterans' preference determinations. Certain of these provisions (notably that requiring written notice prior to a RIF) derive directly from statutory provisions made applicable to covered employees by the VEOA. The Board has adopted others so as to ensure that the employing offices, which have significant autonomy and discretion in integrating the veterans' preference requirements into their personnel systems, administer the preferences in a way that promotes accountability and transparency. In response to the earlier Comments of the employing offices, however, the Board has refrained from adopting more burdensome procedural requirements, such as keeping formal retention registers (see 5 CFR §351.505).

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices? No. The Board of Directors has identified no ''good cause'' for varying the text of these regulations. Therefore, if these proposed regulations are approved as proposed, there will be one text applicable to all employing offices and covered employees.

Are these proposed substantive regulations available to persons with disabilities in an alternate format? This Notice of Proposed Regulations is available on the Office of Compliance web site, www.compliance.gov, which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794d. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Alma Candelaria, Deputy Executive Director, Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, D.C. 20540; 202–724–9226; TDD: 202–426–1912; FAX: 202–426–1913.

30 Day Comment Period Regarding the Proposed Regulations

How can I submit comments regarding the proposed regulations? Comments regarding the proposed new regulations of the Office of Compliance set forth in this NOTICE are invited for **a period of thirty (30) days** following the date of the appearance of this NOTICE in the *Congressional Record*. In addition to being posted on the Office of Compliance's section 508 compliant web site (www.compliance.gov) this NOTICE is also available in the following alternative formats: Large Print, Braille. Requests for this NOTICE in an alternative format should be made to: Bill Thompson, Executive Director, or Alma Candelaria, Deputy Executive Director, Office of Compliance, at 202–724–9250 (voice) or 202–426–1912 (TDD).

Submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. It is requested, but not required, that an electronic version of any comments be provided on an accompanying computer disk. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non-toll-free number.) Those wishing to receive confirmation of the receipt of their comments must provide a self-addressed, stamped post card with their submission.

Copies of submitted comments will be available for review on the Office's web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Supplementary Information: The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 11 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. The CAA was amended by adding 2 U.S.C. 1316a as part of the enactment of the Veterans' Employment Opportunities Act of 1998 (VEOA), PL 105–339, section 4(c), to provide additional substantive employment rights for veterans. Those additional rights are the subject of these regulations. Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within the Legislative Branch.

More Detailed Discussion of the Text of the Proposed Regulations

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 4 OF THE VEOA

1.101 Purpose and scope. This section clarifies that the purpose of these regulations is to ensure that the principles of the veterans' preference laws are integrated into the employing offices' existing employment and retention policies and processes, as per the explicit statutory mandate contained in the VEOA. Additionally, through these regulations, the Board seeks to fulfill its goal of achieving transparency in the application of veterans' preference in covered appointment and retention decisions.

Finally, it is noted that nothing in these regulations shall be construed to require an employing office to reduce any existing veterans' preference rights and protections that it may currently afford to preference eligible individuals. Any employing agencies that currently provide greater veterans' preferences than required by these regulations may retain them. Note also that, while the VEOA does not directly cover the GAO, GPO, or Library of Congress, should Congress extend Board jurisdiction over any of these entities in the future, it should take their existing veterans' preference policies into account, which may be based on independent statutory mandates. Note, for example, that 31 U.S.C. §732(h)(1) already mandates that the GAO must afford veterans' preferences (largely similar to those in subchapter I of chapter 35 of title 5 U.S.C.).

1.102 General definitions. This section provides straightforward definitions of key terms referred to in the regulations. Several of the definitions are derived from the statutory provisions made applicable via the VEOA, including ''veteran,'' from 5 U.S.C. §2108(1), ''disabled veteran'' from 5 U.S.C. §2108(2), and ''preference eligible'' from 5 U.S.C. §2108(3). It also contains several other definitions included for explanatory purposes.

The term ''appointment'' is defined as an individual's appointment to employment in a covered position. Consistent with the OPM regulations in 5 C.F.R. §211.102(c), the term excludes inservice placement actions such as promotions. The term ''covered employee'' follows the language of section 101(3) of the CAA, as limited by section 4(c)(5) of the VEOA. Section 4(c)(5) of the VEOA excludes employees whose appointment is made by a committee or subcommittee of either House of Congress. The Board believes this statutory exclusion extends to joint committees and has expressly excluded such employees from the definition of ''covered employee''.

The term ''qualified applicant,'' while not directly originating in the text of U.S.C. Title V, is used to capture the principle in 5 U.S.C. §3309 that only a preference eligible applicant who has received a passing grade in an examination or evaluation for entrance into the competitive service need receive additional points accorded to his or her application (except for certain ''restricted'' positions, discussed below). ''Qualified applicant'' is borrowed from the Americans with Disabilities Act (''ADA,'' 42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3). The ADA's reference to ''requisite skill, experience, education and other minimum job-related requirements'' has been shortened to ''requisite minimum job-related requirements,'' as not every job may require a particular level of acquired skill, experience, or education.

As will be discussed further, we are not requiring an employing office to establish any particular prerequisites or type of evaluation or examination system for applicants. Instead, the term ''qualified applicant'' serves as a means of implementing the statutory mandate that only preference eligible applicants with ''passing scores'' receive preference in the hiring process in the context of appointment processes that do not involve ''scoring'' or similar numeric evaluation.

Where the employing office does not use a numerically scored entrance examination or evaluation, we have authorized the employing office to make the determination of whether the applicant is minimally ''qualified'' for a covered position. In doing so, the employing office may rely on any job-related requirements or on any evaluation system, formal or otherwise, which it chooses to employ in assessing and rating applicants for covered positions, provided that the employing office in no way seeks to create or manipulate a standard as to whether an applicant is ''qualified'' so as to avoid obligations imposed upon it by the VEOA.

If, however, the employing office uses an entrance examination or evaluation that is numerically scored, the term ''qualified applicant'' shall mean that the applicant has obtained a passing score on the examination or evaluation. The Board notes that it expects the level of ''passing scores'' to be roughly comparable to that in the OPM regulations (70 points on a 100 point scale; 5 CFR §337.101). We are not requiring employing offices to administer entrance exams at all, or to model an exam or the grading thereof after OPM's models. However, employing offices may not set the bar on a scored entrance examination or evaluation for a covered position so high that minimally qualified preference eligible applicants cannot pass. Moreover, the determination of what will constitute a ''passing score'' should be made and communicated to applicants before they are evaluated or sit for the entrance examination.

1.103 Adoption of regulations. This section details the process by which the regulations shall be adopted. It also clarifies that, as discussed extensively in the prefatory comments, supra, the Board has at times deviated from the regulations which otherwise were most applicable, i.e. the regulations issued by OPM implementing these selected provisions of U.S.C. Title V. When the Board has so deviated from the OPM regulations, it has done so in an effort to implement the statutory language of the VEOA in a way that respects the autonomy of employing offices' personnel systems and avoids placing undue administrative burdens upon these offices, and that otherwise respects the legislative intent of the VEOA.

1.104 Coordination with section 225 of the Congressional Accountability Act. This section notes that the VEOA requires that regulations promulgated are consistent with section 225 of the CAA. These proposed regulations are consistent with section 225; the regulations follow CAA principles contained therein, including applying CAA definitions and exemptions, and reserving enforcement through CAA procedures, rather than through recourse to the Executive Branch.

SUBPART B—VETERANS' PREFERENCE—GENERAL PROVISIONS

1.105 Responsibility for administration of veterans' preference. This section clarifies that employing offices have responsibility for administering veterans' preference, within the parameters of the VEOA and these regulations.

1.106 Procedures for bringing claims under the VEOA. This section establishes the procedures for contesting an adverse determination.

SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

1.107 Veterans' preference in appointments to restricted covered positions. The VEOA makes 5 U.S.C. §3310 applicable to the Legislative Branch, thereby extending an absolute preference to veterans who apply for the positions of guard, elevator operator, messenger and custodian. Despite concerns raised by certain employing offices regarding the singling out of these particular positions, the Board may not ignore the statutory requirement that veterans who apply for them be afforded an absolute preference over non-veteran applicants.

We have based our definitions of the restricted position terms ''guards,'' ''elevator operators,'' ''custodians,'' and ''messengers,'' upon the definitions employed in the veterans'' preference context by the U.S. Office of Personnel Management in its ''Delegated Examining Operations Handbook.'' See http://www.opm.gov/deu/Handbook_2003. The definitions of custodian and messenger have been modified to include a ''primary duty'' requirement, to allow the performance of some custodial or messenger duties in positions having other primary duties without transforming those positions into restricted positions.

1.108 Veterans' preference in appointments to non-restricted covered positions. This section clarifies that preference eligible status is an affirmative factor in the hiring process for covered positions. The requirement that preference eligible status be applied as an ''affirmative factor'' is derived from the directive of the VEOA that the underlying principles of the veterans' preference laws be applied within the Legislative Branch.

Where an employing office assigns points to applicants competing for appointment to a covered position, it should add commensurate points for veterans' preference eligible applicants consistent with 5 U.S.C. §3309, one of the sections made applicable to the Legislative Branch by the VEOA. Should the office choose not to conduct formal evaluations on a point scale, it must apply veterans' preference as an affirmative factor, to

a degree consistent with the level of preference applied in 5 U.S.C. §3309.

In no way does this require the creation of any particular type of system of examining or evaluating applicants, and an employing office may properly choose to not assign points at all to applications for covered positions. Rather, this regulation merely states that, whatever system the employing office uses to choose among qualified applicants for a covered position, it must accord a level of preference to preference eligible qualified applicants consistent with the point system indicated in the statute. Thus, the preference must be comparable to affording an additional 5 or 10 points (depending on the status of the preference eligible) on a 100 point scale to qualified applicants, while understanding that under such a point system the applicant must have attained at least 70 points to be considered qualified. (OPM provides a scale for converting other point scales (5 point, 10 point, 25 point, etc.) to a 100-point scale.)

Section 1.108 applies to both restricted and non-restricted positions. While restricted positions are limited to preference eligibles (should there be preference eligible applicants), in the event that more than one preference eligible applies, the employing office should apply the requirement in this section to provide a higher preference to a disabled preference eligible. Thus, 5 U.S.C. §3310, while restricting certain positions to preference eligibles (so long as preference eligibles are available), does not except these positions from this requirement in 5 U.S.C. §3309 to provide higher preference to a disabled preference eligible applicant.

1.109 Crediting experience in appointments to covered positions. This language is taken from 5 CFR §337.101(c), which interprets 5 U.S.C. §3311, one of the sections made applicable to the Legislative Branch by the VEOA. We have elected to use the regulatory language as it is more clearly written, and serves to better guide employing offices than does the direct statutory text. The statutory and regulatory provisions are laid out below for an easy comparison:

SEC. 3311. PREFERENCE ELIGIBLES; EXAMINATIONS; CREDITING EXPERIENCE

In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit—

(1) for service in the armed forces when his employment in a similar vocation to that for which examined was interrupted by the service; and

(2) for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

5 U.S.C. §3311

(c) When experience is a factor in determining eligibility, OPM shall credit a preference eligible with:

(1) Time spent in the military service (i) as an extension of time spent in the position in which he was employed immediately before his entrance into the military service, or (ii) on the basis of actual duties performed in the military service, or (iii) as a combination of both methods. OPM shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(2) All valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

5 CFR §337.101(c). Section 1.109 does not require an employing office to consider experience as an element of qualification, but only requires that preference eligibles be afforded credit for certain experience if the employing office chooses to do so. Also, section 1.109 does not preclude an employing office from granting credit for experience to non-preference eligibles, so long as the credit afforded preference eligibles complies with the VEOA. Note also that section 1.109 of these proposed regulations applies equally to restricted and non-restricted positions.

Section 1.110 Waiver of physical requirements in appointments to covered positions. This section contains language derived directly from 5 U.S.C. §3312, one of the sections made applicable to the Legislative Branch by the VEOA. It requires an employing office to waive physical requirements for a position if it determines, after considering any recommendations of an accredited physician that may be submitted by such an applicant, that he or she is physically able to perform efficiently the duties of the position. Note that OPM has chosen to promulgate regulations interpreting 5 U.S.C. §3312 which make clear that: ''[A]gencies must waive a medical standard or physical requirement established under this part when there is sufficient evidence that an applicant or employee, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.''

5 CFR 339.204. The Board does not believe that these proposed regulations are the proper vehicle for issuing regulations concerning the Americans with Disabilities Act (''ADA,'' 42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3). Therefore, section 1.110(a)(2) tracks the statutory language rather than the OPM regulation. It also clarifies that the employing office need consider a recommendation of an accredited physician only if such a recommendation is submitted by the preference eligible.

The Board does note, however, that Congress passed the ADA subsequent to the veterans' preference protections contained in 5 U.S.C. §3312, and that, under the ADA as applied by the CAA, employing offices may have obligations towards applicants that may in some circumstances be greater than the protections accorded preference eligible applicants in 5 U.S.C. §3312. For example, these regulations do not relieve employing offices from complying with the restrictions imposed on disability-based inquiries under the ADA but, as is discussed in the comments to section 1.118, recognize that an employing office may use information obtained through voluntary self-identification of one's disabled status. Accordingly, the Board has made clear in section 1.110 that nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the ADA.

SUBPART D—VETERAN'S PREFERENCE IN REDUCTIONS IN FORCE

1.111 Definitions applicable in reductions in force. This section provides definitions of several terms used in the regulations applying veterans' preference principles in the context of reductions in force. Unless clearly stated otherwise, the general definitions in proposed regulation 1.102 continue to apply in the context of reductions in force. For example, as used in the proposed reduction in force regulations, the term ''covered employee'' excludes employees whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate and other employees excluded under the proposed regulation 1.202(f). The term ''reduction in force'' has been defined to encompass actions that result in termination of employment, reductions in grade or demotions expected to continue for more than 30 days. This definition derives from OPM regulations, which clearly interpret 5 U.S.C. §3502 to include demotions and include the requirement that the personnel action be for more than 30 days [5 CFR §351.201 (a)(2)], and from the statutory provisions of the VEOA that charge the Board to follow OPM's regulations except where the Board may determine that a modification of those regulations would be more effective for the implementation of the rights and protections under the VEOA. Caselaw interpreting the veterans' preference laws also indicates that the inclusion of demotions in what constitutes a reduction in force stems from statutory, not just regulatory, language. (See, e.g., AFGE Local 1904 v. Resor, 442 F. 2d 993, 994 (3rd Cir. 1971); Alder v. U.S., 129 Ct. Cl. 150 (1954).)

5 U.S.C. §3501, which has been included in the CAA through Section (c)(2) of the VEOA, contains special definitions for determining whether an employee is a ''preference eligible'' for purposes of applying veterans' preference in reductions in force. The definitions that appear in section 1.111(b) of the regulations are taken directly from the statutory language in 5 U.S.C. §3501. Note, however, that these definitions do not apply to the application of the provisions of 5 U.S.C. §3504 (and section 1.114 of these regulations) regarding the waiver of physical requirements in determining qualifications for retention. In that context, the definition of ''preference eligible'' set forth in 5 U.S.C. §2108 (and section 1.102(o) of the Board's regulations) shall apply.

As discussed below, 5 U.S.C. §3502(c) provides that preference eligibles are entitled to retention over other ''competing employees''. In the Executive Branch, the question of who are ''competing employees'' is answered by reference to detailed and rather complex retention registers that Executive Branch agencies are required to maintain. (See, e.g., 5 CFR §351.203, 5 CFR §351.404 and 5 CFR §351.501.) The Comments to our initial proposed regulations noted that few if any employing offices in the Legislative Branch maintain retention registers, and that many of the OPM regulations regarding retention registers rely on personnel practices and systems that do not exist in the Legislative Branch.

In keeping with our new approach to the implementation of the VEOA, these regulations do not impose a requirement that an employing office create or maintain OPM-like retention registers but instead provide a framework for determining groups of ''competing employees'' for purposes of applying retention preferences as mandated by 5 U.S.C. §3502(c). In this respect, the Board has determined that several of the terms in the OPM regulations may be used to implement the concept of ''competing employees'' in the Legislative Branch without imposing Executive Branch personnel practices or systems: generally, ''competing covered employees'' are the covered employees within a particular ''position classification or job classification,'' at or within a particular ''competitive area''.

The definition of ''position classification or job classification'' is derived from OPM's basic definition of ''competitive level'' in 5 CFR §351.403(a)(1). The remaining regulations in 5 CFR §351.403(a)(2)–(4), (b)(1)–(5) and (c)(1)–(4) prescribe the manner in which an Executive Branch agency may determine a covered employee's competitive level. While some of these rules could be adopted in the Legislative Branch, others are clearly inapplicable. The Board has decided not to adopt these portions of the OPM regulations in order to provide employing offices with a

great amount of flexibility in determining an employee's ''position classification or job classification''. This is in keeping with our understanding that the personnel systems used by employing offices within the Legislative Branch vary significantly from those used in the Executive Branch. This flexibility is, of course, subject to the understanding that such determinations may not be manipulated in order to avoid the employing office's obligations under the VEOA.

The definition of ''competitive area'' more closely tracks OPM's definition of the same term in 5 CFR §351.402. We note that the OPM regulations define ''competitive area'' in terms of an agency's ''organizational units'' and ''geographical locations''. The Board is not adopting OPM definitions or descriptions of these terms, but will allow employing offices flexibility in applying these concepts to their own organizational structure. The Board has retained the OPM requirement that the minimum competitive area be a department or subdivision ''under separate administration''. In this respect, ''separate administration'' is not considered to require that the administration of a proposed competitive area has final authority to hire and fire but that it has the authority to administer the day to day operations of the department or subdivision in question.

The OPM regulations incorporate the term ''tenure'' in their definition of ''competitive group.'' We have used the term in our definition of ''position classification or job classification'' because the statutory language in 5 U.S.C. §3502 identifies ''tenure'' as a factor that will override veterans' preference in determining employee retention in a reduction in force. However, we have not adopted OPM's definition of tenure, as it is tied to Executive Branch service classifications that do not exist in the Legislative Branch. See 5 CFR 351.501. Instead, the use of the term ''tenure'' in these definitions refers only to the type of appointment. For example, an employing office may choose to make ''tenure'' distinctions between permanent and temporary employees, probationary and nonprobationary employees, etc. By referring to ''permanent'' positions, we are referring to jobs that are not limited in advance to a specific temporal duration. Nothing in these Comments and Regulations is intended to address the ''at-will'' status of any covered position.

The Chief Counsel for the Senate noted, in her Comments to the prior proposed regulations, that the Senate does not employ the concept of ''tenure''. If an employing office chooses not to make such distinctions, nothing in these regulations requires it to do so. If the office does, that is one of the factors in the constitution of the ''position classifications or job classifications''. Again, the Board notes that an employing office should not manipulate the creation of tenure so as to avoid its obligations under the VEOA.

We have also included a definition of ''undue interruption'' that is taken directly from the definition of the same term in the OPM regulations, 5 CFR §351.203. The term is used in determining whether various jobs should be included within the same ''position classification'' or ''job classification,'' and is meant to strike a balance between the interests of employing offices in retaining employees who will be able to perform the jobs remaining after a reduction in force, and the interests of preference eligibles whose jobs are being eliminated in remaining employed. OPM struck this balance by generally suggesting that an employee should be able to perform or ''complete'' required work within 90 days of being placed in the position, and the Board considers this time period to be appropriate in the Legislative Branch as well. For example, this protection against ''undue interruption'' would apply if a preference eligible would have to complete a training program of more than 90 days in order to safely and efficiently perform the covered position to which he or she would otherwise be transferred as a result of a RIF. Finally, we note that, since ''undue interruption'' is an affirmative defense, an employing office has the burden of raising it and proving that an employee may not perform work without ''undue interruption'' by objectively quantifiable evidence.

1.112 Application of reductions in force to veterans' preference eligibles. The crux of this regulation derives from 5 U.S.C. §3502(c), which provides:

An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees. (Emphasis added.)

This provision is the statutory lynchpin underlying veterans' preferences in RIF's. The statutory language in section 3502(c) above in effect requires the employing office to terminate covered employees subject to a RIF in inverse order of their veterans' preference status, within the appropriate group of covered employees with similar jobs, so long as the employees' performance has not been rated unacceptable. Under section 3502(c), a preference eligible covered employee (without an unacceptable performance appraisal) must be retained in preference to non-preference eligibles—even if the other covered employees in the group in fact have greater length of service or more favorable performance evaluations.

A separate provision in 5 U.S.C. §3502(a) requires Executive Branch agencies to give ''due effect'' to four factors: tenure, veterans'' preference, length of service, and performance or efficiency evaluations. OPM has promulgated regulations addressing these four factors, but which also incorporate the concept that, within the group of employees competing for retention, appropriate veteran's preference status is a factor that may override other factors such as length of service and performance or efficiency evaluations. (''Tenure,'' as discussed below, is factored in to the group of employees within which employees compete for retention during a RIF.)

Case law has also made abundantly clear that section 3502(c) requires that this preference eligible status ''trumps'' the ''due effect'' given to length of service and performance. Courts have interpreted the separate requirement under section 3502(a) to give ''due effect'' to these four enumerated factors as being relevant to retention determinations between two preference eligibles, or between two non-preference eligibles—and *not* relevant to retention determinations between a preference eligible and a non-preference eligible. *Hilton v. Sullivan*, 334 U.S. 323, 335, 336 (1948). The Board has chosen not to explicitly require that length of service or performance or efficiency evaluations be taken into account during RIF's—only that, if they are, veterans' preference remains the controlling factor in making retention decisions within ''position or job classifications'' in a competitive area (assuming other appropriate requirements are also met).

Federal courts have interpreted the present statutory language of section 3502(c) as providing preference eligible employees with an ''absolute preference,'' although only within the confines of their competing group. *Dodd v. TWA*, 770 F. 2d 1038, 1041 (Fed. Cir. 1985); see also *McKee v. TWA*, 1999 LEXIS 25663 at *5 (Fed. Cir. 1999) (unpublished). Additionally, the source of this key language in §3502(c), the Veterans' Preference Act of 1944 (in turn deriving from a series of historical statutes and executive orders, commencing in 1865), and the legislative history of this Act indicate that the section 3502(c) predecessor language was considered the ''heart of the section''. *Hilton v. Sullivan*, 334 U.S. 323, 338 (1948). To this effect, courts have interpreted §3502(c) (or its predecessor under the Veterans' Preference Act of 1944) as overriding such factors as length of service when considering retention standing. *Hilton v. Sullivan*, 334 U.S. at 335, 336, 339 (noting that ''Congress passed the bill with full knowledge that the long standing absolute retention preference of veterans would be embodied in the Act;'' *Elder v. Brannan*, 341 U.S. 277, 285 (1951). Thus, courts have interpreted section 3502(c) as requiring preference to be given to a minimally qualified preference eligible, within his or her competing group, regardless of the preference eligible's length of service or performance in comparison to non-preference eligibles.

To follow this clear statutory directive, the Board has decided that veterans' preference shall be the ''controlling'' factor (provided that the covered employee's performance was not rated unacceptable), in an employment decision taken within ''position or job classifications'' in ''competitive areas,'' as discussed in the Comments to section 1.111 of these proposed regulations, regardless of such factors as length of service or performance or efficiency ratings. Restricting the veterans' preference to RIF's taken within ''position or job classifications'' in ''competitive areas'' provides important limitations on the scope of the preference accorded. As noted above, the preference eligible does not normally compete for retention against all covered employees of an employing office; the definitional terms in section 1.111 restrict the scope of competition only to covered employees in similar occupational groupings (with the further qualification that the preference eligible must perform the position in question without ''undue interruption''(see discussion regarding section 1.111 of these proposed regulations)); in certain facilities involved; and with similar ''tenure,'' or employment status (such as, for example, whether the employee is a permanent or probationary employee). Note that OPM regulations incorporate the concept of ''tenure'' into the definition of ''competing group''; covered employees only compete for retention against co-workers of the same tenure type. As noted in the Comments to section 1.111 of these proposed regulations, employing offices may or may not incorporate the concept of ''tenure,'' and may choose not to make such distinctions as permanent, temporary, or probationary employees. Nothing in these proposed regulations requires employing offices to adopt such distinctions.

Another qualification on the veterans' preference as a ''controlling factor'' is that the preference eligible employee's performance must not have been rated ''unacceptable.'' While 5 U.S.C. §3502(c) contains a reference to performance appraisal systems implemented under 5 U.S.C. §4301 et seq., we are not requiring employing offices to implement a performance appraisal system following 5 U.S.C. §4301 et seq. An employing office may continue to use its own methods for evaluating covered employees and appraising performance, and need not adopt any formal policy regarding performance appraisal. However, the Board notes that employing offices should not manipulate performance appraisals or evaluations so as to avoid obligations under the VEOA.

Another significant qualification on this regulation is that it only governs retention decisions in so far as they affect preference

eligible covered employees. In no way does it govern decisions that do not affect preference eligible covered employees; in such cases, an employing office is free to make whatever determinations it so chooses, provided that these determinations are consistent with any other applicable law, and are not used to avoid responsibilities imposed by the VEOA. (Of course, an employing office with covered employees must disseminate information regarding its VEOA policy to covered employees, so as to allow for self-identification of preference eligibles. Furthermore, the notice required by section 1.120 of these regulations will allow covered employees who have not been identified as preference eligibles to assert that status before the RIF becomes effective.) Nor does the regulation require the keeping of formal retention registers, as OPM (and these regulations, as initially proposed) generally requires. However, an employing office must preserve any records kept or made regarding these retention decisions, as detailed in Subpart E of these proposed regulations.

Note also that the Board has included the provision that a preference eligible covered employee who is a ''disabled veteran'' under section 1.102(h) above, who has a compensable service-connected disability of 30 percent or more, and whose performance has not been rated unacceptable by an employing office is entitled to be retained in preference to other preference eligibles. This provision derives from 5 U.S.C. §3502(b), which provides a higher level of preference to certain disabled preference eligibles with regard to other preference eligibles.

Finally, the Board notes that this section does not relieve an employing office of any greater obligation it may be subject to pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. §2101 et seq.) as applied by section 102(a)(9) of the CAA, 2 U.S.C. §1302(a)(9), which would of course apply to all employees covered by the CAA, not only to preference eligible employees covered by the VEOA.

1.113 Crediting experience in reductions in force. This section closely follows 5 U.S.C. §3502(a), one of the sections made applicable to the Legislative Branch by the VEOA, requiring the employing office to provide preference eligible covered employees with credit for certain specified forms of prior service as the office calculates ''length of service'' in the context of a RIF. This provision in no way requires an employing office to utilize ''length of service'' as a factor in its retention decisions regarding employees in the event that the RIF decision does not impact any preference eligible covered employees.

1.114 Waiver of physical requirements—retention. This provision closely follows 5 U.S.C. §3504, one of the sections made applicable to the Legislative Branch by the VEOA, requiring that, when making decisions regarding employee retention during a RIF, an employing office must waive physical requirements for a job for preference eligibles in certain specified circumstances. As discussed in the Comments to section 1.110, nothing in this regulation relieves an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

1.116 Transfer of functions. The language in this section derives from 5 U.S.C. §3503, one of the sections made applicable to the Legislative Branch by the VEOA, requiring covered employees to be transferred to another employing office in the event of a transfer of functions from one employing office to the other, or in the event of the replacement of one employing office by another employing office. The Board expects that employing offices shall coordinate any such transfers in a way that respects both the requirements of this regulation and, to the greatest extent possible, the employing offices' own personnel systems and policies. This section is one of the rare instances where an employing office must follow the regulation even in the event that the personnel action taken does not involve any preference eligible covered employees; however, the clear statutory language of 5 U.S.C. §3503 requires such a result.

Employees and employing offices are reminded that the definition of ''covered employee'' in these proposed regulations does not include employees appointed by a Member of Congress, a committee or subcommittee of either House of Congress, or a joint committee of the House of Representatives and the Senate. *See* proposed regulation 1.102(f)(bb). Therefore, proposed regulation 1.116 will not apply to any such employees affected by the election of new Members of Congress or the transfer of jurisdiction from one committee to another.

SUBPART E: ADOPTION OF VETERANS' PREFERENCE POLICIES, RECORDKEEPING & INFORMATIONAL REQUIREMENTS

We note that, of the six sections in this Subpart, only section 1.120 derives directly from statutory language. The other sections are borrowed from various other employment statutes, and are promulgated pursuant to the authority granted the Board by section 4(c)(4)(A) of the VEOA because they are considered necessary to the implementation of the VEOA. For example, the informational regulations in sections 1.120 and 1.121 are derived from informational regulations promulgated under the Family and Medical Leave Act, which provides employers with some flexibility in determining how the FMLA will be implemented within their own workforce. The Board is strongly committed to transparency as a policy matter. Moreover, for the VEOA rights to become meaningful, applicants for covered positions and covered employees will have to participate in ensuring that this system works properly, since employing offices are permitted to have flexibility in determining their policies, and the Board will not be taking the same active role in policing the veterans' preference requirements that OPM takes in the Executive Branch.

We also note that while this approach differs from OPM's, it reflects the far greater flexibility that employing offices have to tailor substantive requirements to their existing personnel systems and imposes less burdensome obligations on employing offices than that which is imposed on executive agencies: under our regulatory approach, employing offices will have reduced procedural burdens in that they will not be subject to the more detailed requirements of keeping formal retention registers, to the more highly regulated requirements regarding employee access to files (see e.g., 5 CFR §293.101 et seq., 5 CFR §297.101 et seq., and 5 CFR §351.505(b)), or to examining or evaluating applicants on a 100-point scale, seeking prior OPM approval of RIF's, etc.

Section 1.116 Adoption of veterans' preference policy. As noted at the outset of these Comments, the regulations will require each employing office that employs one or more covered employees or seeks applicants for covered positions to develop, within 120 days of the Congressional approval of the regulations, a written program or policy setting forth that employing office's methods for implementing the VEOA's veterans' preference principles in the employing office's hiring and retention systems. Employing offices that have no employees covered by the VEOA are not required to adopt such a policy or program.

Because these regulations afford the employing offices a great amount of flexibility in determining how to implement veterans' preference within their own personnel systems, it is imperative that the methods chosen by the employing offices be reduced to writing and disseminated to covered applicants and employees. This will further the goals of accountability and transparency, as well as consistency in the application of the employing office's veterans' preference procedures. An existing policy may be amended or replaced by the employing office from time to time, as it deems necessary or appropriate to meet changing personnel practices and needs. We note, however, that the employing office's policy or program will at all times remain subject to the requirements of the VEOA and these regulations. Accordingly, while the adoption of a policy or program will demonstrate the employing office's efforts to comply with the VEOA, it will not relieve an employing office of substantive compliance with the VEOA.

Sections 1.117 Preservation of records kept or made. The requirements set forth in this section are derived from OPM regulations regarding retention of RIF records, 5 CFR §351.505, and EEOC regulations regarding the preservation of personnel and employment records kept or made by employers, 29 CFR §1602.14. This section requires that relevant records be retained for one year from the date of the making of the record or the date of the personnel action involved or, if later, one year from the date on which the applicant or employee is notified of the personnel action. In addition, where a claim has been brought under section 401 of the CAA against an employing office under the VEOA, the respondent employing office must preserve all personnel records relevant to the claim until final disposition of the claim.

Section 1.118 Dissemination of veterans' preference policies to applicants for covered positions. Section 1.118 requires that employing offices must furnish information to applicants for covered positions before appointment decisions are made. Before these decisions are made, it is important that applicants be given the opportunity to self-identify themselves as preference eligibles, and that they receive information regarding the employing office's policies and procedures for implementing the VEOA, in order to ensure that they are aware of the VEOA obligations that may apply to their situation. Accordingly, the regulations require that information regarding the employing office's policies and procedures for implementing the VEOA in appointments be furnished to applicants at various stages when the employing office is hiring into covered positions. We note that inviting applicants to voluntarily self-identify as a disabled veteran for purposes of the application of an employing office's veterans' preference policies, as outlined in the proposed regulation, is consistent with the EEOC's ADA *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* (EEOC Oct. 10, 1995).

This requirement does not prevent an employing office from appropriately modifying its veterans' preference policies when it sees fit to do so, but is intended to ensure that applicants will be made aware of the employing office's then-current policies and procedures. The requirement that an employing office allow applicants a ''reasonable time'' to provide information regarding their veterans' preference status is intentionally flexible. If an employing office must fill a covered position within a matter of days, one working day may be a ''reasonable time'' for submission of the information. However, if the employing office's appointment process is more prolonged, more time should be allowed.

Sections 1.119 and 1.120 Dissemination of information of veterans' preference policies to covered employees, and notice requirements applicable in RIFs. It is also important that covered employees receive information regarding the employing office's policies and procedures for implementing the VEOA in connection with RIFs, in order to ensure that they are aware of the VEOA obligations that may apply to that situation. Accordingly, section 1.119 requires that information regarding the employing office's policies and procedures for implementing the VEOA in appointments be disseminated through employee handbooks, if the employing office has covered employees and ordinarily distributes such handbooks to those employees, or through any other written policy or manual that the employing office may distribute to covered employees concerning their employee rights or reductions in force.

The notice requirements attendant to a RIF are set out separately in section 1.120 of the regulations. These regulations derive from the express statutory language in 5 USC §3502(d) and (e), which have been applied to the Legislative Branch by the VEOA. The language of section 3502(d) and (e) has been modified in section 1.120 to be consistent with the terms and approach used in the rest of these regulations. Among other changes, section 1.120 refers to ''covered employees'' and the provision in 5 U.S.C. §3502(e) that the ''President'' may shorten the 60 day advance notice period to 30 days has been changed to the ''director of the employing agency.'' Additionally, the provision regarding Job Training Partnership Act notice has been omitted. The requirement to inform the employee of the place where he or she may inspect regulations and records pertaining to this case derives from 5 CFR §351.802(a)(3).

The statutory language requiring notice of ''the employee's ranking relative to other competing employees, and how that ranking was determined'' has been modified to require that the notice state whether the covered employee is preference eligible and that the notice separately state the ''retention status'' (i.e., whether the employee will be retained or not) and preference eligibility of the other covered employees in the same job or position classification within the covered employee's competitive area. The Board is not requiring the keeping of retention registers or the ranking of employees within a job or position classification affected by a RIF. However, the statutory language clearly compels employing offices to provide employees who will be adversely affected by a reduction in force with advance notice of how and why the agency decided to subject that particular employee to the reduction in force. At a minimum, this includes whether the affected employee has preference eligible status, and an objective indication why the employee was not retained in relation to other employees in the affected position classifications or job classifications.

Section 1.121 Informational requirements regarding veterans' preference determinations. Once an appointment or reduction in force decision has been made, it is important that applicants for covered positions and covered employees receive information regarding the employing office's decision, in order to ensure that the rights and obligations created by the VEOA may be effectively enforced under the CAA as contemplated by section 4(c)(3)(B) of the VEOA. Accordingly, section 1.121 of the regulations requires that certain limited information regarding the employing office's decision be made available to applicants for covered positions and to covered employees, upon request.

Proposed Substantive Regulations

PART 1—Extension of Rights and Protections Relating to Veterans' Preference Under Title 5, United States Code, to Covered Employees of the Legislative Branch (section 4(c) of the Veterans Employment Opportunities Act of 1998)

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 4 OF THE VEOA

Sec.
1.101 Purpose and scope.
1.102 Definitions.
1.103 Adoption of regulations.
1.105 Coordination with section 225 of the Congressional Accountability Act.

SEC. 1.101 PURPOSE AND SCOPE

(a) Section 4(c) of the VEOA. The Veterans Employment Opportunities Act (VEOA) applies the rights and protections of sections 2108, 3309 through 3312, and subchapter I of chapter 35 of title 5 U.S.C., to certain covered employees within the Legislative Branch.

(b) Purpose and scope of regulations. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 4(c)(4) of the VEOA, in accordance with the rulemaking procedure set forth in section 304 of the CAA (2 U.S.C. §1384). The purpose of subparts B, C and D of these regulations is to define veterans' preference and the administration of veterans' preference as applicable to Federal employment in the Legislative Branch. (5 U.S.C. §2108, as applied by the VEOA). The purpose of subpart E of these regulations is to ensure that the principles of the veterans' preference laws are integrated into the existing employment and retention policies and processes of those employing offices with employees covered by the VEOA, and to provide for transparency in the application of veterans' preference in covered appointment and retention decisions. Provided, nothing in these regulations shall be construed so as to require an employing office to reduce any existing veterans' preference rights and protections that it may afford to preference eligible individuals.

SEC. 1.102 DEFINITIONS

Except as otherwise provided in these regulations, as used in these regulations:

(a) Act or CAA means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) Active duty or active military duty means full-time duty with military pay and allowances in the armed forces, except (1) for training or for determining physical fitness and (2) for service in the Reserves or National Guard.

(c) Appointment means an individual's appointment to employment in a covered position, but does not include inservice placement actions such as promotions.

(d) Armed forces means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(e) Board means the Board of Directors of the Office of Compliance.

(f) Covered employee means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Board; (4) the Capitol Police Board; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; and (8) the Office of Compliance, but does not include an employee (aa) whose appointment is made by the President with the advice and consent of the Senate; (bb) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate; or (cc) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code). The term covered employee includes an applicant for employment in a covered position and a former covered employee.

(g) Covered position means any position that is or will be held by a covered employee.

(h) Disabled veteran means a person who was separated under honorable conditions from active duty in the armed forces performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public statute administered by the Department of Veterans Affairs or a military department.

(i) Employee of the Office of the Architect of the Capitol includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(j) Employee of the Capitol Police Board includes any member or officer of the Capitol police.

(k) Employee of the House of Representatives includes an individual occupying a position the pay of which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (f) above nor any individual described in subparagraphs (aa) through (cc) of paragraph (f) above.

(l) Employee of the Senate includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (f) above nor any individual described in subparagraphs (aa) through (cc) of paragraph (f) above.

(m) Employing office means: (1) the personal office of a Member of the House of Representatives or of a Senator; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance.

(n) Office means the Office of Compliance.

(o) Preference eligible means veterans, spouses, widows, widowers or mothers who meet the definition of ''preference eligible'' in 5 U.S.C. §2108(3)(A)–(G).

(p) Qualified applicant means an applicant for a covered position whom an employing office deems to satisfy the requisite minimum job-related requirements of the position. Where the employing office uses an entrance examination or evaluation for a covered position that is numerically scored, the term ''qualified applicant'' shall mean that the applicant has received a passing score on the examination or evaluation.

(q) Separated under honorable conditions means either an honorable or a general discharge from the armed forces. The Department of Defense is responsible for administering and defining military discharges.

(r) Uniformed services means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(s) VEOA means the Veterans Employment Opportunities Act of 1998 (Pub. L. 105–339, 112 Stat. 3182).

(t) Veteran means persons as defined in 5 U.S.C. §2108, or any superseding legislation.

SEC. 1.103 ADOPTION OF REGULATIONS

(a) Adoption of regulations. Section 4(c)(4)(A) of the VEOA generally authorizes the Board to issue regulations to implement section 4(c). In addition, section 4(c)(4)(B) of the VEOA directs the Board to promulgate regulations that are ''the same as the most relevant substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions referred to in paragraph (3)'' of section 4(c) of the VEOA. Those statutory provisions are section 2108, sections 3309 through 3312, and subchapter I of chapter 35, of title 5, United States Code. The regulations issued by the Board herein are on all matters for which section 4(c)(4)(B) of the VEOA requires a regulation to be issued. Specifically, it is the Board's considered judgment based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions referred to in paragraph (3)'' of section 4(c) of the VEOA that need be adopted.

(b) Modification of substantive regulations. As a qualification to the statutory obligation to issue regulations that are ''the same as the most substantive regulations (applicable with respect to the Executive Branch),'' section 4(c)(4)(B) of the VEOA authorizes the Board to ''determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under'' section 4(c) of the VEOA.

(c) Rationale for Departure from the Most Relevant Executive Branch Regulations. The Board concludes that it must promulgate regulations accommodating the human resource systems existing in the Legislative Branch; and that such regulations must take into account the fact that the Board does not possess the statutory and Executive Order based government-wide policy making authority underlying OPM's counterpart VEOA regulations governing the Executive Branch. OPM's regulations are designed for the competitive service (defined in 5 U.S.C. §2102(a)(2)), which does not exist in the employing offices subject to this regulation. Therefore, to follow the OPM regulations would create detailed and complex rules and procedures for a workforce that does not exist in the Legislative Branch, while providing no VEOA protections to the covered Legislative Branch employees. We have chosen to propose specially tailored regulations, rather than simply to adopt those promulgated by OPM, so that we may effectuate Congress' intent in extending the principles of the veterans' preference laws to the Legislative Branch through the VEOA.

SEC. 1.104 COORDINATION WITH SECTION 225 OF THE CONGRESSIONAL ACCOUNTABILITY ACT

Statutory directive. Section 4(c)(4)(D) of the VEOA requires that promulgated regulations must be consistent with section 225 of the CAA. Among the relevant provisions of section 225 are subsection (f)(1), which prescribes as a rule of construction that definitions and exemptions in the laws made applicable by the CAA shall apply under the CAA, and subsection (f)(3), which states that the CAA shall not be considered to authorize enforcement of the CAA by the Executive Branch.

SUBPART B—VETERANS' PREFERENCE—GENERAL PROVISIONS

Sec.

1.105 Responsibility for administration of veterans' preference.

1.106 Procedures for bringing claims under the VEOA.

SEC. 1.105 RESPONSIBILITY FOR ADMINISTRATION OF VETERANS' PREFERENCE

Subject to Section 1.106, employing offices are responsible for making all veterans' preference determinations, consistent with the VEOA.

SEC. 1.106 PROCEDURES FOR BRINGING CLAIMS UNDER THE VEOA

Applicants for appointment to a covered position and covered employees may contest adverse veterans' preference determinations, including any determination that a preference eligible is not a qualified applicant, pursuant to sections 401–416 of the CAA, 2 U.S.C. §§1401–1416, and provisions of law referred to therein; 206a(3) of the CAA, 2 U.S.C. §§1401, 1316a(3); and the Office's Procedural Rules.

SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

Sec.

1.107 Veterans' preference in appointments to restricted covered positions.

1.108 Veterans' preference in appointments to non-restricted covered positions.

1.109 Crediting experience in appointments to covered positions.

1.110 waiver of physical requirements in appointments to covered positions

SEC. 1.107 VETERANS' PREFERENCE IN APPOINTMENTS TO RESTRICTED POSITIONS

In each appointment action for the positions of custodian, elevator operator, guard, and messenger (as defined below and collectively referred to in these regulations as restricted covered positions) employing offices shall restrict competition to preference eligibles as long as preference eligibles are available. The provisions of sections 1.109 and 1.110 below shall apply to the appointment of a preference eligible to a restricted covered position. The provisions of section 1.108 shall apply to the appointment of a preference eligible to a restricted covered position, in the event that there is more than one preference eligible applicant for the position.

Custodian—One whose primary duty is the performance of cleaning or other ordinary routine maintenance duties in or about a government building or a building under Federal control, park, monument, or other Federal reservation.

Elevator operator—One whose primary duty is the running of freight or passenger elevators. The work includes opening and closing elevator gates and doors, working elevator controls, loading and unloading the elevator, giving information and directions to passengers such as on the location of offices, and reporting problems in running the elevator.

Guard—One who is assigned to a station, beat, or patrol area in a Federal building or a building under Federal control to prevent illegal entry of persons or property; or required to stand watch at or to patrol a Federal reservation, industrial area, or other area designated by Federal authority, in order to protect life and property; make observations for detection of fire, trespass, unauthorized removal of public property or hazards to Federal personnel or property. The term guard does not include law enforcement officer positions of the U.S. Capitol Police Board.

Messenger—One whose primary duty is the supervision or performance of general messenger work (such as running errands, delivering messages, and answering call bells).

SEC. 1.108 VETERANS' PREFERENCE IN APPOINTMENTS TO NON-RESTRICTED COVERED POSITIONS

(a) Where employing offices opt to examine and rate applicants for covered positions on a numerical basis they shall add points to the earned ratings of those preference eligibles who receive passing scores in an entrance examination, in a manner that is proportionately comparable to the points prescribed in 5 U.S.C. §3309.

(b) In all other situations involving appointment to a covered position, employing offices shall consider veterans' preference eligibility as an affirmative factor that is given weight in a manner that is proportionately comparable to the points prescribed in 5 U.S.C. §3309 in the employing office's determination of who will be appointed from among qualified applicants.

SEC. 1.109 CREDITING EXPERIENCE IN APPOINTMENTS TO COVERED POSITIONS

When considering applicants for covered positions in which experience is an element of qualification, employing offices shall provide preference eligibles with credit:

(a) for time spent in the military service (1) as an extension of time spent in the position in which the applicant was employed immediately before his/her entrance into the military service, or (2) on the basis of actual duties performed in the military service, or (3) as a combination of both methods. Employing offices shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(b) for all experience material to the position for which the applicant is being considered, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he/she received pay therefor.

SEC. 1.110 WAIVER OF PHYSICAL REQUIREMENTS IN APPOINTMENTS TO COVERED POSITIONS

(a) Subject to (c) below, if an employing office determines, on the basis of evidence before it, that an applicant for a covered position is preference eligible, the employing office shall waive in determining whether the preference eligible applicant is qualified for appointment to the position:

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible, the preference eligible is physically able to perform efficiently the duties of the position;

(b) Subject to (c) below, if an employing office determines that, on the basis of evidence before it, an otherwise qualified applicant who is a preference eligible described in 5 U.S.C. §2108(3)(c) who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible of the reasons for the determination and of the right to respond and to submit additional information to the employing office, within 15 days of the date of the notification. Should the preference eligible make a timely response the employing office, at the highest level within the employing office, shall render a final determination of the physical ability of the preference eligible to perform the duties of the position, taking into account the response and any additional information provided by the preference eligible. When the employing office has completed its review of the proposed disqualification on

the basis of physical disability, it shall send its findings to the preference eligible.

(c) Nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

SUBPART D—VETERAN'S PREFERENCE IN REDUCTIONS IN FORCE

Sec.
1.111 Definitions applicable in reductions in force.
1.112 Application of preference in reductions in force.
1.113 Crediting experience in reductions in force.
1.114 Waiver of physical requirements in reductions in force.
1.115 Transfer of functions.

SEC. 1.111 DEFINITIONS APPLICABLE IN REDUCTIONS IN FORCE

(a) Competing covered employees are the covered employees within a particular position or job classification, at or within a particular competitive area, as those terms are defined below.

(b) Competitive area is that portion of the employing office's organizational structure, as determined by the employing office, in which covered employees compete for retention. A competitive area must be defined solely in terms of the employing office's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an employing office. The minimum competitive area is a department or subdivision of the employing office under separate administration within the local commuting area.

(c) Position classifications or job classifications are determined by the employing office, and shall refer to all covered positions within a competitive area that are in the same grade, occupational level or classification, and which are similar enough in duties, qualification requirements, pay schedules, tenure (type of appointment) and working conditions so that an employing office may reassign the incumbent of one position to any of the other positions in the position classification without undue interruption.

(d) Preference Eligibles. For the purpose of applying veterans' preference in reductions in force, except with respect to the application of section 1.114 of these regulations regarding the waiver of physical requirements, the following shall apply:

(1) ''active service'' has the meaning given it by section 101 of title 37;

(2) ''a retired member of a uniformed service'' means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his/her service as such a member; and

(3) a preference eligible covered employee who is a retired member of a uniformed service is considered a preference eligible only if—

(A) his/her retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) his/her service does not include twenty or more years of full-time active service, regardless of when performed but not including periods of active duty for training; or

(C) on November 30, 1964, he/she was employed in a position to which this subchapter applies and thereafter he/she continued to be so employed without a break in service of more than 30 days.

The definition of ''preference eligible'' as set forth in 5 U.S.C §2108 and section 1.102(o) of these regulations shall apply to waivers of physical requirements in determining an employee's qualifications for retention under section 1.114 of these regulations.

(e) Reduction in force is any termination of a covered employee's employment or the reduction in pay and/or position grade of a covered employee for more than 30 days and that may be required for budgetary or workload reasons, changes resulting from reorganization, or the need to make room for an employee with reemployment or restoration rights. This does not encompass terminations or other personnel actions predicated upon performance, conduct or other grounds attributable to an employee.

(f) Undue interruption is a degree of interruption that would prevent the completion of required work by a covered employee 90 days after the employee has been placed in a different position under this part. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if a covered employee needed more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a program accorded low priority by the employing office, or to a vacant position. An employing office has the burden of proving ''undue interruption'' by objectively quantifiable evidence.

SEC. 1.112 APPLICATION OF PREFERENCE IN REDUCTIONS IN FORCE

Prior to carrying out a reduction in force that will affect covered employees, employing offices shall determine which, if any, covered employees within a particular group of competing covered employees are entitled to veterans' preference eligibility status in accordance with these regulations. In determining which covered employees will be retained, employing offices will treat veterans' preference as the controlling factor in retention decisions among such competing covered employees, regardless of length of service or performance, provided that the preference eligible employee's performance has not been rated unacceptable. Provided, a preference eligible who is a ''disabled veteran'' under section 1.102(h) above who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable by an employing office is entitled to be retained in preference to other preference eligibles. Provided, this section does not relieve an employing office of any greater obligation it may be subject to pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. §2101 et seq.) as applied by section 102(a)(9) of the CAA, 2 U.S.C. § 1302(a)(9).

SEC. 1.113 CREDITING EXPERIENCE IN REDUCTIONS IN FORCE

In computing length of service in connection with a reduction in force, the employing office shall provide credit to preference eligible covered employees as follows:

(a) a preference eligible covered employee who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(b) a preference eligible covered employee who is a retired member of a uniformed service is entitled to credit for:

(1) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) the total length of time in active service in the armed forces if he is included under 5 U.S.C. §3501(a)(3)(A), (B), or (C); and

(c) a preference eligible covered employee is entitled to credit for:

(1) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(2) service rendered as an employee described in 5 U.S.C. §2105(c) if such employee moves or has moved, on or after January 1, 1966, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in 5 U.S.C. §2105(c).

SEC. 1.114 WAIVER OF PHYSICAL REQUIREMENTS IN REDUCTIONS IN FORCE

(a) If an employing office determines, on the basis of evidence before it, that a covered employee is preference eligible, the employing office shall waive:

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an employing office determines that, on the basis of evidence before it, a preference eligible described in 5 U.S.C. §2108(3)(c) who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible of the reasons for the determination and of the right to respond and to submit additional information to the employing office within 15 days of the date of the notification. Should the preference eligible make a timely response the employing office, at the highest level within the employing office, shall render a final determination of the physical ability of the preference eligible to perform the duties of the covered position, taking into account the evidence before it, including the response and any additional information provided by the preference eligible. When the employing office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the preference eligible.

(c) Nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

SEC. 1.115 TRANSFER OF FUNCTIONS

(a) When a function is transferred from one employing office to another employing office, each covered employee in the affected position classifications or job classifications in the function that is to be transferred shall be transferred to the receiving employing office for employment in a covered position for which he/she is qualified before the receiving employing office may make an appointment from another source to that position.

(b) When one employing office is replaced by another employing office, each covered employee in the affected position classifications or job classifications in the employing office to be replaced shall be transferred to the replacing employing office for employment in a covered position for which he/she

is qualified before the replacing employing office may make an appointment from another source to that position.

SUBPART E—ADOPTION OF VETERANS' PREFERENCE POLICIES, RECORDKEEPING & INFORMATIONAL REQUIREMENTS

Sec.
1.116 Adoption of veterans' preference policy.
1.117 Preservation of records made or kept.
1.118 Dissemination of veterans' preference policies to applicants for covered positions.
1.119 Dissemination of veterans' preference policies to covered employees.
1.120 Written notice prior to a reduction in force.
1.121 Informational requirements regarding veterans' preference determinations.

SEC. 1.116 ADOPTION OF VETERANS' PREFERENCE POLICY

No later than 120 calendar days following Congressional approval of this regulation, each employing office that employs one or more covered employees or that seeks applicants for a covered position shall adopt its written policy specifying how it has integrated the veterans' preference requirements of the Veterans Employment Opportunities Act of 1998 and these regulations into its employment and retention processes. Upon timely request and the demonstration of good cause, the Executive Director, in his/her discretion, may grant such an employing office additional time for preparing its policy. Each such employing office will make its policies available to applicants for appointment to a covered position and to covered employees in accordance with these regulations and to the public upon request. The act of adopting a veterans' preference policy shall not relieve any employing office of any other responsibility or requirement of the Veterans Employment Opportunity Act of 1998 or these regulations. An employing office may amend or replace its veterans' preference policies as it deems necessary or appropriate, so long as the resulting policies are consistent with the VEOA and these regulations.

SEC. 1.117 PRESERVATION OF RECORDS MADE OR KEPT

An employing office that employs one or more covered employees or that seeks applicants for a covered position shall maintain any records relating to the application of its veterans' preference policy to applicants for covered positions and to workforce adjustment decisions affecting covered employees for a period of at least one year from the date of the making of the record or the date of the personnel action involved or, if later, one year from the date on which the applicant or covered employee is notified of the personnel action. Where a claim has been brought under section 401 of the CAA against an employing office under the VEOA, the respondent employing office shall preserve all personnel records relevant to the claim until final disposition of the claim. The term ''personnel records relevant to the claim,'' for example, would include records relating to the veterans' preference determination regarding the person bringing the claim and records relating to any veterans' preference determinations regarding other applicants for the covered position the person sought, or records relating to the veterans' preference determinations regarding other covered employees in the person's position or job classification. The date of final disposition of the charge or the action means the latest of the date of expiration of the statutory period within which the aggrieved person may file a complaint with the Office or in a U.S. District Court or, where an action is brought against an employing office by the aggrieved person, the date on which such litigation is terminated.

1.118 DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO APPLICANTS FOR COVERED POSITIONS

(a) An employing office shall state in any announcements and advertisements it makes concerning vacancies in covered positions that the staffing action is governed by the VEOA.

(b) An employing office shall invite applicants for a covered position to identify themselves as veterans' preference eligibles, provided that in doing so:

(1) the employing office shall state clearly on any written application or questionnaire used for this purpose or make clear orally, if a written application or questionnaire is not used, that the requested information is intended for use solely in connection with the employing office's obligations and efforts to provide veterans' preference to preference eligibles in accordance with the VEOA; and

(2) the employing office shall state clearly that disabled veteran status is requested on a voluntary basis, that it will be kept confidential in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3), that refusal to provide it will not subject the individual to any adverse treatment except the possibility of an adverse determination regarding the individual's status as a preference eligible as a disabled veteran under the VEOA, and that any information obtained in accordance with this section concerning the medical condition or history of an individual will be collected, maintained and used only in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

(c) An employing office shall provide the following information in writing to all qualified applicants for a covered position:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition in a manner designed to be understood by applicants, along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to appointments to covered positions, including any procedures the employing office shall use to identify preference eligible employees;

(3) the employing office may provide other information to applicants, but is not required to do so by these regulations.

(d) Except as provided in this subparagraph, the written information required by paragraph (c) must be provided to all qualified applicants for a covered position so as to allow those applicants a reasonable time to respond regarding their veterans' preference status.

(e) Employing offices are also expected to answer applicant questions concerning the employing office's veterans' preference policies and practices.

SEC. 1.119 DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO COVERED EMPLOYEES

(a) If an employing office that employs one or more covered employees or that seeks applicants for a covered position provides any written guidance to such employees concerning employee rights generally or reductions in force more specifically, such as in a written employee policy, manual or handbook, such guidance must include information concerning veterans' preference entitlements under the VEOA and employee obligations under the employing office's veterans' preference policy, as set forth in subsection (b) of this regulation.

(b) Written guidances and notices to covered employees required by subsection (a) above shall include, at a minimum:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to workforce adjustments; and the procedures the employing office shall take to identify preference eligible employees.

(3) The employing office may include other information in the notice or in its guidances, but is not required to do so by these regulations.

(c) Employing offices are also expected to answer covered employee questions concerning the employing office's veterans' preference policies and practices.

1.120 WRITTEN NOTICE PRIOR TO A REDUCTION IN FORCE

(a) Except as provided under subsection (b), a covered employee may not be released, due to a reduction in force, unless the covered employee and the covered employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (b), at least 60 days before the covered employee is so released.

(b) Any notice under paragraph (a) shall include—

(1) the personnel action to be taken with respect to the covered employee involved;

(2) the effective date of the action;

(3) a description of the procedures applicable in identifying employees for release;

(4) the covered employee's competitive area;

(5) the covered employee's eligibility for veterans' preference in retention and how that preference eligibility was determined;

(6) the retention status and preference eligibility of the other employees in the affected position classifications or job classifications within the covered employee's competitive area;

(7) the place where the covered employee may inspect the regulations and records pertinent to him/her, as detailed in section 1.121(b) below; and

(8) a description of any appeal or other rights which may be available.

(c) (1) The director of the employing office may, in writing, shorten the period of advance notice required under subsection (a), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) No notice period may be shortened to less than 30 days under this subsection.

SEC. 1.121 INFORMATIONAL REQUIREMENTS REGARDING VETERANS' PREFERENCE DETERMINATIONS

(a) Upon written request by an applicant for a covered position, the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's appointment decision regarding that applicant. Such explanation shall state at a minimum:

(1) Whether the applicant is preference eligible and, if not, a brief statement of the reasons for the employing office's determination that the applicant is not preference eligible. If the applicant is not considered preference eligible, the explanation need not address the remaining matters described in subparagraphs (2) and (3).

(2) If the applicant is preference eligible, whether he/she is a qualified applicant and, if not, a brief statement of the reasons for the employing office's determination that the

applicant is not a qualified applicant. If the applicant is not considered a qualified applicant, the explanation need not address the remaining matters described in subparagraph (3).

(3) If the applicant is preference eligible and a qualified applicant, the employing office's explanation shall advise whether the person appointed to the covered position for which the applicant was applying is preference eligible.

(b) Upon written request by a covered employee who has received a notice of reduction in force under section 1.120 above (or his/her representative), the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's retention decision regarding that covered employee. Such explanation shall state:

(1) Whether the covered employee is preference eligible and, if not, the reasons for the employing office's determination that the covered employee is not preference eligible.

(2) If the covered employee is preference eligible, the employing office's explanation shall include:

(A) a list of all covered employee(s) in the requesting employee's position classification or job classification and competitive area who were retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible,

(B) a list of all covered employee(s) in the requesting employee's position classification or job classification and competitive area who were not retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible, and

(C) a brief statement of the reason(s) for the employing office's decision not to retain the covered employee.

END OF PROPOSED REGULATIONS

RECOGNITION OF MARK MORSE

Mr. REID. Mr. President, today I wish to recognize the public service of Mark Morse of Las Vegas, NV.

Mark has served as field manager for the Bureau of Land Management's Las Vegas Field Office for the last 5 years. Serving as a field manager for any BLM office is a challenge, but nowhere are the competing demands of recreation and conservation, urban development and species preservation more pronounced than in southern Nevada.

Some might throw up their hands in the face of such challenges, but Mark confronted them head on. He is respected by such diverse groups as local and county government officials, environmental organizations, and recreation advocates for balancing the needs of all who take an interest in our public lands.

He has forged partnerships between the BLM and local organizations, including the Red Rock Canyon Interpretive Association, Friends of Red Rock Canyon, the National Wild Horse Association, Master Gardeners, UNLV, and the Clark County School District. These partnerships have not only included the local community in the stewardship of our public lands; they have ensured that these lands are better cared for than they would be under only BLM supervision. Red Rock enthusiasts are improving the BLM's interpretation of Red Rock Canyon; students from a local high school are discovering the unique history of Tule Springs. It was Mark's vision that made these partnerships happen.

We in Nevada's congressional delegation have also handed Mark his share of challenges. The Nevada BLM oversees an enormously successful program that disposes of Federal land in southern Nevada while using the proceeds to preserve Nevada's natural treasures. This program has made federal land agencies work together in ways that have no precedent in our country. Mark has helped create interagency teams that improve both the care of Federal lands and the efficiency of the agencies charged with that care. Without Mark's leadership, this program would not be such a success story.

Mark has helped the Las Vegas Field Office adapt to the unique nature of managing Federal land in this growing urban setting. He is proud of his team, and he would say it has embraced change and achieved excellence. The BLM is not always a popular entity in Nevada, but Mark's accomplishments have greatly improved its reputation.

Mark's retirement is the culmination of 39 years of service with the BLM in the West, including time in northern California and Colorado as well as Nevada. I wish Mark the best, and I hope I will have the privilege of working with him again in the future.

BALTAZAR CERVANTES' 100TH BIRTHDAY

Mr. REID. Mr. President, I speak today in recognition of Mr. Baltazar Cervantes' 100th birthday.

Mr. Cervantes was born and raised in Mexico, and he came to the United States in 1919, making Nevada his home in 1958.

He worked for the Southern Pacific Railroad for 36 years, then worked part time for the city of Elko, in northeast Nevada, for the next 20 years. He finally retired in 1993 at the age of 88.

Throughout his life, Mr. Cervantes has dedicated himself to his family, a group that has continued to grow over time. Today his extended family include 10 children, 44 grandchildren, 54 great grandchildren, and 1 great-great-grandchild.

Mr. Cervantes has experienced many things during his life, and he has seen some historic figures. When he was a young boy, he saw Pancho Villa in Mexico, and after he moved to the United States he was fortunate enough to see the legendary Babe Ruth play baseball.

Mr. Cervantes has long been an avid baseball fan, and his favorite team is the Atlanta Braves. He tells his children that even though the Braves. didn't enjoy much success during the early years when he watched them, he always knew they would turn it around. I am sure Mr. Cervantes has enjoyed the Braves' 13 consecutive playoff appearances.

Today Mr. Cervantes lives with his daughter Norma and her daughter Kara, and he enjoys watching Braves games in the company of his loving family. It gives me great pleasure to offer my sincerest congratulations to this special man on the occasion of his 100th birthday.

EGYPT

Mr. MCCONNELL. Mr. President, in his recent State of the Union address, President Bush stated:

> the great and proud nation of Egypt, which showed the way toward peace in the Middle East, can now show the way toward democracy in the Middle East.

In light of the President's statement, I would like to submit for the RECORD an op-ed by Jackson Diehl that appeared in today's Washington Post titled ''Egypt's Gamble.''

In this piece, Mr. Diehl notes with concern that the Egyptian Government appears to be acting under the assumption that, despite the President's strong statement on the need for democratic reforms in the country, the United States will still turn a blind eye to the recent heavy-handed actions taken by the Egyptian authorities toward prodemocracy activists. Mr. Diehl's piece notes:

> The U.S. Embassy in Cairo is urging caution; it argues that an overly aggressive U.S. reaction [to the crackdown] would play into the hands of Egyptian ''hardliners.''

Mr. President, I am deeply troubled about these reports, if they are true.

President Bush's statement of policy with respect to Egypt could not be more clear. Nonetheless, it appears that there are those in the Bureau of Near Eastern Affairs at the State Department who are attempting to return to ''business as usual'' with respect to U.S. policy toward Egypt. I would like to go on record as reiterating my strong support for the need for Egypt to reform its political and economic institutions, and I look forward to working with Secretary Rice to ensure that the President's vision of democracy in the region is not diluted at lower levels of the Department through bureaucratic inertia and intransigence.

I ask unanimous consent that the op-ed 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, Feb. 14, 2005]

EGYPT'S GAMBLE

(By Jackson Diehl)

The appearance of Egyptian Foreign Minister Ahmed Aboul Gheit and intelligence chief Omar Suleiman in Washington this week should bring to a head a bold attempt by their country's strongman, Hosni Mubarak, to neuter President Bush's campaign for democracy in the Middle East within weeks of his inaugural address.

Mubarak's brazen gambit was encapsulated by two events on successive days last week. On Tuesday he played host in Sharm el-Sheikh as Israeli Prime Minister Ariel Sharon and Palestinian President Mahmoud Abbas declared a cease-fire. On Wednesday his police in Cairo arrested the deputy leader of the new, liberal democratic Tomorrow political party and banned its newspaper from publishing its first issue—even though 10 days before the Bush administration had strongly objected to the arrest of the party's chairman, Ayman Nour.

Mubarak is betting that Gheit and Suleiman will be greeted at the State Department and White House as close collaborators in a budding Israeli-Palestinian detente, not as representatives of a government engaged in an expanding crackdown on its secular and democratic opposition. If so, the 76-year-old president will feel secure in continuing a campaign aimed at crushing what has been mounting opposition among the Egyptian political and business elite to his plan to extend his quarter-century in office by six years through a rigged referendum this fall. His son, Gamal, waits in the wings to succeed him.

Bush, who in his State of the Union speech called on Egypt to ''show the way'' toward democracy in the Middle East, will look feckless and foolish if a regime so deeply dependent on U.S. military and economic aid stages another fraudulent election while jailing the very politicians who support his vision. But Mubarak is betting that this U.S president, like those who preceded him, won't seriously confront him or threaten his economic lifeline at a sensitive moment in the ''peace process.''

He may or may not be right. Some officials tell me that the Egyptians will get a cool, if not cold, reception in Washington and will be told that the jailing of Nour and his deputy, Moussa Mustafa, is unacceptable. Bush, one source said, is ''furious'' about the arrests. A U.S. diplomatic letter has been drafted, but not yet dispatched, to other members of the Group of Eight industrial nations; it describes Mubarak's political crackdown in harsh terms and suggests that G–8 participation in an early March meeting in Egypt with the Arab League should be reconsidered.

One official I spoke to pointed out that Condoleezza Rice is due to pay her first visit as secretary of state to the Arab Middle East for the Arab League meeting. If Nour is not freed, the official predicted, Rice may cancel the trip: ''She is not going to sit there like a potted plant while the Egyptians do this.'' But Rice hasn't addressed the issue, and there is no consensus inside the administration on such a tough response. Predictably, the U.S. Embassy in Cairo is urging caution; it argues that an overly aggressive U.S. reaction would play into the hands of Egyptian ''hard-liners.'' Such limp logic, of course, is exactly what the chief hard-liner—Mubarak—is counting on.

Whatever comes of the Nour affair, the State Department has launched a committee to review policy toward Egypt. That will give democracy advocates at State and the White House a platform for arguing that relations with Cairo should be fundamentally shifted in the coming year. They can count on support in Congress, where key Republicans, such as Sen. Mitch McConnell of Kentucky, have grown increasingly impatient with Mubarak's refusal to liberalize.

Few believe that Mubarak can now be stopped from granting himself another term as president. But proponents of change will argue that Bush must at least push Mubarak to make a major concession to his moderate opposition. This is not a matter of the United States dictating reform: Nour, a new coalition of political groups and even some officials in the ruling party have been pressing for a constitutional rewrite that would make future elections democratic and limit the president's power and tenure. They also want lifted the ''emergency laws'' that Mubarak has used to suppress political activity. Bush need only embrace this homegrown agenda.

The old autocrat probably won't yield unless his annual dose of $1.2 billion in U.S. aid is put at stake. Critics have been arguing for years that that huge subsidy, which dates to the Cold War, buys the United States little but greater enmity from the millions of Arabs who loathe the region's corrupt autocracies and blame the United States for propping them up.

The fact is, Mubarak has far more to lose than Bush from a rupture in U.S.-Egyptian relations. By contrast, if the dictator sails to reelection with the apparent consent of Washington, it is Bush who will be the big loser.

RULES OF PROCEDURE—SELECT COMMITTEE ON ETHICS

Mr. VOINOVICH. Mr. President, in accordance with rule XXVI.2 of the Standing Rules of the Senate, I ask unanimous consent that the Rules of Procedure of the Select Committee on Ethics, which were adopted February 23, 1978, and revised November 1999, be printed in the CONGRESSIONAL RECORD for the 109th Congress.

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

RULES OF THE SELECT COMMITTEE ON ETHICS

RULE 1: GENERAL PROCEDURES

(a) Officers: In the absence of the Chairman, the duties of the Chair shall be filled by the Vice Chairman or, in the Vice Chairman's absence, a Committee member designated by the Chairman.

(b) Procedural Rules: The basic procedural rules of the Committee are stated as a part of the Standing Orders of the Senate in Senate Resolution 338, 88th Congress, as amended, as well as other resolutions and laws. Supplementary Procedural Rules are stated herein and are hereinafter referred to as the Rules. The Rules shall be published in the Congressional Record not later than thirty days after adoption, and copies shall be made available by the Committee office upon request.

(c) Meetings:

(1) The regular meeting of the Committee shall be the first Thursday of each month while the Congress is in session.

(2) Special meetings may be held at the call of the Chairman or Vice Chairman if at least forty-eight hours notice is furnished to all members. If all members agree, a special meeting may be held on less than forty-eight hours notice.

(3)(A) If any member of the Committee desires that a special meeting of the Committee be called, the member may file in the office of the Committee a written request to the Chairman or Vice Chairman for that special meeting.

(B) Immediately upon the filing of the request the Clerk of the Committee shall notify the Chairman and Vice Chairman of the filing of the request. If, within three calendar days after the filing of the request, the Chairman or the Vice Chairman does not call the requested special meeting, to be held within seven calendar days after the filing of the request, any three of the members of the Committee may file their written notice in the office of the Committee that a special meeting of the Committee will be held at a specified date and hour; such special meeting may not occur until forty-eight hours after the notice is filed. The Clerk shall immediately notify all members of the Committee of the date and hour of the special meeting. The Committee shall meet at the specified date and hour.

(d) Quorum:

(1) A majority of the members of the Select Committee shall constitute a quorum for the transaction of business involving complaints or allegations of, or information about, misconduct, including resulting preliminary inquiries, adjudicatory reviews, recommendations or reports, and matters relating to Senate Resolution 400, agreed to May 19, 1976.

(2) Three members shall constitute a quorum for the transaction of the routine business of the Select Committee not covered by the first subparagraph of this paragraph, including requests for opinions and interpretations concerning the Code of Official Conduct or any other statute or regulation under the jurisdiction of the Select Committee, if one member of the quorum is a Member of the Majority Party and one member of the quorum is a Member of the Minority Party. During the transaction of routine business any member of the Select Committee constituting the quorum shall have the right to postpone further discussion of a pending matter until such time as a majority of the members of the Select Committee are present.

(3) Except for an adjudicatory hearing under Rule 5 and any deposition taken outside the presence of a Member under Rule 6, one Member shall constitute a quorum for hearing testimony, provided that all Members have been given notice of the hearing and the Chairman has designated a Member of the Majority Party and the Vice Chairman has designated a Member of the Minority Party to be in attendance, either of whom in the absence of the other may constitute the quorum.

(e) Order of Business: Questions as to the order of business and the procedure of the Committee shall in the first instance be decided by the Chairman and Vice Chairman, subject to reversal by a vote by a majority of the Committee.

(f) Hearings Announcements: The Committee shall make public announcement of the date, place and subject matter of any hearing to be conducted by it at least one week before the commencement of that hearing, and shall publish such announcement in the Congressional Record. If the Committee

determines that there is good cause to commence a hearing at an earlier date, such notice will be given at the earliest possible time.

(g) Open and Closed Committee Meetings: Meetings of the Committee shall be open to the public or closed to the public (executive session), as determined under the provisions of paragraphs 5 (b) to (d) of Rule XXVI of the Standing Rules of the Senate. Executive session meetings of the Committee shall be closed except to the members and the staff of the Committee. On the motion of any member, and with the approval of a majority of the Committee members present, other individuals may be admitted to an executive session meeting for a specific period or purpose.

(h) Record of Testimony and Committee Action: An accurate stenographic or transcribed electronic record shall be kept of all Committee proceedings, whether in executive or public session. Such record shall include Senators' votes on any question on which a recorded vote is held. The record of a witness's testimony, whether in public or executive session, shall be made available for inspection to the witness or his counsel under Committee supervision; a copy of any testimony given by that witness in public session, or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be made available to any witness if he so requests. (See Rule 5 on Procedures for Conducting Hearings.)

(i) Secrecy of Executive Testimony and Action and of Complaint Proceedings:

(1) All testimony and action taken in executive session shall be kept secret and shall not be released outside the Committee to any individual or group, whether governmental or private, without the approval of a majority of the Committee.

(2) All testimony and action relating to a complaint or allegation shall be kept secret and shall not be released by the Committee to any individual or group, whether governmental or private, except the respondent, without the approval of a majority of the Committee, until such time as a report to the Senate is required under Senate Resolution 338, 88th Congress, as amended, or unless otherwise permitted under these Rules. (See Rule 8 on Procedures for Handling Committee Sensitive and Classified Materials.)

(j) Release of Reports to Public: No information pertaining to, or copies of any Committee report, study, or other document which purports to express the view, findings, conclusions or recommendations of the Committee in connection with any of its activities or proceedings may be released to any individual or group whether governmental or private, without the authorization of the Committee. Whenever the Chairman or Vice Chairman is authorized to make any determination, then the determination may be released at his or her discretion. Each member of the Committee shall be given a reasonable opportunity to have separate views included as part of any Committee report. (See Rule 8 on Procedures for Handling Committee Sensitive and Classified Materials.)

(k) Ineligibility or Disqualification of Members and Staff:

(1) A member of the Committee shall be ineligible to participate in any Committee proceeding that relates specifically to any of the following:

(A) a preliminary inquiry or adjudicatory review relating to (i) the conduct of (I) such member; (II) any officer or employee the member supervises; or (ii) any complaint filed by the member; and

(B) the determinations and recommendations of the Committee with respect to any preliminary inquiry or adjudicatory review described in subparagraph (A).

For purposes of this paragraph, a member of the committee and an officer of the Senate shall be deemed to supervise any officer or employee consistent with the provision of paragraph 12 of Rule XXXVII of the Standing Rules of the Senate.

(2) If any Committee proceeding appears to relate to a member of the Committee in a manner described in subparagraph (1) of this paragraph, the staff shall prepare a report to the Chairman and Vice Chairman. If either the Chairman or the Vice Chairman concludes from the report that it appears that the member may be ineligible, the member shall be notified in writing of the nature of the particular proceeding and the reason that it appears that the member may be ineligible to participate in it. If the member agrees that he or she is ineligible, the member shall so notify the Chairman or Vice Chairman. If the member believes that he or she is not ineligible, he or she may explain the reasons to the Chairman and Vice Chairman, and if they both agree that the member is not ineligible, the member shall continue to serve. But if either the Chairman or Vice Chairman continues to believe that the member is ineligible, while the member believes that he or she is not ineligible, the matter shall be promptly referred to the Committee. The member shall present his or her arguments to the Committee in executive session. Any contested questions concerning a member's eligibility shall be decided by a majority vote of the Committee, meeting in executive session, with the member in question not participating.

(3) A member of the Committee may, at the discretion of the member, disqualify himself or herself from participating in any preliminary inquiry or adjudicatory review pending before the Committee and the determinations and recommendations of the Committee with respect to any such preliminary inquiry or adjudicatory review.

(4) Whenever any member of the Committee is ineligible under paragraph (1) to participate in any preliminary inquiry or adjudicatory review, or disqualifies himself or herself under paragraph (3) from participating in any preliminary inquiry or adjudicatory review, another Senator shall be appointed by the Senate to serve as a member of the Committee solely for purposes of such preliminary inquiry or adjudicatory review and the determinations and recommendations of the Committee with respect to such preliminary inquiry or adjudicatory review. Any member of the Senate appointed for such purposes shall be of the same party as the member who is ineligible or disqualifies himself or herself.

(5) The President of the Senate shall be given written notice of the ineligibility or disqualification of any member from any preliminary inquiry, adjudicatory review, or other proceeding requiring the appointment of another member in accordance with subparagraph (k)(4).

(6) A member of the Committee staff shall be ineligible to participate in any Committee proceeding that the staff director or outside counsel determines relates specifically to any of the following:

(A) the staff member's own conduct;

(B) the conduct of any employee that the staff member supervises;

(C) the conduct of any member, officer or employee for whom the staff member has worked for any substantial period; or

(D) a complaint, sworn or unsworn, that was filed by the staff member. At the direction or with the consent of the staff director or outside counsel, a staff member may also be disqualified from participating in a Committee proceeding in other circumstances not listed above.

(l) Recorded Votes: Any member may require a recorded vote on any matter.

(m) Proxies; Recording Votes of Absent Members:

(1) Proxy voting shall not be allowed when the question before the Committee is the initiation or continuation of a preliminary inquiry or an adjudicatory review, or the issuance of a report or recommendation related thereto concerning a Member or officer of the Senate. In any such case an absent member's vote may be announced solely for the purpose of recording the member's position and such announced votes shall not be counted for or against the motion.

(2) On matters other than matters listed in paragraph (m)(1) above, the Committee may order that the record be held open for the vote of absentees or recorded proxy votes if the absent Committee member has been informed of the matter on which the vote occurs and has affirmatively requested of the Chairman or Vice Chairman in writing that he be so recorded.

(3) All proxies shall be in writing, and shall be delivered to the Chairman or Vice Chairman to be recorded.

(4) Proxies shall not be considered for the purpose of establishing a quorum.

(n) Approval of Blind Trusts and Foreign Travel Requests Between Sessions and During Extended Recesses: During any period in which the Senate stands in adjournment between sessions of the Congress or stands in a recess scheduled to extend beyond fourteen days, the Chairman and Vice Chairman, or their designees, acting jointly, are authorized to approve or disapprove blind trusts under the provision of Rule XXXIV.

(o) Committee Use of Services or Employees of Other Agencies and Departments: With the prior consent of the department or agency involved, the Committee may (1) utilize the services, information, or facilities of any such department or agency of the Government, and (2) employ on a reimbursable basis or otherwise the services of such personnel of any such department or agency as it deems advisable. With the consent of any other committee of the Senate, or any subcommittee, the Committee may utilize the facilities and the services of the staff of such other committee or subcommittee whenever the Chairman and Vice Chairman of the Committee, acting jointly, determine that such action is necessary and appropriate.

RULE 2: PROCEDURES FOR COMPLAINTS, ALLEGATIONS, OR INFORMATION

(a) Complaint, Allegation, or Information: Any member or staff member of the Committee shall report to the Committee, and any other person may report to the Committee, a sworn complaint or other allegation or information, alleging that any Senator, or officer, or employee of the Senate has violated a law, the Senate Code of Official Conduct, or any rule or regulation of the Senate relating to the conduct of any individual in the performance of his or her duty as a Member, officer, or employee of the Senate, or has engaged in improper conduct which may reflect upon the Senate. Such complaints or allegations or information may be reported to the Chairman, the Vice Chairman, a Committee member, or a Committee staff member.

(b) Source of Complaint, Allegation, or Information: Complaints, allegations, and information to be reported to the Committee may be obtained from a variety of sources, including but not limited to the following:

(1) sworn complaints, defined as a written statement of facts, submitted under penalty of perjury, within the personal knowledge of the complainant alleging a violation of law, the Senate Code of Official Conduct, or any other rule or regulation of the Senate relating to the conduct of individuals in the performance of their duties as members, officers, or employees of the Senate;

(2) anonymous or informal complaints;

(3) information developed during a study or inquiry by the Committee or other committees or subcommittees of the Senate, including information obtained in connection with legislative or general oversight hearings;

(4) information reported by the news media; or

(5) information obtained from any individual, agency or department of the executive branch of the Federal Government.

(c) Form and Content of Complaints: A complaint need not be sworn nor must it be in any particular form to receive Committee consideration, but the preferred complaint will:

(1) state, whenever possible, the name, address, and telephone number of the party filing the complaint;

(2) provide the name of each member, officer or employee of the Senate who is specifically alleged to have engaged in improper conduct or committed a violation;

(3) state the nature of the alleged improper conduct or violation;

(4) supply all documents in the possession of the party filing the complaint relevant to or in support of his or her allegations as an attachment to the complaint.

RULE 3: PROCEDURES FOR CONDUCTING A PRELIMINARY INQUIRY

(a) Definition of Preliminary Inquiry: A ''preliminary inquiry'' is a proceeding undertaken by the Committee following the receipt of a complaint or allegation of, or information about, misconduct by a Member, officer, or employee of the Senate to determine whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred.

(b) Basis for Preliminary Inquiry: The Committee shall promptly commence a preliminary inquiry whenever it has received a sworn complaint, or other allegation of, or information about, alleged misconduct or violations pursuant to Rule 2.

(c) Scope of Preliminary Inquiry:

(1) The preliminary inquiry shall be of such duration and scope as is necessary to determine whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred. The Chairman and Vice Chairman, acting jointly, on behalf of the Committee may supervise and determine the appropriate duration, scope, and conduct of a preliminary inquiry. Whether a preliminary inquiry is conducted jointly by the Chairman and Vice Chairman or by the Committee as a whole, the day to day supervision of a preliminary inquiry rests with the Chairman and Vice Chairman, acting jointly.

(2) A preliminary inquiry may include any inquiries, interviews, sworn statements, depositions, or subpoenas deemed appropriate to obtain information upon which to make any determination provided for by this Rule.

(d) Opportunity for Response: A preliminary inquiry may include an opportunity for any known respondent or his or her designated representative to present either a written or oral statement, or to respond orally to questions from the Committee. Such an oral statement or answers shall be transcribed and signed by the person providing the statement or answers.

(e) Status Reports: The Committee staff or outside counsel shall periodically report to the Committee in the form and according to the schedule prescribed by the Committee. The reports shall be confidential.

(f) Final Report: When the preliminary inquiry is completed, the staff or outside counsel shall make a confidential report, oral or written, to the Committee on findings and recommendations, as appropriate.

(g) Committee Action: As soon as practicable following submission of the report on the preliminary inquiry, the Committee shall determine by a recorded vote whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred. The Committee may make any of the following determinations:

(1) The Committee may determine that there is not such substantial credible evidence and, in such case, the Committee shall dismiss the matter. The Committee, or Chairman and Vice Chairman acting jointly on behalf of the Committee, may dismiss any matter which, after a preliminary inquiry, is determined to lack substantial merit. The Committee shall inform the complainant of the dismissal.

(2) The Committee may determine that there is such substantial credible evidence, but that the alleged violation is inadvertent, technical, or otherwise of a de minimis nature. In such case, the Committee may dispose of the matter by issuing a public or private letter of admonition, which shall not be considered discipline and which shall not be subject to appeal to the Senate. The issuance of a letter of admonition must be approved by the affirmative recorded vote of no fewer than four members of the Committee voting.

(3) The Committee may determine that there is such substantial credible evidence and that the matter cannot be appropriately disposed of under paragraph (2). In such case, the Committee shall promptly initiate an adjudicatory review in accordance with Rule 4. No adjudicatory review of conduct of a Member, officer, or employee of the Senate may be initiated except by the affirmative recorded vote of not less than four members of the Committee.

RULE 4: PROCEDURES FOR CONDUCTING AN ADJUDICATORY REVIEW

(a) Definition of Adjudicatory Review: An ''adjudicatory review'' is a proceeding undertaken by the Committee after a finding, on the basis of a preliminary inquiry, that there is substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred.

(b) Scope of Adjudicatory Review: When the Committee decides to conduct an adjudicatory review, it shall be of such duration and scope as is necessary for the Committee to determine whether a violation within its jurisdiction has occurred. An adjudicatory review shall be conducted by outside counsel as authorized by section 3(b)(1) of Senate Resolution 338 unless the Committee determines not to use outside counsel. In the course of the adjudicatory review, designated outside counsel, or if the Committee determines not to use outside counsel, the Committee or its staff, may conduct any inquiries or interviews, take sworn statements, use compulsory process as described in Rule 6, or take any other actions that the Committee deems appropriate to secure the evidence necessary to make a determination.

(c) Notice to Respondent: The Committee shall give written notice to any known respondent who is the subject of an adjudicatory review. The notice shall be sent to the respondent no later than five working days after the Committee has voted to conduct an adjudicatory review. The notice shall include a statement of the nature of the possible violation, and description of the evidence indicating that a possible violation occurred. The Committee may offer the respondent an opportunity to present a statement, orally or in writing, or to respond to questions from members of the Committee, the Committee staff, or outside counsel.

(d) Right to a Hearing: The Committee shall accord a respondent an opportunity for a hearing before it recommends disciplinary action against that respondent to the Senate or before it imposes an order of restitution or reprimand (not requiring discipline by the full Senate).

(e) Progress Reports to Committee: The Committee staff or outside counsel shall periodically report to the Committee concerning the progress of the adjudicatory review. Such reports shall be delivered to the Committee in the form and according to the schedule prescribed by the Committee, and shall be confidential.

(f) Final Report of Adjudicatory Review to Committee: Upon completion of an adjudicatory review, including any hearings held pursuant to Rule 5, the outside counsel or the staff shall submit a confidential written report to the Committee, which shall detail the factual findings of the adjudicatory review and which may recommend disciplinary action, if appropriate. Findings of fact of the adjudicatory review shall be detailed in this report whether or not disciplinary action is recommended.

(g) Committee Action:

(1) As soon as practicable following submission of the report of the staff or outside counsel on the adjudicatory review, the Committee shall prepare and submit a report to the Senate, including a recommendation or proposed resolution to the Senate concerning disciplinary action, if appropriate. A report shall be issued, stating in detail the Committee's findings of fact, whether or not disciplinary action is recommended. The report shall also explain fully the reasons underlying the Committee's recommendation concerning disciplinary action, if any. No adjudicatory review of conduct of a Member, officer or employee of the Senate may be conducted, or report or resolution or recommendation relating to such an adjudicatory review of conduct may be made, except by the affirmative recorded vote of not less than four members of the Committee.

(2) Pursuant to S. Res. 338, as amended, section 2 (a), subsections (2), (3), and (4), after receipt of the report prescribed by paragraph (f) of this rule, the Committee may make any of the following recommendations for disciplinary action or issue an order for reprimand or restitution, as follows:

(i) In the case of a Member, a recommendation to the Senate for expulsion, censure, payment of restitution, recommendation to a Member's party conference regarding the Member's seniority or positions of responsibility, or a combination of these;

(ii) In the case of an officer or employee, a recommendation to the Senate of dismissal, suspension, payment of restitution, or a combination of these;

(iii) In the case where the Committee determines, after according to the Member, officer, or employee due notice and opportunity for a hearing, that misconduct occurred warranting discipline less serious than discipline by the full Senate, and subject to the provisions of paragraph (h) of this rule relating to appeal, by a unanimous vote of six members order that a Member, officer or employee be reprimanded or pay restitution or both;

(iv) In the case where the Committee determines that misconduct is inadvertent, technical, or otherwise of a de minimis nature, issue a public or private letter of admonition to a Member, officer or employee, which shall not be subject to appeal to the Senate.

(3) In the case where the Committee determines, upon consideration of all the evidence, that the facts do not warrant a finding that there is substantial credible evidence which provides substantial cause for

the Committee to conclude that a violation within the jurisdiction of the Committee has occurred, the Committee may dismiss the matter.

(4) Promptly, after the conclusion of the adjudicatory review, the Committee's report and recommendation, if any, shall be forwarded to the Secretary of the Senate, and a copy shall be provided to the complainant and the respondent. The full report and recommendation, if any, shall be printed and made public, unless the Committee determines by the recorded vote of not less than four members of the Committee that it should remain confidential.

(h) Right of Appeal:

(1) Any individual who is the subject of a reprimand or order of restitution, or both, pursuant to subsection (g)(2)(iii), may, within 30 days of the Committee's report to the Senate of its action imposing a reprimand or order of restitution, or both, appeal to the Senate by providing written notice of the appeal to the Committee and the presiding officer of the Senate. The presiding officer shall cause the notice of the appeal to be printed in the Congressional Record and the Senate Journal.

(2) S. Res. 338 provides that a motion to proceed to consideration of an appeal pursuant to paragraph (1) shall be highly privileged and not debatable. If the motion to proceed to consideration of the appeal is agreed to, the appeal shall be decided on the basis of the Committee's report to the Senate. Debate on the appeal shall be limited to 10 hours, which shall be divided equally between, and controlled by, those favoring and those opposing the appeal.

RULE 5: PROCEDURES FOR HEARINGS

(a) Right to Hearing: The Committee may hold a public or executive hearing in any preliminary inquiry, adjudicatory review, or other proceeding. The Committee shall accord a respondent an opportunity for a hearing before it recommends disciplinary action against that respondent to the Senate or before it imposes an order of restitution or reprimand. (See Rule 4(d).)

(b) Non-Public Hearings: The Committee may at any time during a hearing determine in accordance with paragraph 5(b) of Rule XXVI of the Standing Rules of the Senate whether to receive the testimony of specific witnesses in executive session. If a witness desires to express a preference for testifying in public or in executive session, he or she shall so notify the Committee at least 5 days before he or she is scheduled to testify.

(c) Adjudicatory Hearings: The Committee may, by the recorded vote of not less than four members of the Committee, designate any public or executive hearing as an adjudicatory hearing; and any hearing which is concerned with possible disciplinary action against a respondent or respondents designated by the Committee shall be an adjudicatory hearing. In any adjudicatory hearing, the procedures described in paragraph (j) shall apply.

(d) Subpoena Power: The Committee may require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such correspondence, books, papers, documents or other articles as it deems advisable. (See Rule 6.)

(e) Notice of Hearings: The Committee shall make public an announcement of the date, place, and subject matter of any hearing to be conducted by it, in accordance with Rule 1(f).

(f) Presiding Officer: The Chairman shall preside over the hearings, or in his absence the Vice Chairman. If the Vice Chairman is also absent, a Committee member designated by the Chairman shall preside. If an oath or affirmation is required, it shall be administered to a witness by the Presiding Officer, or in his absence, by any Committee member.

(g) Witnesses:

(1) A subpoena or other request to testify shall be served on a witness sufficiently in advance of his or her scheduled appearance to allow the witness a reasonable period of time, as determined by the Committee, to prepare for the hearing and to employ counsel if desired.

(2) The Committee may, by recorded vote of not less than four members of the Committee, rule that no member of the Committee or staff or outside counsel shall make public the name of any witness subpoenaed by the Committee before the date of that witness's scheduled appearance, except as specifically authorized by the Chairman and Vice Chairman, acting jointly.

(3) Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the Committee at least 2 working days in advance of the hearing at which the statement is to be presented. The Chairman and Vice Chairman shall determine whether such statements may be read or placed in the record of the hearing.

(4) Insofar as practicable, each witness shall be permitted to present a brief oral opening statement, if he or she desires to do so.

(h) Right to Testify: Any person whose name is mentioned or who is specifically identified or otherwise referred to in testimony or in statements made by a Committee member, staff member or outside counsel, or any witness, and who reasonably believes that the statement tends to adversely affect his or her reputation may—

(1) Request to appear personally before the Committee to testify in his or her own behalf; or

(2) File a sworn statement of facts relevant to the testimony or other evidence or statement of which he or she complained. Such request and such statement shall be submitted to the Committee for its consideration and action.

(i) Conduct of Witnesses and Other Attendees: The Presiding Officer may punish any breaches of order and decorum by censure and exclusion from the hearings. The Committee, by majority vote, may recommend to the Senate that the offender be cited for contempt of Congress.

(j) Adjudicatory Hearing Procedures:

(1) Notice of Hearings: A copy of the public announcement of an adjudicatory hearing, required by paragraph (e), shall be furnished together with a copy of these Rules to all witnesses at the time that they are subpoenaed or otherwise summoned to testify.

(2) Preparation for Adjudicatory Hearings:

(A) At least 5 working days prior to the commencement of an adjudicatory hearing, the Committee shall provide the following information and documents to the respondent, if any:

(i) a list of proposed witnesses to be called at the hearing;

(ii) copies of all documents expected to be introduced as exhibits at the hearing; and

(iii) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(B) At least 2 working days prior to the commencement of an adjudicatory hearing, the respondent, if any, shall provide the information and documents described in divisions (i), (ii) and (iii) of subparagraph (A) to the Committee.

(C) At the discretion of the Committee, the information and documents to be exchanged under this paragraph shall be subject to an appropriate agreement limiting access and disclosure.

(D) If a respondent refuses to provide the information and documents to the Committee (see (A) and (B) of this subparagraph), or if a respondent or other individual violates an agreement limiting access and disclosure, the Committee, by majority vote, may recommend to the Senate that the offender be cited for contempt of Congress.

(3) Swearing of Witnesses: All witnesses who testify at adjudicatory hearings shall be sworn unless the Presiding Officer, for good cause, decides that a witness does not have to be sworn.

(4) Right to Counsel: Any witness at an adjudicatory hearing may be accompanied by counsel of his or her own choosing, who shall be permitted to advise the witness of his or her legal rights during the testimony.

(5) Right to Cross-Examine and Call Witnesses:

(A) In adjudicatory hearings, any respondent and any other person who obtains the permission of the Committee, may personally or through counsel cross-examine witnesses called by the Committee and may call witnesses in his or her own behalf.

(B) A respondent may apply to the Committee for the issuance of subpoenas for the appearance of witnesses or the production of documents on his or her behalf. An application shall be approved upon a concise showing by the respondent that the proposed testimony or evidence is relevant and appropriate, as determined by the Chairman and Vice Chairman.

(C) With respect to witnesses called by a respondent, or other individual given permission by the Committee, each such witness shall first be examined by the party who called the witness or by that party's counsel.

(D) At least 1 working day before a witness's scheduled appearance, a witness or a witness's counsel may submit to the Committee written questions proposed to be asked of that witness. If the Committee determines that it is necessary, such questions may be asked by any member of the Committee, or by any Committee staff member if directed by a Committee member. The witness or witness's counsel may also submit additional sworn testimony for the record within 24 hours after the last day that the witness has testified. The insertion of such testimony in that day's record is subject to the approval of the Chairman and Vice Chairman acting jointly within 5 days after the testimony is received.

(6) Admissibility of Evidence:

(A) The object of the hearing shall be to ascertain the truth. Any evidence that may be relevant and probative shall be admissible unless privileged under the Federal Rules of Evidence. Rules of evidence shall not be applied strictly, but the Presiding Officer shall exclude irrelevant or unduly repetitious testimony. Objections going only to the weight that should be given evidence will not justify its exclusion.

(B) The Presiding Officer shall rule upon any question of the admissibility of testimony or other evidence presented to the Committee. Such rulings shall be final unless reversed or modified by a recorded vote of not less than four members of the Committee before the recess of that day's hearings.

(C) Notwithstanding paragraphs (A) and (B), in any matter before the Committee involving allegations of sexual discrimination, including sexual harassment, or sexual misconduct, by a Member, officer, or employee within the jurisdiction of the Committee, the Committee shall be guided by the standards and procedures of Rule 412 of the Federal Rules of Evidence, except that the Committee may admit evidence subject to the provisions of this paragraph only upon a determination of not less than four members of

the full Committee that the interests of justice require that such evidence be admitted.

(7) Supplementary Hearing Procedures: The Committee may adopt any additional special hearing procedures that it deems necessary or appropriate to a particular adjudicatory hearing. Copies of such supplementary procedures shall be furnished to witnesses and respondents, and shall be made available upon request to any member of the public.

(k) Transcripts:

(1) An accurate stenographic or recorded transcript shall be made of all public and executive hearings. Any member of the Committee, Committee staff member, outside counsel retained by the Committee, or witness may examine a copy of the transcript retained by the Committee of his or her own remarks and may suggest to the official reporter any typographical or transcription errors. If the reporter declines to make the requested corrections, the member, staff member, outside counsel or witness may request a ruling by the Chairman and Vice Chairman, acting jointly. Any member or witness shall return the transcript with suggested corrections to the Committee offices within five working days after receipt of the transcript, or as soon thereafter as is practicable. If the testimony was given in executive session, the member or witness may only inspect the transcript at a location determined by the Chairman and Vice Chairman, acting jointly. Any questions arising with respect to the processing and correction of transcripts shall be decided by the Chairman and Vice Chairman, acting jointly.

(2) Except for the record of a hearing which is closed to the public, each transcript shall be printed as soon as is practicable after receipt of the corrected version. The Chairman and Vice Chairman, acting jointly, may order the transcript of a hearing to be printed without the corrections of a member or witness if they determine that such member or witness has been afforded a reasonable time to correct such transcript and such transcript has not been returned within such time.

(3) The Committee shall furnish each witness, at no cost, one transcript copy of that witness's testimony given at a public hearing. If the testimony was given in executive session, then a transcript copy shall be provided upon request, subject to appropriate conditions and restrictions prescribed by the Chairman and Vice Chairman. If any individual violates such conditions and restrictions, the Committee may recommend by majority vote that he or she be cited for contempt of Congress.

RULE 6: SUBPOENAS AND DEPOSITIONS

(a) Subpoenas:

(1) Authorization for Issuance: Subpoenas for the attendance and testimony of witnesses at depositions or hearings, and subpoenas for the production of documents and tangible things at depositions, hearings, or other times and places designated therein, may be authorized for issuance by either (A) a majority vote of the Committee, or (B) the Chairman and Vice Chairman, acting jointly, at any time during a preliminary inquiry, adjudicatory review, or other proceeding.

(2) Signature and Service: All subpoenas shall be signed by the Chairman or the Vice Chairman and may be served by any person eighteen years of age or older, who is designated by the Chairman or Vice Chairman. Each subpoena shall be served with a copy of the Rules of the Committee and a brief statement of the purpose of the Committee's proceeding.

(3) Withdrawal of Subpoena: The Committee, by recorded vote of not less than four members of the Committee, may withdraw any subpoena authorized for issuance by it or authorized for issuance by the Chairman and Vice Chairman, acting jointly. The Chairman and Vice Chairman, acting jointly, may withdraw any subpoena authorized for issuance by them.

(b) Depositions:

(1) Persons Authorized to Take Depositions: Depositions may be taken by any member of the Committee designated by the Chairman and Vice Chairman, acting jointly, or by any other person designated by the Chairman and Vice Chairman, acting jointly, including outside counsel, Committee staff, other employees of the Senate, or government employees detailed to the Committee.

(2) Deposition Notices: Notices for the taking of depositions shall be authorized by the Committee, or the Chairman and Vice Chairman, acting jointly, and issued by the Chairman, Vice Chairman, or a Committee staff member or outside counsel designated by the Chairman and Vice Chairman, acting jointly. Depositions may be taken at any time during a preliminary inquiry, adjudicatory review or other proceeding. Deposition notices shall specify a time and place for examination. Unless otherwise specified, the deposition shall be in private, and the testimony taken and documents produced shall be deemed for the purpose of these rules to have been received in a closed or executive session of the Committee. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness's failure to appear, or to testify, or to produce documents, unless the deposition notice was accompanied by a subpoena authorized for issuance by the Committee, or the Chairman and Vice Chairman, acting jointly.

(3) Counsel at Depositions: Witnesses may be accompanied at a deposition by counsel to advise them of their rights.

(4) Deposition Procedure: Witnesses at depositions shall be examined upon oath administered by an individual authorized by law to administer oaths, or administered by any member of the Committee if one is present. Questions may be propounded by any person or persons who are authorized to take depositions for the Committee. If a witness objects to a question and refuses to testify, or refuses to produce a document, any member of the Committee who is present may rule on the objection and, if the objection is overruled, direct the witness to answer the question or produce the document. If no member of the Committee is present, the individual who has been designated by the Chairman and Vice Chairman, acting jointly, to take the deposition may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from the Chairman or Vice Chairman of the Committee, who may refer the matter to the Committee or rule on the objection. If the Chairman or Vice Chairman, or the Committee upon referral, overrules the objection, the Chairman, Vice Chairman, or the Committee as the case may be, may direct the witness to answer the question or produce the document. The Committee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to testify or produce documents after having been directed to do so.

(5) Filing of Depositions: Deposition testimony shall be transcribed or electronically recorded. If the deposition is transcribed, the individual administering the oath shall certify on the transcript that the witness was duly sworn in his or her presence and the transcriber shall certify that the transcript is a true record of the testimony. The transcript with these certifications shall be filed with the chief clerk of the Committee, and the witness shall be furnished with access to a copy at the Committee's offices for review. Upon inspecting the transcript, within a time limit set by the Chairman and Vice Chairman, acting jointly, a witness may request in writing changes in the transcript to correct errors in transcription. The witness may also bring to the attention of the Committee errors of fact in the witness's testimony by submitting a sworn statement about those facts with a request that it be attached to the transcript. The Chairman and Vice Chairman, acting jointly, may rule on the witness's request, and the changes or attachments allowed shall be certified by the Committee's chief clerk. If the witness fails to make any request under this paragraph within the time limit set, this fact shall be noted by the Committee's chief clerk. Any person authorized by the Committee may stipulate with the witness to changes in this procedure.

RULE 7: VIOLATIONS OF LAW; PERJURY; LEGISLATIVE RECOMMENDATIONS; EDUCATIONAL MANDATE; AND APPLICABLE RULES AND STANDARDS OF CONDUCT

(a) Violations of Law: Whenever the Committee determines by the recorded vote of not less than four members of the full Committee that there is reason to believe that a violation of law, including the provision of false information to the Committee, may have occurred, it shall report such possible violation to the proper Federal and State authorities.

(b) Perjury: Any person who knowingly and willfully swears falsely to a sworn complaint or any other sworn statement to the Committee does so under penalty of perjury. The Committee may refer any such case to the Attorney General for prosecution.

(c) Legislative Recommendations: The Committee shall recommend to the Senate by report or resolution such additional rules, regulations, or other legislative measures as it determines to be necessary or desirable to ensure proper standards of conduct by Members, officers, or employees of the Senate. The Committee may conduct such inquiries as it deems necessary to prepare such a report or resolution, including the holding of hearings in public or executive session and the use of subpoenas to compel the attendance of witnesses or the production of materials. The Committee may make legislative recommendations as a result of its findings in a preliminary inquiry, adjudicatory review, or other proceeding.

(d) Educational Mandate: The Committee shall develop and implement programs and materials designed to educate Members, officers, and employees about the laws, rules, regulations, and standards of conduct applicable to such individuals in the performance of their duties.

(e) Applicable Rules and Standards of Conduct:

(1) Notwithstanding any other provision of this section, no adjudicatory review shall be initiated of any alleged violation of any law, the Senate Code of Official Conduct, rule, or regulation which was not in effect at the time the alleged violation occurred. No provisions of the Senate Code of Official Conduct shall apply to or require disclosure of any act, relationship, or transaction which occurred prior to the effective date of the applicable provision of the Code.

(2) The Committee may initiate an adjudicatory review of any alleged violation of a rule or law which was in effect prior to the enactment of the Senate Code of Official Conduct if the alleged violation occurred while such rule or law was in effect and the violation was not a matter resolved on the merits by the predecessor Committee.

RULE 8: PROCEDURES FOR HANDLING COMMITTEE SENSITIVE AND CLASSIFIED MATERIALS

(a) Procedures for Handling Committee Sensitive Materials:

(1) Committee Sensitive information or material is information or material in the possession of the Select Committee on Ethics which pertains to illegal or improper conduct by a present or former Member, officer, or employee of the Senate; to allegations or accusations of such conduct; to any resulting preliminary inquiry, adjudicatory review or other proceeding by the Select Committee on Ethics into such allegations or conduct; to the investigative techniques and procedures of the Select Committee on Ethics; or to other information or material designated by the staff director, or outside counsel designated by the Chairman and Vice Chairman.

(2) The Chairman and Vice Chairman of the Committee shall establish such procedures as may be necessary to prevent the unauthorized disclosure of Committee Sensitive information in the possession of the Committee or its staff. Procedures for protecting Committee Sensitive materials shall be in writing and shall be given to each Committee staff member.

(b) Procedures for Handling Classified Materials:

(1) Classified information or material is information or material which is specifically designated as classified under the authority of Executive Order 11652 requiring protection of such information or material from unauthorized disclosure in order to prevent damage to the United States.

(2) The Chairman and Vice Chairman of the Committee shall establish such procedures as may be necessary to prevent the unauthorized disclosure of classified information in the possession of the Committee or its staff. Procedures for handling such information shall be in writing and a copy of the procedures shall be given to each staff member cleared for access to classified information.

(3) Each member of the Committee shall have access to classified material in the Committee's possession. Only Committee staff members with appropriate security clearances and a need-to-know, as approved by the Chairman and Vice Chairman, acting jointly, shall have access to classified information in the Committee's possession.

(c) Procedures for Handling Committee Sensitive and Classified Documents:

(1) Committee Sensitive documents and materials shall be stored in the Committee's offices, with appropriate safeguards for maintaining the security of such documents or materials. Classified documents and materials shall be further segregated in the Committee's offices in secure filing safes. Removal from the Committee offices of such documents or materials is prohibited except as necessary for use in, or preparation for, interviews or Committee meetings, including the taking of testimony, or as otherwise specifically approved by the staff director or by outside counsel designated by the Chairman and Vice Chairman.

(2) Each member of the Committee shall have access to all materials in the Committee's possession. The staffs of members shall not have access to Committee Sensitive or classified documents and materials without the specific approval in each instance of the Chairman, and Vice Chairman, acting jointly. Members may examine such materials in the Committee's offices. If necessary, requested materials may be hand delivered by a member of the Committee staff to the member of the Committee, or to a staff person(s) specifically designated by the member, for the Member's or designated staffer's examination. A member of the Committee who has possession of Committee Sensitive documents or materials shall take appropriate safeguards for maintaining the security of such documents or materials in the possession of the Member or his or her designated staffer.

(3) Committee Sensitive documents that are provided to a Member of the Senate in connection with a complaint that has been filed against the Member shall be hand delivered to the Member or to the Member's Chief of Staff or Administrative Assistant. Committee Sensitive documents that are provided to a Member of the Senate who is the subject of a preliminary inquiry, adjudicatory review, or other proceeding, shall be hand delivered to the Member or to his or her specifically designated representative.

(4) Any Member of the Senate who is not a member of the Committee and who seeks access to any Committee Sensitive or classified documents or materials, other than documents or materials which are matters of public record, shall request access in writing. The Committee shall decide by majority vote whether to make documents or materials available. If access is granted, the Member shall not disclose the information except as authorized by the Committee.

(5) Whenever the Committee makes Committee Sensitive or classified documents or materials available to any Member of the Senate who is not a member of the Committee, or to a staff person of a Committee member in response to a specific request to the Chairman and Vice Chairman, a written record shall be made identifying the Member of the Senate requesting such documents or materials and describing what was made available and to whom.

(d) Non-Disclosure Policy and Agreement:

(1) Except as provided in the last sentence of this paragraph, no member of the Select Committee on Ethics, its staff or any person engaged by contract or otherwise to perform services for the Select Committee on Ethics shall release, divulge, publish, reveal by writing, word, conduct, or disclose in any way, in whole, or in part, or by way of summary, during tenure with the Select Committee on Ethics or anytime thereafter, any testimony given before the Select Committee on Ethics in executive session (including the name of any witness who appeared or was called to appear in executive session), any classified or Committee Sensitive information, document or material, received or generated by the Select Committee on Ethics or any classified or Committee Sensitive information which may come into the possession of such person during tenure with the Select Committee on Ethics or its staff. Such information, documents, or material may be released to an official of the executive branch properly cleared for access with a need-to-know, for any purpose or in connection with any proceeding, judicial or otherwise, as authorized by the Select Committee on Ethics, or in the event of termination of the Select Committee on Ethics, in such a manner as may be determined by its successor or by the Senate.

(2) No member of the Select Committee on Ethics staff or any person engaged by contract or otherwise to perform services for the Select Committee on Ethics, shall be granted access to classified or Committee Sensitive information or material in the possession of the Select Committee on Ethics unless and until such person agrees in writing, as a condition of employment, to the nondisclosure policy. The agreement shall become effective when signed by the Chairman and Vice Chairman on behalf of the Committee.

RULE 9: BROADCASTING AND NEWS COVERAGE OF COMMITTEE PROCEEDINGS

(a) Whenever any hearing or meeting of the Committee is open to the public, the Committee shall permit that hearing or meeting to be covered in whole or in part, by television broadcast, radio broadcast, still photography, or by any other methods of coverage, unless the Committee decides by recorded vote of not less than four members of the Committee that such coverage is not appropriate at a particular hearing or meeting.

(b) Any witness served with a subpoena by the Committee may request not to be photographed at any hearing or to give evidence or testimony while the broadcasting, reproduction, or coverage of that hearing, by radio, television, still photography, or other methods is occurring. At the request of any such witness who does not wish to be subjected to radio, television, still photography, or other methods of coverage, and subject to the approval of the Committee, all lenses shall be covered and all microphones used for coverage turned off.

(c) If coverage is permitted, it shall be in accordance with the following requirements:

(1) Photographers and reporters using mechanical recording, filming, or broadcasting apparatus shall position their equipment so as not to interfere with the seating, vision, and hearing of the Committee members and staff, or with the orderly process of the meeting or hearing.

(2) If the television or radio coverage of the hearing or meeting is to be presented to the public as live coverage, the coverage shall be conducted and presented without commercial sponsorship.

(3) Personnel providing coverage by the television and radio media shall be currently accredited to the Radio and Television Correspondents' Galleries.

(4) Personnel providing coverage by still photography shall be currently accredited to the Press Photographers' Gallery Committee of Press Photographers.

(5) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and the coverage activities in an orderly and unobtrusive manner.

RULE 10: PROCEDURES FOR ADVISORY OPINIONS

(a) When Advisory Opinions Are Rendered:

(1) The Committee shall render an advisory opinion, in writing within a reasonable time, in response to a written request by a Member or officer of the Senate or a candidate for nomination for election, or election to the Senate, concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within the Committee's jurisdiction, to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(2) The Committee may issue an advisory opinion in writing within a reasonable time in response to a written request by any employee of the Senate concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within the Committee's jurisdiction, to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(b) Form of Request: A request for an advisory opinion shall be directed in writing to the Chairman of the Committee and shall include a complete and accurate statement of the specific factual situation with respect to which the request is made as well as the specific question or questions which the requestor wishes the Committee to address.

(c) Opportunity for Comment:

(1) The Committee will provide an opportunity for any interested party to comment on a request for an advisory opinion—

(A) which requires an interpretation on a significant question of first impression that will affect more than a few individuals; or

(B) when the Committee determines that comments from interested parties would be of assistance.

(2) Notice of any such request for an advisory opinion shall be published in the Congressional Record, with appropriate deletions to insure confidentiality, and interested parties will be asked to submit their comments in writing to the Committee within ten days.

(3) All relevant comments received on a timely basis will be considered.

(d) Issuance of an Advisory Opinion:

(1) The Committee staff shall prepare a proposed advisory opinion in draft form which will first be reviewed and approved by the Chairman and Vice Chairman, acting jointly, and will be presented to the Committee for final action. If (A) the Chairman and Vice Chairman cannot agree, or (B) either the Chairman or Vice Chairman requests that it be taken directly to the Committee, then the proposed advisory opinion shall be referred to the Committee for its decision.

(2) An advisory opinion shall be issued only by the affirmative recorded vote of a majority of the members voting.

(3) Each advisory opinion issued by the Committee shall be promptly transmitted for publication in the Congressional Record after appropriate deletions are made to insure confidentiality. The Committee may at any time revise, withdraw, or elaborate on any advisory opinion.

(e) Reliance on Advisory Opinions:

(1) Any advisory opinion issued by the Committee under Senate Resolution 338, 88th Congress, as amended, and the rules may be relied upon by—

(A) Any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered if the request for such advisory opinion included a complete and accurate statement of the specific factual situation; and

(B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(2) Any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of Senate Resolution 338, 88th Congress, as amended, and of the rules, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction by the Senate.

RULE 11: PROCEDURES FOR INTERPRETATIVE RULINGS

(a) Basis for Interpretative Rulings: Senate Resolution 338, 88th Congress, as amended, authorizes the Committee to issue interpretative rulings explaining and clarifying the application of any law, the Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction. The Committee also may issue such rulings clarifying or explaining any rule or regulation of the Select Committee on Ethics.

(b) Request for Ruling: A request for such a ruling must be directed in writing to the Chairman or Vice Chairman of the Committee.

(c) Adoption of Ruling:

(1) The Chairman and Vice Chairman, acting jointly, shall issue a written interpretative ruling in response to any such request, unless——

(A) they cannot agree,

(B) it requires an interpretation of a significant question of first impression, or

(C) either requests that it be taken to the Committee, in which event the request shall be directed to the Committee for a ruling.

(2) A ruling on any request taken to the Committee under subparagraph (1) shall be adopted by a majority of the members voting and the ruling shall then be issued by the Chairman and Vice Chairman.

(d) Publication of Rulings: The Committee will publish in the Congressional Record, after making appropriate deletions to ensure confidentiality, any interpretative rulings issued under this Rule which the Committee determines may be of assistance or guidance to other Members, officers or employees. The Committee may at any time revise, withdraw, or elaborate on interpretative rulings.

(e) Reliance on Rulings: Whenever an individual can demonstrate to the Committee's satisfaction that his or her conduct was in good faith reliance on an interpretative ruling issued in accordance with this Rule, the Committee will not recommend sanctions to the Senate as a result of such conduct.

(f) Rulings by Committee Staff: The Committee staff is not authorized to make rulings or give advice, orally or in writing, which binds the Committee in any way.

RULE 12: PROCEDURES FOR COMPLAINTS INVOLVING IMPROPER USE OF THE MAILING FRANK

(a) Authority To Receive Complaints: The Committee is directed by section 6(b) of Public Law 93–191 to receive and dispose of complaints that a violation of the use of the mailing frank has occurred or is about to occur by a Member or officer of the Senate or by a surviving spouse of a Member. All such complaints will be processed in accordance with the provisions of these Rules, except as provided in paragraph (b).

(b) Disposition of Complaints:

(1) The Committee may dispose of any such complaint by requiring restitution of the cost of the mailing, pursuant to the franking statute, if it finds that the franking violation was the result of a mistake.

(2) Any complaint disposed of by restitution that is made after the Committee has formally commenced an adjudicatory review, must be summarized, together with the disposition, in a report to the Senate, as appropriate.

(3) If a complaint is disposed of by restitution, the complainant, if any, shall be notified of the disposition in writing.

(c) Advisory Opinions and Interpretative Rulings: Requests for advisory opinions or interpretative rulings involving franking questions shall be processed in accordance with Rules 10 and 11.

RULE 13: PROCEDURES FOR WAIVERS

(a) Authority for Waivers: The Committee is authorized to grant a waiver under the following provisions of the Standing Rules of the Senate:

(1) Section 101(h) of the Ethics in Government Act of 1978, as amended (Rule XXXIV), relating to the filing of financial disclosure reports by individuals who are expected to perform or who have performed the duties of their offices or positions for less than one hundred and thirty days in a calendar year;

(2) Section 102(a)(2)(D) of the Ethics in Government Act, as amended (Rule XXXIV), relating to the reporting of gifts;

(3) Paragraph 1 of Rule XXXV relating to acceptance of gifts; or

(4) Paragraph 5 of Rule XLI relating to applicability of any of the provisions of the Code of Official Conduct to an employee of the Senate hired on a per diem basis.

(b) Requests for Waivers: A request for a waiver under paragraph (a) must be directed to the Chairman or Vice Chairman in writing and must specify the nature of the waiver being sought and explain in detail the facts alleged to justify a waiver. In the case of a request submitted by an employee, the views of his or her supervisor (as determined under paragraph 12 of Rule XXXVII of the Standing Rules of the Senate) should be included with the waiver request.

(c) Ruling: The Committee shall rule on a waiver request by recorded vote with a majority of those voting affirming the decision. With respect to an individual's request for a waiver in connection with the acceptance or reporting the value of gifts on the occasion of the individual's marriage, the Chairman and the Vice Chairman, acting jointly, may rule on the waiver.

(d) Availability of Waiver Determinations: A brief description of any waiver granted by the Committee, with appropriate deletions to ensure confidentiality, shall be made available for review upon request in the Committee office. Waivers granted by the Committee pursuant to the Ethics in Government Act of 1978, as amended, may only be granted pursuant to a publicly available request as required by the Act.

RULE 14: DEFINITION OF ''OFFICER OR EMPLOYEE''

(a) As used in the applicable resolutions and in these rules and procedures, the term ''officer or employee of the Senate'' means:

(1) An elected officer of the Senate who is not a Member of the Senate;

(2) An employee of the Senate, any committee or subcommittee of the Senate, or any Member of the Senate;

(3) The Legislative Counsel of the Senate or any employee of his office;

(4) An Official Reporter of Debates of the Senate and any person employed by the Official Reporters of Debates of the Senate in connection with the performance of their official duties;

(5) A member of the Capitol Police force whose compensation is disbursed by the Secretary of the Senate;

(6) An employee of the Vice President, if such employee's compensation is disbursed by the Secretary of the Senate;

(7) An employee of a joint committee of the Congress whose compensation is disbursed by the Secretary of the Senate;

(8) An officer or employee of any department or agency of the Federal Government whose services are being utilized on a full-time and continuing basis by a Member, officer, employee, or committee of the Senate in accordance with Rule XLI(3) of the Standing Rules of the Senate; and

(9) Any other individual whose full-time services are utilized for more than 90 days in a calendar year by a Member, officer, employee, or committee of the Senate in the conduct of official duties in accordance with Rule XLI(4) of the Standing Rules of the Senate.

RULE 15: COMMITTEE STAFF

(a) Committee Policy:

(1) The staff is to be assembled and retained as a permanent, professional, nonpartisan staff.

(2) Each member of the staff shall be professional and demonstrably qualified for the position for which he or she is hired.

(3) The staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner.

(4) No member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election.

(5) No member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties with the Committee without specific advance permission from the Chairman and Vice Chairman.

(6) No member of the staff may make public, without Committee approval, any Committee Sensitive or classified information, documents, or other material obtained during the course of his or her employment with the Committee.

(b) Appointment of Staff:

(1) The appointment of all staff members shall be approved by the Chairman and Vice Chairman, acting jointly.

(2) The Committee may determine by majority vote that it is necessary to retain staff members, including a staff recommended by a special counsel, for the purpose of a particular preliminary inquiry, adjudicatory review, or other proceeding. Such staff shall be retained only for the duration of that particular undertaking.

(3) The Committee is authorized to retain and compensate counsel not employed by the Senate (or by any department or agency of the Executive Branch of the Government) whenever the Committee determines that the retention of outside counsel is necessary or appropriate for any action regarding any complaint or allegation, preliminary inquiry, adjudicatory review, or other proceeding, which in the determination of the Committee, is more appropriately conducted by counsel not employed by the Government of the United States as a regular employee. The Committee shall retain and compensate outside counsel to conduct any adjudicatory review undertaken after a preliminary inquiry, unless the Committee determines that the use of outside counsel is not appropriate in the particular case.

(c) Dismissal of Staff: A staff member may not be removed for partisan, political reasons, or merely as a consequence of the rotation of the Committee membership. The Chairman and Vice Chairman, acting jointly, shall approve the dismissal of any staff member.

(d) Staff Works for Committee as Whole: All staff employed by the Committee or housed in Committee offices shall work for the Committee as a whole, under the general direction of the Chairman and Vice Chairman, and the immediate direction of the staff director or outside counsel.

(e) Notice of Summons to Testify: Each member of the Committee staff or outside counsel shall immediately notify the Committee in the event that he or she is called upon by a properly constituted authority to testify or provide confidential information obtained as a result of and during his or her employment with the Committee.

RULE 16: CHANGES IN SUPPLEMENTARY PROCEDURAL RULES

(a) Adoption of Changes in Supplementary Rules: The Rules of the Committee, other than rules established by statute, or by the Standing Rules and Standing Orders of the Senate, may be modified, amended, or suspended at any time, pursuant to a recorded vote of not less than four members of the full Committee taken at a meeting called with due notice when prior written notice of the proposed change has been provided each member of the Committee.

(b) Publication: Any amendments adopted to the Rules of this Committee shall be published in the Congressional Record in accordance with Rule XXVI(2) of the Standing Rules of the Senate.

RULES OF PROCEDURE—COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Ms. COLLINS. Mr. President, pursuant to the requirements of rule XXVI, section 2, of the Standing Rules of the Senate, I ask unanimous consent to have printed in the RECORD the rules of the Committee on Homeland Security and Governmental Affairs for the 109th Congress adopted by the committee on February 10, 2005.

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

RULES OF THE SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

RULE 1. MEETINGS AND MEETING PROCEDURES OTHER THAN HEARINGS

A. Meeting dates. The Committee shall hold its regular meetings on the first Thursday of each month, when the Congress is in session, or at such other times as the chairman shall determine. Additional meetings may be called by the chairman as he/she deems necessary to expedite Committee business. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

B. Calling special Committee meetings. If at least three members of the Committee desire the chairman to call a special meeting, they may file in the offices of the Committee a written request therefor, addressed to the chairman. Immediately thereafter, the clerk of the committee shall notify the chairman of such request. If, within 3 calendar days after the filing of such request, the chairman fails to call the requested special meeting, which is to be held within 7 calendar days after the filing of such request, a majority of the committee members may file in the offices of the committee their written notice that a special Committee meeting will be held, specifying the date and hour thereof, and the Committee shall meet on that date and hour.

Immediately upon the filing of such notice, the Committee clerk shall notify all Committee members that such special meeting will be held and inform them of its date and hour. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

C. Meeting notices and agenda. Written notices of Committee meetings, accompanied by an agenda, enumerating the items of business to be considered, shall be sent to all Committee members at least 3 days in advance of such meetings, excluding Saturdays, Sundays, and legal holidays in which the Senate is not in session. The written notices required by this Rule may be provided by electronic mail. In the event that unforeseen requirements or Committee business prevent a 3-day notice of either the meeting or agenda, the Committee staff shall communicate such notice and agenda, or any revisions to the agenda, as soon as practicable by telephone or otherwise to members or appropriate staff assistants in their offices.

D. Open business meetings. Meetings for the transaction of Committee or Subcommittee business shall be conducted in open session, except that a meeting or series of meetings on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee members when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.) Notwithstanding the foregoing, whenever disorder arises during a Committee or Subcommittee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the chairman to enforce order on his or her own initiative and without any point of order being made by a member of the Committee or Subcommittee; provided, further, that when the chairman finds it necessary to maintain order, he/she shall have the power to clear the room, and the Committee or Subcommittee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. 5(d), Standing Rules of the Senate.)

E. Prior notice of first degree amendments. It shall not be in order for the committee, or a Subcommittee thereof, to consider any amendment in the first degree proposed to any measure under consideration by the Committee or Subcommittee unless a written copy of such amendment has been delivered to each member of the Committee or Subcommittee, as the case may be, and to the office of the Committee or Subcommittee, at least 24 hours before the meeting of the Committee or Subcommittee at which the amendment is to be proposed. The written copy of amendments in the first degree required by this Rule may be provided by electronic mail. This subsection may be waived by a majority of the members present. This subsection shall apply only when at least 72 hours written notice of a session to mark-up a measure is provided to the Committee or Subcommittee.

F. Meeting transcript. The Committee or Subcommittee shall prepare and keep a complete transcript or electronic recording adequate to fully record the proceeding of each meeting whether or not such meeting or any part thereof is closed to the public, unless a majority of the Committee or Subcommittee members vote to forgo such a record. (Rule XXVI, Sec. 5(e), Standing Rules of the Senate.)

RULE 2. QUORUMS

A. Reporting measures and matters. A majority of the members of the Committee shall constitute a quorum for reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

B. Transaction of routine business. One-third of the membership of the Committee shall constitute a quorum for the transaction of routine business, provided that one member of the minority is present. For the purpose of this paragraph, the term ''routine business'' includes the convening of a meeting and the consideration of any business of the Committee other than reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

C. Taking testimony. One member of the Committee shall constitute a quorum for taking sworn or unsworn testimony. (Rule XXVI, Sec. 7(a)(2) and 7(c)(2), Standing Rules of the Senate.)

D. Subcommittee quorums. Subject to the provisions of sections 7(a) (1) and (2) of Rule XXVI of the Standing Rules of the Senate, the Subcommittees of this Committee are authorized to establish their own quorums for the transaction of business and the taking of sworn testimony.

E. Proxies prohibited in establishment of quorum. Proxies shall not be considered for the establishment of a quorum.

RULE 3. VOTING

A. Quorum required. Subject to the provisions of subsection (E), no vote may be taken by the Committee, or any Subcommittee thereof, on any measure or matter unless a quorum, as prescribed in the preceding section, is actually present.

B. Reporting measures and matters. No measure, matter or recommendation shall be reported from the Committee unless a majority of the Committee members are actually present, and the vote of the Committee to report a measure or matter shall require the concurrence of a majority of those members who are actually present at the time the vote is taken. (Rule XXVI, Sec. 7(a)(1) and (3), Standing Rules of the Senate.)

C. Proxy voting. Proxy voting shall be allowed on all measures and matters before the Committee, or any Subcommittee thereof, except that, when the Committee, or any Subcommittee thereof, is voting to report a measure or matter, proxy votes shall be allowed solely for the purposes of recording a member's position on the pending question. Proxy voting shall be allowed only if the absent Committee or Subcommittee member has been informed of the matter on which he/she is being recorded and has affirmatively requested that he or she be so recorded. All proxies shall be filed with the chief clerk of the Committee or Subcommittee thereof, as the case may be. All proxies shall be in writing and shall contain sufficient reference to the pending matter as is necessary to identify it and to inform the Committee or Subcommittee as to how the member establishes his or her vote to be recorded thereon. (Rule XXVI, Sec. 7(a)(3) and 7(c)(1), Standing Rules of the Senate.)

D. Announcement of vote.

(1) Whenever the Committee by roll call vote reports any measure or matter, the report of the Committee upon such a measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each member of the Committee. (Rule XXVI, Sec. 7(c), Standing Rules of the Senate.)

(2) Whenever the Committee by roll call vote acts upon any measure or amendment thereto, other than reporting a measure or matter, the results thereof shall be announced in the Committee report on that measure unless previously announced by the Committee, and such announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment thereto by each member of the Committee who was present at the meeting. (Rule XXVI, Sec. 7(b), Standing Rules of the Senate.)

(3) In any case in which a roll call vote is announced, the tabulation of votes shall state separately the proxy vote recorded in favor of and in opposition to that measure, amendment thereto, or matter. (Rule XXVI, Sec. 7(b) and (c), Standing Rules of the Senate.)

E. Polling.

(1) The Committee, or any Subcommittee thereof, may poll (a) internal Committee or Subcommittee matters including the Committee's or Subcommittee's staff, records and budget; (b) steps in an investigation, including issuance of subpoenas, applications for immunity orders, and requests for documents from agencies; and (c) other Committee or Subcommittee business other than a vote on reporting to the Senate any measures, matters or recommendations or a vote on closing a meeting or hearing to the public.

(2) Only the chairman, or a Committee member or staff officer designated by him/her, may undertake any poll of the members of the Committee. If any member requests, any matter to be polled shall be held for meeting rather than being polled. The chief clerk of the Committee shall keep a record of polls; if a majority of the members of the Committee determine that the polled matter is in one of the areas enumerated in subsection (D) of Rule 1, the record of the poll shall be confidential. Any Committee member may move at the Committee meeting following the poll for a vote on the polled decision, such motion and vote to be subject to the provisions of subsection (D) of Rule 1, where applicable.

RULE 4. CHAIRMANSHIP OF MEETINGS AND HEARINGS

The chairman shall preside at all Committee meetings and hearings except that he/she shall designate a temporary chairman to act in his/her place if he/she is unable to be present at a scheduled meeting or hearing. If the chairman (or his/her designee) is absent 10 minutes after the scheduled time set for a meeting or hearing, the ranking majority member present shall preside until the chairman's arrival. If there is no member of the majority present, the ranking minority member present, with the prior approval of the chairman, may open and conduct the meeting or hearing until such time as a member of the majority arrives.

RULE 5. HEARINGS AND HEARINGS PROCEDURES

A. Announcement of hearings. The Committee, or any Subcommittee thereof, shall make public announcement of the date, time, and subject matter of any hearing to be conducted on any measure or matter at least 1 week in advance of such hearing, unless the Committee, or Subcommittee, determines that there is good cause to begin such hearing at an earlier date. (Rule XXVI, Sec. 4(a), Standing rules of the Senate.)

B. Open hearings. Each hearing conducted by the Committee, or any Subcommittee thereof, shall be open to the public, except that a hearing or series of hearings on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the hearing to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee members when it is determined that the matters to be discussed or the testimony to be taken at such hearing or hearings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.) Notwithstanding the foregoing, whenever disorder arises during a Committee or Subcommittee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the chairman to enforce order on his/her own initiative and without any point of order being made by a member of the Committee or Subcommittee; provided, further, that when the chairman finds it necessary to maintain order, he/she shall have the power to clear the room, and the Committee or Subcommittee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. 5(d), Standing rules of the Senate.)

C. Full Committee subpoenas. The chairman, with the approval of the ranking minority member of the Committee, is authorized to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials at a hearing or deposition, provided that the chairman may subpoena attendance or production without the approval of the ranking minority member where the chairman or staff officer designated by him/her has not received notification from the ranking minority member or a staff officer designated by him/her of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena. If a subpoena is disapproved by the ranking minority member as provided in this subsection, the subpoena may be authorized by vote of the members of the Committee. When the Committee or chairman authorizes subpoenas, subpoenas may be issued upon the signature of the chairman or any other member of the Committee designated by the chairman.

D. Witness counsel. Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing or deposition to advise such witness while he or she is testifying, of his or her legal rights, provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Committee chairman may rule that representation by counsel from the government, corporation, or association or by counsel representing, other witnesses, creates a conflict of interest, and that the witness may only be represented during interrogation by staff or during testimony before the Committee by personal counsel not from the government, corporation, or association or by personal counsel not representing other witnesses. This subsection shall not be construed to excuse a witness from testifying in the event his or her counsel is ejected for conducting himself or herself in such manner so as to prevent, impede, disrupt, obstruct or interfere with the orderly administration of the

hearings; nor shall this subsection be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

E. Witness transcripts. An accurate electronic or stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. The record of his or her testimony whether in public or executive session shall be made available for inspection by the witness or his or her counsel under Committee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be provided to any witness at his or her expense if he or she so requests. Upon inspecting his or her transcript, within a time limit set by the chief clerk of the Committee, a witness may request changes in the transcript to correct errors of transcription and grammatical errors; the chairman or a staff officer designated by him/her shall rule on such requests.

F. Impugned persons. Any person whose name is mentioned or is specifically identified, and who believes that evidence presented, or comment made by a member of the Committee or staff officer, at a public hearing or at a closed hearing concerning which there have been public reports, tends to impugn his or her character or adversely affect his or her reputation may:

(a) File a sworn statement of facts relevant to the evidence or comment, which statement shall be considered for placement in the hearing record by the Committee;

(b) Request the opportunity to appear personally before the Committee to testify in his or her own behalf, which request shall be considered by the Committee; and

(c) Submit questions in writing which he or she requests be used for the cross-examination of other witnesses called by the Committee, which questions shall be considered for use by the Committee.

G. Radio, television, and photography. The Committee, or any Subcommittee thereof, may permit the proceedings of hearings which are open to the public to be photographed and broadcast by radio, television or both, subject to such conditions as the Committee, or Subcommittee, may impose. (Rule XXVI, Sec. 5(c), Standing Rules of the Senate.)

H. Advance statements of witnesses. A witness appearing before the Committee, or any Subcommittee thereof, shall provide 100 copies of a written statement and an executive summary or synopsis of his proposed testimony at least 48 hours prior to his appearance. This requirement may be waived by the chairman and the ranking minority member following their determination that there is good cause for failure of compliance. (Rule XXVI, Sec. 4(b), Standing Rules of the Senate.)

I. Minority witnesses. In any hearings conducted by the Committee, or any Subcommittee thereof, the minority members of the Committee or Subcommittee shall be entitled, upon request to the chairman by a majority of the minority members, to call witnesses of their selection during at least 1 day of such hearings. (Rule XXVI, Sec. 4(d), Standing Rules of the Senate.)

J. Full Committee depositions. Depositions may be taken prior to or after a hearing as provided in this subsection.

(1) Notices for the taking of depositions shall be authorized and issued by the chairman, with the approval of the ranking minority member of the Committee, provided that the chairman may initiate depositions without the approval of the ranking minority member where the chairman or a staff officer designated by him/her has not received notification from the ranking minority member or a staff officer designated by him/her of disapproval of the deposition within 72 hours, excluding Saturdays and Sundays, of being notified of the deposition notice. If a deposition notice is disapproved by the ranking minority members as provided in this subsection, the deposition notice may be authorized by a vote of the members of the Committee. Committee deposition notices shall specify a time and place for examination, and the name of the Committee member or members or staff officer or officers who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear or produce unless the deposition notice was accompanied by a Committee subpoena.

(2) Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Rule 5D.

(3) Oaths at depositions may be administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee member or members or staff. If a witness objects to a question and refuses to testify, the objection shall be noted for the record and the Committee member or members or staff may proceed with the remainder of the deposition.

(4) The Committee shall see that the testimony is transcribed or electronically recorded (which may include audio or audio/video recordings). If it is transcribed, the transcript shall be made available for inspection by the witness or his or her counsel under Committee supervision. The witness shall sign a copy of the transcript and may request changes to it, which shall be handled in accordance with the procedure set forth in subsection (E). If the witness fails to sign a copy, the staff shall note that fact on the transcript. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the chief clerk of the Committee. The chairman or a staff officer designated by him may stipulate with the witness to changes in the procedure, deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his or her obligation to testify truthfully.

RULE 6. COMMITTEE REPORTING PROCEDURES

A. Timely filing. When the Committee has ordered a measure or matter reported following final action the report thereon shall be filed in the Senate at the earliest practicable time. (Rule XXVI Sec. 20(b), Standing Rules of the Senate.)

B. Supplemental, minority, and additional views. A member of the Committee who gives notice of his or her intention to file supplemental minority or additional views at the time of final Committee approval of a measure or matter, shall be entitled to not less than 3 calendar days in which to file such views, in writing, with the chief clerk of the Committee. Such views shall then be included in the Committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the Committee report may be filed and printed immediately without such views, (Rule XXVI, Sec. 10(c), Standing Rules of the Senate.)

C. Notice by Subcommittee chairmen. The chairman of each Subcommittee shall notify the chairman in writing whenever any measure has been ordered reported by such Subcommittee and is ready for consideration by the full Committee.

D. Draft reports of Subcommittees. All draft reports prepared by Subcommittees of this Committee on any measure or matter referred to it by the chairman, shall be in the form, style, and arrangement required to conform to the applicable provisions of the Standing Rules of the Senate, and shall be in accordance with the established practices followed by the Committee. Upon completion of such draft reports, copies thereof shall be filed with the chief clerk of the Committee at the earliest practicable time.

E. Impact statements in reports. All Committee reports, accompanying a bill or joint resolution of a public character reported by the Committee, shall contain (1) an estimate, made by the Committee, of the costs which would be incurred in carrying out the legislation for the then current fiscal year and for each of the next 5 years thereafter (or for the authorized duration of the proposed legislation, if less than 5 years); and (2) a comparison of such cost estimates with any made by a Federal agency; or (3) in lieu of such estimate or comparison, or both, a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(a), Standing Rules of the Senate.)

Each such report shall also contain an evaluation, made by the Committee, of the regulatory impact which would be incurred in carrying out the bill or joint resolution. The evaluation shall include (a) an estimate of the numbers of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses, (b) a determination of the economic impact of such regulation on the individuals, consumers, and businesses affected, (c) a determination of the impact on the personal privacy of the individuals affected, and (d) a determination of the amount of paperwork that will result from the regulations to be promulgated pursuant to the bill or joint resolution, which determination may include, but need not be limited to, estimates of the amount of time and financial costs required of affected parties, showing whether the effects of the bill or joint resolution could be substantial, as well as reasonable estimates of the record keeping requirements that may be associated with the bill or joint resolution. Or, in lieu of the forgoing evaluation, the report shall include a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(b), Standing Rules of the Senate.)

RULE 7. SUBCOMMITTEES AND SUBCOMMITTEE PROCEDURES

A. Regularly established Subcommittees. The Committee shall have three regularly established Subcommittees. The Subcommittees are as follows:

Permanent Subcommittee on Investigations

Oversight of Government Management, the Federal Workforce, and the District of Columbia

Federal Financial Management, Government Information, and International Security

B. Ad hoc Subcommittees. Following consultation with the ranking minority member, the chairman shall, from time to time, establish such ad hoc Subcommittees as he/she deems necessary to expedite Committee business.

C. Subcommittee membership. Following consultation with the majority members, and the ranking minority member of the

Committee, the chairman shall announce selections for membership on the Subcommittees referred to in paragraphs A and B, above.

D. Subcommittee meetings and hearings. Each Subcommittee of this Committee is authorized to establish meeting dates and adopt rules not inconsistent with the rules of the Committee except as provided in Rules 2(D) and 7(E).

E. Subcommittee subpoenas. Each Subcommittee is authorized to adopt rules concerning subpoenas which need not be consistent with the rules of the Committee; provided, however, that in the event the Subcommittee authorizes the issuance of a subpoena pursuant to its own rules, a written notice of intent to issue the subpoena shall be provided to the chairman and ranking minority member of the Committee, or staff officers designated by them, by the Subcommittee chairman or a staff officer designated by him/her immediately upon such authorization, and no subpoena shall be issued for at least 48 hours, excluding Saturdays and Sundays, from delivery to the appropriate offices, unless the chairman and ranking minority member waive the 48 hour waiting period or unless the Subcommittee chairman certifies in writing to the chairman and ranking minority member that, in his/her opinion, it is necessary to issue a subpoena immediately.

F. Subcommittee budgets. During the first year of a new Congress, each Subcommittee that requires authorization for the expenditure of funds for the conduct of inquiries and investigations, shall file with the chief clerk of the Committee, by a date and time prescribed by the Chairman, its request for funds for the two (2) 12-month periods beginning on March 1 and extending through and including the last day of February of the 2 following years, which years comprise that Congress. Each such request shall be submitted on the budget form prescribed by the Committee on Rules and Administration, and shall be accompanied by a written justification addressed to the chairman of the Committee, which shall include (1) a statement of the Subcommittee's area of activities, (2) its accomplishments during the preceding Congress detailed year by year, and (3) a table showing a comparison between (a) the funds authorized for expenditure during the preceding Congress detailed year by year, (b) the funds actually expended during that Congress detailed year by year, (c) the amount requested for each year of the Congress, and (d) the number of professional and clerical staff members and consultants employed by the Subcommittee during the preceding Congress detailed year by year and the number of such personnel requested for each year of the Congress. The chairman may request additional reports from the Subcommittees regarding their activities and budgets at any time during a Congress. (Rule XXVI, Sec. 9, Standing Rules of the Senate.)

RULE 8. CONFIRMATION STANDARDS AND PROCEDURES

A. Standards. In considering a nomination, the Committee shall inquire into the nominee's experience, qualifications, suitability, and integrity to serve in the position to which he or she has been nominated. The Committee shall recommend confirmation, upon finding that the nominee has the necessary integrity and is affirmatively qualified by reason of training, education, or experience to carry out the functions of the office to which he or she was nominated.

B. Information Concerning the Nominee. Each nominee shall submit the following information to the Committee:

(1) A detailed biographical resume which contains information relating to education, employment and achievements;

(2) Financial information, in such specificity as the Committee deems necessary, including a list of assets and liabilities of the nominee and tax returns for the 3 years preceding the time of his or her nomination, and copies of other relevant documents requested by the Committee, such as a proposed blind trust agreement, necessary for the Committee's consideration; and,

(3) Copies of other relevant documents the Committee may request, such as responses to questions concerning the policies and programs the nominee intends to pursue upon taking office. At the request of the chairman or the ranking minority member, a nominee shall be required to submit a certified financial statement compiled by an independent auditor. Information received pursuant to this subsection shall be made available for public inspection; provided, however, that tax returns shall, after review by persons designated in subsection (C) of this rule, be placed under seal to ensure confidentiality.

C. Procedures for Committee inquiry. The Committee shall conduct an inquiry into the experience, qualifications, suitability, and integrity of nominees, and shall give particular attention to the following matters:

(1) A review of the biographical information provided by the nominee, including, but not limited to, any professional activities related to the duties of the office to which he or she is nominated;

(2) A review of the financial information provided by the nominee, including tax returns for the 3 years preceding the time of his or her nomination;

(3) A review of any actions, taken or proposed by the nominee, to remedy conflicts of interest; and

(4) A review of any personal or legal matter which may bear upon the nominee's qualifications for the office to which he or she is nominated. For the purpose of assisting the Committee in the conduct of this inquiry, a majority investigator or investigators shall be designated by the chairman and a minority investigator or investigators shall be designated by the ranking minority member. The chairman, ranking minority member, other members of the Committee and designated investigators shall have access to all investigative reports on nominees prepared by any Federal agency, except that only the chairman, the ranking minority member, or other members of the Committee, upon request, shall have access to the report of the Federal Bureau of Investigation. The Committee may request the assistance of the General Accounting Office and any other such expert opinion as may be necessary in conducting its review of information provided by nominees.

D. Report on the Nominee. After a review of all information pertinent to the nomination, a confidential report on the nominee shall be made in the case of judicial nominees and may be made in the case of non-judicial nominees by the designated investigators to the chairman and the ranking minority member and, upon request, to any other member of the Committee. The report shall summarize the steps taken by the Committee during its investigation of the nominee and the results of the Committee inquiry, including any unresolved matters that have been raised during the course of the inquiry.

E. Hearings. The Committee shall conduct a public hearing during which the nominee shall be called to testify under oath on all matters relating to his or her suitability for office, including the policies and programs which he or she will pursue while in that position. No hearing shall be held until at least 72 hours after the following events have occurred: The nominee has responded to prehearing questions submitted by the Committee; and, if applicable, the report described in subsection (D) has been made to the chairman and ranking minority member, and is available to other members of the Committee, upon request.

F. Action on confirmation. A mark-up on a nomination shall not occur on the same day that the hearing on the nominee is held. In order to assist the Committee in reaching a recommendation on confirmation, the staff may make an oral presentation to the Committee at the mark-up, factually summarizing the nominee's background and the steps taken during the pre-hearing inquiry.

G. Application. The procedures contained in subsections (C), (D), (E), and (F) of this rule shall apply to persons nominated by the President to positions requiring their full-time service. At the discretion of the chairman and ranking minority member, those procedures may apply to persons nominated by the President to serve on a part-time basis.

RULE 9. PERSONNEL ACTIONS AFFECTING COMMITTEE STAFF

In accordance with Rule XLII of the Standing Rules of the Senate and the Congressional Accountability Act of 1995 (P.L. 104–1), all personnel actions affecting the staff of the Committee shall be made free from any discrimination based on race, color, religion, sex, national origin, age, state of physical handicap, or disability.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Last summer, a young man and two of his gay friends were on their way to a bar. A 38-year-old male confronted one of the gay men and began to harass him. When the victim's friend tried to intervene, the assailant struck him in the head multiple times with a baseball bat believing that he was also gay. He was treated for skull fractures, cranial bleeding, and a blood clot in the brain.

The Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. By passing this legislation and changing current law, we can change hearts and minds as well.

JOHN HUME—LEADER FOR PEACE IN NORTHERN IRELAND

Mr. KENNEDY. Mr. President, it is with great honor that I submitted this resolution, S. Res. 45, paying tribute to John Hume. Throughout the long and difficult years of civil strife and turmoil, John dedicated himself to achieving a peaceful, just, and lasting settlement of the conflict in Northern Ireland.

I have known John for over 30 years, and he has always been one of the people I have admired most in the world. I have consistently been impressed by his insights, his commitment to peace, and his dedication to the people of Northern Ireland. He is truly a profile in courage, and he won the Nobel Prize for it in 1998.

I first contacted John in 1972, shortly after he founded the Social Democratic and Labour Party in Northern Ireland. I was planning a trip to Western Europe for a NATO meeting in Bonn. I was concerned about the violence erupting in Northern Ireland, and I was told that John Hume was the best person to see in the North. So I called him in Derry, and said: ''Mr. Hume, it's Ted Kennedy. I understand you're the person to talk to about what's going on over there.'' He didn't believe it. He said: ''Pull my other leg.''

I resisted though and told him that I would be in Bonn for the meeting of NATO. He graciously agreed to meet me there, and it was the beginning of our extraordinary friendship over the years.

John has been an indispensable voice for peace and reconciliation in Northern Ireland. His call for respect for both the Catholic and the Protestant traditions has been eloquent and historic for more than three decades.

In a very real sense, it was John who, in large part, became the glue that held Northern Ireland together, halted the descent into anarchy and civil war, and produced realistic hope for peace and further progress.

In 1983, largely as a result of John's efforts, the principal political parties in Ireland and the SDLP in Northern Ireland established what was called the New Ireland Forum. It developed new ideas for peace, and prepared a landmark report that laid the groundwork for an unprecedented, new initiative on the North between Britain and Ireland, culminating in 1985 with the signing of the historic Anglo-Irish Agreement by Margaret Thatcher of Great Britain and Garret FitzGerald of Ireland.

That in turn led to the cease-fire by the Irish Republican Army in 1994, the famous Good Friday Agreement in 1998, and the further progress that has brought both sides so close to a permanent peace today.

John has been a familiar face to many of us in the United States over the years. Perhaps his greatest achievement was educating Irish America about the conflict and the most effective way forward.

The civil rights movement in the United States in the 1960s planted the seed for a comparable movement by the Catholic minority in Northern Ireland. But, as the movement gained strength, it encountered intense resistance, and there was a very real feeling that violence was the only path to a better future. Much of Irish America agreed with that view, and there was a strong financial support in the United States for the IRA.

John Hume changed all that. He became an apostle of nonviolence, just as Martin Luther King did at a critical time in our own civil rights movement. The violence began to ebb, and more and more citizens in Northern Ireland recognized that peaceful change could be achieved in a way that would benefit people of both communities in the North. Others had important roles as well, but at a critical time in the history of Northern Ireland, John Hume stepped up and led the way toward peace, and history will honor him forever for all he did so well.

The pending resolution pays tribute to John Hume's brilliant achievements in the cause of peace for all the people of Northern Ireland, and I urge my colleagues to support it.

ADDITIONAL STATEMENTS

HONORING THE CAREER OF DENNIS HAGNY

• Mr. JOHNSON. Mr. President, I rise today to publicly commend Mr. Dennis Hagny, general manager and chief executive officer of Northern Electric Cooperative, for devoting more than 40 years of service to advancing the ambitions and objectives of the rural electric program. After four decades with Northern Electric, Dennis is retiring and looks forward to traveling with his wife, Mary, and visiting their two children, Jennifer and Jeff.

Over the years, Dennis guided Northern Electric as it grew from a basic electric service provider into a progressive electric system that currently serves more than 6,000 residential, farm and industrial customers. Under Dennis' leadership, Northern Electric headed up many projects designed to technologically integrate South Dakota, such as the North Central Area Interconnect, which Northern Electric built and funded. North Central Area Interconnect, created in 1993, is a fully-interactive long distance learning system comprised of eight school districts, spanning three separate counties. This system provides high school students the opportunity to take college level classes via personal computer. Likewise, Dennis' innovation and commitment to rural communities inspired the creation of Northern Rural Cable TV, the Nation's first rural cooperative wireless cable television system.

Dennis has used Northern Electric to connect South Dakotans not only with each other, but with the global market, as well. During Dennis' tenure, Northern Electric developed WOWnet, a high speed, wireless internet service for underserved areas. Similarly, Dennis helped finance the construction of Aberdeen's first ''smart park,'' a 150-acre industrial park wired for high-speed telecommunications.

In addition to his tremendous contributions to rural South Dakota, Dennis, a native of Gettysburg, SD, is also a Vietnam veteran. Following his graduation from Gettysburg High School in 1961, Dennis served in the U.S. Army and Iowa National Guard from 1965 to 1969.

Dennis has always been devoted to improving conditions in the communities he served. As a result, he is a founding member of the Rural Electric Economic Development Revolving Loan Fund, REED, and is actively involved with numerous local boards and organizations. REED, a nonprofit corporation that provides financing for projects in small communities and rural areas of South Dakota, is credited with creating more than 3,000 jobs throughout South Dakota. Additionally, Dennis is chairman of Avera St. Luke's Board of Directors, and is a member of St. Luke's Foundation Board. Also, he serves on the Northern Electric Regional Board of the Governors Office of Economic Development, the Presentation College Board of Trustees, and is founding and past member of South Dakota Rural Enterprise. He is also a life member of Veterans of Foreign Wars and the American Legion.

It is with great honor that I share Dennis' accomplishments with my colleagues and publicly commend him for his excellent service to South Dakota. I wish him the very best, along with his wife, Mary; their two children, Jennifer and Jeff; and their three grandchildren.•

SOUTH DAKOTAN STUDENTS HONORED

• Mr. THUNE. Mr. President, I congratulate and honor two young South Dakota students who have achieved national recognition for exemplary volunteer service in their communities. Michelle Rydell of Vermillion and Molly Stehly of Sioux Falls have just been named State Honorees in the 2005 Prudential Spirit of Community Awards program. They have proved themselves to be a part of the extraordinary youth of our country who understand the importance of civic duty and service in the community.

Michelle is being recognized for her creation of a ''Dream Team'' that collected essential goods for impoverished people in Guatemala and helped raise awareness of poverty in the region. She gave more than goods to the people of a foreign land, she gave them hope.

Molly is being recognized for her help with her mother's special education class. She offered freely of herself, at the young age of 13, in an effort to help the students with special needs to move toward greater independence.

In a State like South Dakota, selfless acts of goodwill toward the community are often commonplace. Michelle and Molly stand out, however, for their constant contributions to others without consideration for themselves. The Prudential Spirit of Community Awards program has considered more than 20,000 young people this year and Michelle and Molly are among the handful selected for the honor.

I heartily applaud Michelle and Molly for their initiative in seeking to

make others' lives better. They have demonstrated a level of commitment and service that many adults will never achieve. They are shining examples, to young and old alike, of selfless public service. I would also like to recognize Kelly Fawcett of Miller and Kirstin Hanson of Elk Point, who were named Distinguished Finalists for their outstanding volunteer service.

The actions of all of these young people demonstrate that young Americans can, and do, play important roles in their communities, and that America's youth continue to hold tremendous promise for the future.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar.

S. 384. A bill to extend the existence of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group for 2 years.

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–728. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Emergency Evacuation Demonstration Procedures to Improve Participant Safety'' ((RIN2120–AF21) (2005–0001)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–729. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Miscellaneous Cabin Safety Changes'' (2120–AF77) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–730. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airspace Designations; Incorporation by Reference'' (RIN2120–ZZ61) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–731. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Process for Requesting Waiver of Mandatory Separation Age for Certain Federal Aviation Administration (FAA) Air Traffic Control Specialists'' (2120–AI18) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–732. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''DOD Commercial Air Carrier Evaluators; Request for Comments'' (RIN2120–AI00) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–733. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations; Correction'' (RIN2120–AH06) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–734. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Picture Identification Requirements; Correction'' (RIN2120–AH76) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–735. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Jet Route 187, and Revision of Jet Routes 180 and 181; MO'' (RIN2120–AA66) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–736. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Kotzebue, AK'' (2120–AA66) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–737. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Lamar, MO'' (RIN2120–AA66) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–738. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Kennett, MO'' (RIN2120–AA66) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–739. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Correction to Class E Airspace; Durango, CO'' (RIN2120–AA66) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–740. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Jonesville, VA'' (RIN2120–AA66) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–741. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Restricted Areas 3801A, 3801B, and 3801C, Camp Clairborne, LA'' (RIN2120–AA66) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–742. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; St. Francis, KS'' (RIN2120–AA66) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–743. A communication from the Director, Regulations Management, National Cemetery Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Relocation of National Cemetery Administration Regulations'' (RIN2900–AM10) received February 8, 2005; to the Committee on Veterans' Affairs.

EC–744. A communication from the Director, Regulations Management, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Payment for Non-VA Physician and Other Health Care Professional Services Associated with Either Outpatient or Inpatient Care Provided at Non-VA Facilities'' (RIN2900–AK94) received on February 8, 2005; to the Committee on Veterans' Affairs.

EC–745. A communication from the Chief, Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Loan Guaranty: Implementation of Public Law 107–103'' (RIN2900–AL23) received on February 8, 2005; to the Committee on Veterans' Affairs.

EC–746. A communication from the Assistant General Counsel for Regulations, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Eligibility of Mortgages on Hawaiian Home Lands Insured Under Section 247'' (RIN2502–AH92) received on February 8, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–747. A communication from Assistant Secretary for Housing, Federal Housing Commissioner, Department of Housing and Urban Development, transmitting, pursuant to law, an update on the status of the report required by the LEGACY Act of 2003, received on February 8, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–748. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Proposed Data Collection, Reporting, and Recordkeeping Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order'' (Docket Number: FV01–926–1 FR) received on February 7, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–749. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Spring Viremia of Carp; Payment of Indemnity'' (Docket Number 02–091–2) received on February 8, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–750. A communication from the Director, Regulatory Review Group, Department of Agriculture/FSA, transmitting, pursuant to law, the report of a rule entitled ''Nonrecourse Marketing Assistance Loan and Loan Deficiency Payment Regulations for Honey'' (RIN0560–AH18) received on February

8, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–751. A communication from the Director, Regulatory Review Group, Department of Agriculture/FSA, transmitting, pursuant to law, the report of a rule entitled ''2004 Ewe Lamb Replacement and Retention Payment Program'' (RIN0560–AH15) received on February 8, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–752. A communication from the Deputy Associate Administrator, Office of the Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Bacillus pumilus GB34; Exemption from the Requirement of a Tolerance'' (FRL–7682–6) received on February 8, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–753. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Thiamethoxam; Pesticide Tolerances for Emergency Exceptions'' (FRL No. 7696–8) received on February 8, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–754. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pesticides; Removal of Expired Time-Limited Tolerances for Emergency Exemptions'' (FRL No. 7690–6) received on February 8, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–755. A communication from the Rules Administrator, Office of General Counsel, Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Community Confinement'' ((RIN1120–AB27)(70 FR 1659)) received February 8, 2005; to the Committee on the Judiciary.

EC–756. A communication from the Acting Chief, Publications and Regulations, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tentative Differential Earnings Rate for 2004 Under Section 809 (Notice 2005–18) received on February 8, 2005; to the Committee on Finance.

EC–757. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Gastroenterology-Urology Devices; Classification for External Penile Rigidity Devices'' (Docket No. 1998N–1111) received on February 7, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–758. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Secondary Direct Food Additives Permitted in Food for Human Consumption'' (Docket No. 2003F–0128) received on February 7, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–759. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Public Information Regulations; Withdrawal'' (Docket No. 2004N–0214) received on February 8, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–760. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Department's Annual Report on the Implementation of the Age Discrimination Act of 1975 during Fiscal Year 2003, received February 8, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–761. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review; Withdrawal'' (Docket No. 1980N–0208) received on February 8, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–762. A communication from the Director, National Science Foundation, transmitting, pursuant to law, the Foundation's report on its competitive sourcing efforts for Fiscal Year 2004, received February 11, 2005; to the Committee on Health, Education, Labor, and Pensions.

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. BAYH (for himself, Mr. CRAIG, and Ms. LANDRIEU):

S. 375. A bill to amend the Public Health Service Act to provide for an influenza vaccine awareness campaign, ensure a sufficient influenza vaccine supply, and prepare for an influenza pandemic or epidemic, to amend the Internal Revenue Code of 1986 to encourage vaccine production capacity, and for other purposes; to the Committee on Finance.

By Mrs. HUTCHISON:

S. 376. A bill to improve intermodal shipping container transportation security; to the Committee on Commerce, Science, and Transportation.

By Mr. LIEBERMAN:

S. 377. A bill to require negotiation and appropriate action with respect to certain countries that engage in currency manipulation; to the Committee on Finance.

By Mr. BIDEN (for himself, Mr. SPECTER, Mrs. FEINSTEIN, Mr. KYL, and Mr. ALLEN):

S. 378. A bill to make it a criminal act to willfully use a weapon with the intent to cause death or serious bodily injury to any person while on board a passenger vessel, and for other purposes; to the Committee on the Judiciary.

By Ms. MIKULSKI (for herself, Mr. SARBANES, Mr. DURBIN, and Mr. OBAMA):

S. 379. A bill to build capacity at community colleges in order to meet increased demand for community college education while maintaining the affordable tuition rates and the open-door policy that are the hallmarks of the community college system; to the Committee on Health, Education, Labor, and Pensions.

By Ms. COLLINS (for herself, Mr. PRYOR, Mr. DEWINE, Mr. BINGAMAN, Mr. SMITH, Mr. LIEBERMAN, and Mr. COLEMAN):

S. 380. A bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SMITH (for himself, Mr. CONRAD, Ms. SNOWE, and Mrs. CLINTON):

S. 381. A bill to amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments from annuities and similar payments of life insurance proceeds at dates later than death by excluding from income a portion of such payments; to the Committee on Finance.

By Mr. ENSIGN (for himself, Mr. SPECTER, Ms. CANTWELL, Mrs. FEINSTEIN, Mr. DEWINE, Mr. KENNEDY, Mr. KYL, Mr. KOHL, Mr. LUGAR, Mr. VITTER, Mr. LEAHY, and Mr. SANTORUM):

S. 382. A bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes; to the Committee on the Judiciary.

By Mr. MCCAIN:

S. 383. A bill to shorten the term of broadcasting licenses under the Communications Act of 1934 from 8 to 3 years, to provide better public access to broadcasters' public interest issues and programs lists and children's programming reports, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DEWINE (for himself, Mr. CORNYN, and Mrs. FEINSTEIN):

S. 384. A bill to extend the existence of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group for 2 years; placed on the calendar.

By Mr. GRASSLEY (for himself, Mr. DORGAN, Mr. HAGEL, and Mr. JOHNSON):

S. 385. A bill to amend the Food Security Act of 1985 to restore integrity to and strengthen payment limitation rules for commodity payments and benefits; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HAGEL (for himself, Mr. ALEXANDER, Mr. CRAIG, and Mrs. DOLE):

S. 386. A bill to direct the Secretary of State to carry out activities that promote the adoption of technologies that reduce greenhouse gas intensity in developing countries, while promoting economic development, and for other purposes; to the Committee on Foreign Relations.

By Mr. HAGEL (for himself, Mr. ALEXANDER, Mr. CRAIG, and Mrs. DOLE):

S. 387. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives for the investment in greenhouse gas intensity reduction projects, and for other purposes; to the Committee on Finance.

By Mr. HAGEL (for himself, Mr. ALEXANDER, Mr. CRAIG, and Mrs. DOLE):

S. 388. A bill to amend the Energy Policy Act of 1992 to direct the Secretary of Energy to carry out activities that promote the adoption of technologies that reduce greenhouse gas intensity and to provide credit-based financial assistance and investment protection for projects that employ advanced climate technologies or systems, to provide for the establishment of a national greenhouse gas registry, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DURBIN:

S. 389. A bill to provide for fire safety standards for cigarettes, and for other purposes; to the Committee on Commerce, Science, and Transportation.

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

S. 390. A bill to amend title XVIII of the Social Security Act to provide for coverage of ultrasound screening for abdominal aortic aneurysms under part B of the medicare program; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. FEINGOLD:

S. Con. Res. 12. A concurrent resolution providing that any agreement relating to trade and investment that is negotiated by the executive branch with another country must comply with certain minimum standards; to the Committee on Finance.

By Mr. SUNUNU:

S. Con. Res. 13. A concurrent resolution congratulating ASME on their 125th anniversary, celebrating the achievements of ASME members, and expressing the gratitude of the American people for ASME's contributions; considered and agreed to.

ADDITIONAL COSPONSORS

S. 3

At the request of Mr. GREGG, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 3, a bill to strengthen and protect America in the war on terror.

S. 50

At the request of Mr. INOUYE, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor 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. 98

At the request of Mr. ALLARD, the name of the Senator from California (Mrs. BOXER) 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. 117

At the request of Mrs. FEINSTEIN, the names of the Senator from California (Mrs. BOXER) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of S. 117, a bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to Head Start teachers.

S. 125

At the request of Mrs. BOXER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 125, a bill to designate the United States courthouse located at 501 I Street in Sacramento, California, as the ''Robert T. Matsui United States Courthouse''.

S. 132

At the request of Mr. SMITH, the name of the Senator from Indiana (Mr. BAYH) 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.

S. 188

At the request of Mrs. FEINSTEIN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 188, a bill to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2005 through 2011 to carry out the State Criminal Alien Assistance Program.

S. 282

At the request of Mr. DODD, the names of the Senator from Maryland (Mr. SARBANES) and the Senator from Hawaii (Mr . INOUYE) were added as cosponsors of S. 282, a bill to amend the Family and Medical Leave Act of 1993 to expand the scope of the Act, and for other purposes.

S. 285

At the request of Mr. BOND, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 285, a bill to reauthorize the Children's Hospitals Graduate Medical Education Program.

S. 288

At the request of Mr. GREGG, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 288, a bill to extend Federal funding for operation of State high risk health insurance pools.

S. 296

At the request of Mr. KOHL, the names of the Senator from Ohio (Mr. DEWINE), the Senator from Rhode Island (Mr. REED), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from New York (Mr. SCHUMER) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 296, a bill to authorize appropriations for the Hollings Manufacturing Extension Partnership Program, and for other purposes.

S. 306

At the request of Mr. HAGEL, his name was added as a cosponsor of S. 306, a bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

At the request of Ms. SNOWE, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 306, supra.

S. 323

At the request of Mr. TALENT, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 323, a bill to authorize the Secretary of the Interior to study the suitability and feasibility of designating the French Colonial Heritage Area in the State of Missouri as a unit of the National Park System, and for other purposes.

S. 333

At the request of Mr. SANTORUM, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 333, a bill to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran.

S. 338

At the request of Mr. SMITH, the names of the Senator from Louisiana (Ms. LANDRIEU), the Senator from Nebraska (Mr. HAGEL), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Arizona (Mr. MCCAIN) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 338, a bill to provide for the establishment of a Bipartisan Commission on Medicaid.

S. 357

At the request of Mr. BINGAMAN, the names of the Senator from Texas (Mr. CORNYN), the Senator from California (Mrs. BOXER) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of S. 357, a bill to expand and enhance postbaccalaureate opportunities at Hispanic-serving institutions, and for other purposes.

S. 358

At the request of Mr. DURBIN, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 358, a bill to maintain and expand the steel import licensing and monitoring program.

S. 359

At the request of Mr. CRAIG, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 359, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 362

At the request of Mr. INOUYE, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 362, a bill to establish a program within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety, in coordination with non-Federal entities, and for other purposes.

S. 363

At the request of Mr. INOUYE, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 363, a bill to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to establish vessel ballast water management requirements, and for other purposes.

S. 364

At the request of Mr. INOUYE, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 364, a bill to establish a program within the National Oceanic Atmospheric Administration to integrate Federal coastal and ocean mapping activities.

S. 368

At the request of Mr. LAUTENBERG, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 368, a bill to provide assistance to reduce teen pregnancy, HIV/AIDS, and other sexually transmitted diseases and to support healthy adolescent development.

S. 370

At the request of Mr. LOTT, the names of the Senator from South Carolina (Mr. GRAHAM), the Senator from Louisiana (Mr. VITTER) and the Senator from Arizona (Mr. MCCAIN) were added as cosponsors of S. 370, a bill to preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities.

S.J. RES. 4

At the request of Mr. CONRAD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S.J. Res. 4, a joint resolution providing for congressional disapproval of the rule submitted by the Department of Agriculture under chapter 8 of title 5, United States Code, relating to risk zones for introduction of bovine spongiform encephalopathy.

S. CON. RES. 9

At the request of Mr. ENSIGN, the names of the Senator from New Hampshire (Mr. GREGG), the Senator from Virginia (Mr. WARNER) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. Con. Res. 9, a concurrent resolution recognizing the second century of Big Brothers Big Sisters, and supporting the mission and goals of that organization.

S. RES. 44

At the request of Mr. ALEXANDER, the names of the Senator from Nebraska (Mr. HAGEL), the Senator from Illinois (Mr. DURBIN), the Senator from Arkansas (Mrs. LINCOLN), the Senator from California (Mrs. FEINSTEIN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Carolina (Mr. DEMINT), the Senator from Alaska (Mr. STEVENS), the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from North Carolina (Mrs. DOLE) were added as cosponsors of S. Res. 44, a resolution celebrating Black History Month.

S. RES. 54

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. Res. 54, a resolution paying tribute to John Hume.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAYH (for himself, Mr. CRAIG, and Ms. LANDRIEU):

S. 375. A bill to amend the Public Health Service Act to provide for an influenza vaccine awareness campaign, ensure a sufficient influenza vaccine supply, and prepare for an influenza pandemic or epidemic, to amend the Internal Revenue Code of 1986 to encourage vaccine production capacity, and for other purposes; to the Committee on Finance.

Mr. CRAIG. Mr. President, I rise today to encourage increased production of influenza vaccines in the United States. I am happy to honor my commitment to reintroduce the Flu Protection Act of 2005, along with Senator BAYH.

We dodged a bullet this year because we had a relatively mild flu season. Also, because the administration and public health officials did an excellent job of immediately addressing the vaccine shortage when it was announced in October. While this season's vaccine shortage didn't have as strong an impact as it might have, we should not go a day without looking for a path toward solving this problem so that we don't have the same issues in years to come. We may not always be so fortunate. Scientists believe that the return of an especially strong pandemic strain of flu is overdue. This legislation supports the administration's efforts to take steps to prepare for the imminent threat of avian flu.

The Bush administration has made progress on this issue, but Congress needs to address the underlying problems. The United States is disturbingly underprepared to deal with a massive outbreak or a sudden shortage of vaccine. We don't want to get caught short next year. We must aggressively encourage vaccine companies to come into this market and pass building incentives for existing companies.

I am encouraged that some sections of this legislation have been included in the majority's priority legislative package and look forward to working with other Members of Congress to ensure that the most comprehensive piece of legislation possible can be approved. We must move quickly to pass legislation that ensures sufficient flu vaccine supply, encourages an increase in production capacity, supports a flu vaccine awareness campaign, and prepares the United States to combat a pandemic or epidemic.

By Mrs. HUTCHISON:

S. 376. A bill to improve intermodal shipping container transportation security; to the Committee on Commerce, Science, and Transportation.

Mrs. HUTCHISON. Mr. President, I rise to introduce a bill that will make much-needed improvements to our container security system. The Federal Government currently has no coordinated strategy which integrates the many aspects of inter-modal container shipping.

We may not be able to physically screen every container on the move in our Nation's vast economy, but we should not leave vast shipments of cargo completely unchecked. My bill lays out a systematic plan to coordinate and expand existing methods of screening and securing materials using available technology.

The cost to the U.S. economy of port closures on the West Coast due to a labor dispute last year was approximately $1 billion per day for the first five days, and rose sharply thereafter. These disruptions have become so costly because the container shipping system is designed for speed and efficiency; as a result, the U.S. and its global trading partners have in effect become hostages to a ''just-in-time'' distribution model where any disruption of the system has far reaching and immediate global impact.

I am eager to prevent a similar situation from occurring, since in my home State the Port of Houston, a $15 billion petrochemical complex, is the second-largest port in the U.S. and first in international tonnage. Texas has 13 deepwater ports, many of which subsequently move freight by rail, a model typical nationwide.

My bill will require the Department of Homeland Security to incorporate aviation, maritime, rail and highway security in a single plan. We need a coordinated strategy to make the most of federal, state, and local capabilities.

The bill requires a ''smart box'' standard to reduce the cost of inspecting shipping containers and calls for all containers to meet this standard by 2009. It establishes penalties for commercial shippers, to hold them, and by extension their clients, responsible for properly documenting the contents of their shipments. Finally, it significantly increases U.S. Customs' presence overseas, because identifying a dirty bomb after it is unloaded onto U.S. soil may be too late.

I urge my colleagues to support this legislation and 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. 376

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 ''Intermodal Shipping Container Security Act''.

SEC. 2. NATIONAL TRANSPORTATION SECURITY STRATEGY.

In carrying out section 114(f) of title 49, United States Code, the Under Secretary of Homeland Security for Border and Transportation Security shall take into account the National Maritime Transportation Security Plan prepared under section 70103 of title 46, United States Code, by the Secretary of the department in which the Coast Guard is operating when the plan is prepared in order to ensure that the strategy for dealing with threats to transportation security developed under section 114(f)(3) of title 49, United States Code, incorporates relevant aspects of the National Maritime Transportation Security Plan and addresses all modes of commercial transportation to, from, and within the United States.

SEC. 3. COMPREHENSIVE STRATEGIC PLAN FOR INTERMODAL SHIPPING CONTAINER SECURITY.

(a) STRATEGIC PLAN.—

(1) IN GENERAL.—Within 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a strategic plan for integrating security for all modes of transportation by which intermodal shipping containers arrive, depart, or move in interstate commerce in the United States that—

(A) takes into account the security-related authorities and missions of all Federal, State, and local law enforcement agencies

that relate to the movement of intermodal shipping containers via air, rail, maritime, or highway transportation in the United States; and

(B) establishes as a goal the creation of a comprehensive, integrated strategy for intermodal shipping container security that encompasses the authorities and missions of all those agencies and sets forth specific objectives, mechanisms, and a schedule for achieving that goal.

(2) UPDATES.—The Secretary shall revise the plan from time to time

(c) IDENTIFICATION OF PROBLEM AREAS.—In developing the strategic plan required by subsection (a), the Secretary shall consult with all Federal, State, and local government agencies responsible for security matters that affect or relate to the movement of intermodal shipping containers via air, rail, maritime, or highway transportation in the United States in order to—

(1) identify changes, including legislative, regulatory, jurisdictional, and organizational changes, necessary to improve coordination among those agencies;

(2) reduce overlapping capabilities and responsibilities; and

(3) streamline efforts to improve the security of such intermodal shipping containers.

(d) ESTABLISHMENT OF STEERING GROUP.—The Secretary shall establish, organize, and provide support for an advisory committee, to be known as the Senior Steering Group, of senior representatives of the agencies described in subsection (c). The Group shall meet from time to time, at the call of the Secretary or upon its own motion, for the purpose of developing solutions to jurisdictional and other conflicts among the represented agencies with respect to the security of intermodal shipping containers, improving coordination and information-sharing among the represented agencies, and addressing such other, related matters, as the Secretary may request.

(e) ANNUAL REPORT.—The Secretary, after consulting the Senior Steering Group, shall submit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the activities of the Senior Steering Group and the Secretary under this section, describing the progress made during the year toward achieving the objectives of the plan, and including any recommendations, including legislative recommendations, if appropriate for further improvements in dealing with security-issues related to intermodal shipping containers and related transportation security issues.

(f) BIENNIAL EXPERT CRITIQUE.—

(1) EXPERT PANEL.—A panel of experts shall be convened once every 2 years by the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure to review plans submitted by the Secretary under subsection (a).

(2) Membership.—The panel shall consist of—

(A) 4 individuals selected by the chairman and ranking member of the Senate Committee on Commerce, Science, and Transportation and by the chairman and ranking member of the House of Representatives Committee on Transportation and Infrastructure, respectively; and

(B) 1 individual selected by the 4 individuals selected under subparagraph (A).

(3) QUALIFICATIONS.—Individuals selected under paragraph (2) shall be chosen from among individuals with professional expertise and experience in security-related issues involving shipping or transportation and without regard to political affiliation.

(4) COMPENSATION AND EXPENSES.—An individual serving as a member of the panel shall not receive any compensation or other benefits from the Federal Government for serving on the panel or be considered a Federal employee as a result of such service. Panel members shall be reimbursed by the Committees for expenses, including travel and lodging, they incur while actively engaged in carrying out the functions of the panel.

(5) FUNCTION.—The panel shall review plans submitted by the Secretary under subsection (a), evaluate the strategy set forth in the plan, and make such recommendations to the Secretary for modifying or otherwise improving the strategy as may be appropriate.

SEC. 4. SHIPPING CONTAINER INTEGRITY INITIATIVE.

(a) IN GENERAL.—Chapter 701 of title 46, United States Code, is amended—

(1) by redesignating section 70117 as section 70118; and

(2) by inserting after section 70116 the following:

"§ 70117. Enhanced container-related security measures.

''(a) TRACKING INTERMODAL CONTAINER SHIPMENTS IN THE UNITED STATES.—The Secretary, in cooperation with the Under Secretary of Border and Transportation Security, shall develop a system to increase the number of intermodal shipping containers physically inspected (including non instrusive inspection by scanning technology), monitored, and tracked within the United States.

''(b) SMART BOX TECHNOLOGY.—Under regulations to be prescribed by the Secretary, beginning with calendar year 2007 no less than 50 percent of all ocean-borne shipping containers entering the United States during any calendar year shall incorporate 'Smart Box' or equivalent technology developed, approved, or certified by the Under Secretary of Homeland Security for Border and Transportation Security.

''(c) DEVELOPMENT OF INTERNATIONAL STANDARD FOR SMART CONTAINERS.—The Secretary shall—

''(1) develop, and seek international acceptance of, a standard for 'smart' maritime shipping containers that incorporate technology for tracking the location and assessing the integrity of those containers as they move through the intermodal transportation system; and

''(2) implement an integrated tracking and technology system for such containers.

''(d) REPORT.—Within 1 year after the date of enactment of the Intermodal Shipping Container Security Act, the Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report that contains—

''(1) a cost analysis for implementing this section; and

''(2) a strategy for implementing the system described in subsection (c)(3).''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 701 of title 46, United States Code, is amended by striking the item relating to section 70117 and inserting the following:

''70117. Enhanced container-related security measures.

''70118. Civil penalties.''.

SEC. 5. ADDITIONAL RECOMMENDATIONS.

Within 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report that contains the following:

(1) Recommendations about what analysis must be performed and the cost to develop and field a cargo container tracking and monitoring system within the United States which tracks all aviation, rail, maritime, and highway cargo containers equipped with smart container technology.

(2) Recommendations on how the Department of Homeland Security could help support the deployment of such a system.

(3) Recommendations as to how current efforts by the Department of Homeland Security and other Federal agencies could be incorporated into the physical screening or inspection of aviation, rail, maritime, and highway cargo containers within the United States.

(4) Recommendations about operating systems and standards for those operating systems, to support the tracking of aviation, rail, maritime, and highway cargo containers within the United States that would include the location of regional, State, and local operations centers.

(5) A description of what contingency actions, measures, and mechanisms should be incorporated in the deployment of a nationwide aviation, rail, maritime, and highway cargo containers tracking and monitoring system which would allow the United States maximum flexibility in responding quickly and appropriately to increased terrorist threat levels at the local, State, or regional level.

(6) A description of what contingency actions, measures, and mechanisms must be incorporated in the deployment of such a system which would allow for the quick reconstitution of the system in the event of a catastrophic terrorist attack which affected part of the system.

(7) Recommendations on how to leverage existing information and operating systems within State or Federal agencies to assist in the fielding of the system.

(8) Recommendations on co-locating local, State, and Federal agency personnel to streamline personnel requirements, minimize costs, and avoid redundancy.

(9) An initial assessment of the availability of private sector resources which could be utilized, and incentive systems developed, to support the fielding of the system, and the maintenance and improvement as technology or terrorist threat dictate.

(10) Recommendations on how this system that is focused on the continental United States would be integrated into any existing or planned system, or process, which is designed to monitor the movement of cargo containers outside the continental United States.

SEC. 6. IMPROVEMENTS TO CONTAINER TARGETING SYSTEMS.

(a) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that provides a preliminary plan for strengthening the Bureau of Customs and Border Protection's container targeting system. The plan shall identify the cost and feasibility of requiring additional non-manifest documentation for each container, including purchase orders, shipper's letters of instruction, commercial invoices, letters of credit, or certificates of origin.

(b) REDUCTION OF MANIFEST REVISION WINDOW.—Within 60 days after the date of enactment of this Act, the Secretary of Homeland Security shall issue regulations under which the time period for revisions to a container cargo manifest submitted to the Bureau of Customs and Border Protection shall be reduced from 60 days to 45 days after arrival at a United States port.

(c) SUPPLY CHAIN INFORMATION.—Within 180 days after the date of enactment of this Act,

the Secretary of Homeland Security shall develop a system to share threat and vulnerability information with all of the industries in the supply chain that will allow ports, carriers, and shippers to report on security lapses in the supply chain and have access to unclassified maritime threat and security information such as piracy incidents.

SEC. 7. INCREASE IN NUMBER OF CUSTOMS INSPECTORS ASSIGNED OVERSEAS.

(a) IN GENERAL.—The Secretary of Homeland Security shall substantially increase the number of United States Customs Service inspectors assigned to duty outside the United States under the Container Security Initiative of the United States Customs Service with responsibility for inspecting intermodal shipping containers being shipped to the United States.

(b) STAFFING CRITERIA.—In carrying out subsection (a) the Secretary of Homeland Security shall determine the appropriate level for assignment and density of customs inspectors at selected international port facilities by a threat, vulnerability, and risk analysis which, at a minimum, considers—

(1) the volume of containers shipped;

(2) the ability of the host government to assist in both manning and providing equipment and resources;

(3) terrorist intelligence known of importer vendors, suppliers or manufacturers; and

(4) other criteria as determined in consult with experts in the shipping industry, terrorism, and shipping container security.

(c) MINIMUM NUMBER.—The total number of customs inspectors assigned to international port facilities shall not be less than the number determined as a result of the threat, vulnerability, and risk assessment analysis which is validated by the Administrator of the Transportation Security Administration within 180 days after the date of enactment of this Act.

(d) PLAN.—The Secretary shall submit a plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, with timelines, for phasing inspectors into selected port facilities within 180 days after the enactment of this Act.

SEC. 8. RANDOM INSPECTION OF CONTAINERS.

(a) IN GENERAL.—The Under Secretary of Homeland Security for Border and Transportation Security shall develop and implement a plan for random inspection of shipping containers in addition to any targeted or preshipment inspection of such containers required by law or regulation or conducted under any other program conducted by the Under Secretary.

(b) CIVIL PENALTY FOR ERRONEOUS MANIFEST.—

(1) IN GENERAL.—Except as provided in paragraph (2), if the Under Secretary determines on the basis of an inspection conducted under subsection (a) that there is a discrepancy between the contents of a shipping container and the manifest for that container, the Under Secretary may impose a civil penalty of not more than $1,000 for the discrepancy.

(2) MANIFEST DISCREPANCY REPORTING.—The Under Secretary may not impose a civil penalty under paragraph (1) if a manifest discrepancy report is filed with respect to the discrepancy within the time limits established by Customs Directive No. 3240–067A (or any subsequently issued directive governing the matters therein) for filing a manifest discrepancy report.

By Mr. LIEBERMAN:

S. 377. A bill to require negotiation and appropriate action with respect to certain countries that engage in currency manipulation; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, today, February 15, 2005, I rise to introduce a bill, proposing we enact the Fair Currency Enforcement Act of 2005. The present legislation addresses the practice of some governments to intervene aggressively in currency markets, or to peg their currencies at a fixed—artificially low—exchange rate, thus subsidizing their export sales and raising price barriers to imports from the United States. I introduced similar legislation last Congress, yet the problem remains unsolved.

In recent years, particularly China has been pressed to float their currency upward. Specifically, the Europeans, the International Monetary Fund and the Bank for International Settlements have put pressure on the Chinese to at a minimum repeg their currency to a higher dollar value. The Administration has talked about this idea, but has been ineffective. As a consequence there has been no movement on the part of the Chinese.

As a result of the heavy dollar buying, the Asian Central banks have allowed their foreign-exchange reserves to swell from less than $800 billion at the start of 1999 to over $1.5 trillion in 2003. This is almost two-thirds of the global total.

The world's seven biggest holders of foreign-exchange reserves are all in Asia.

This legislation proposes that our Administration promptly open negotiations with the four Asian countries that exemplify this practice, with the intent to put a stop to it. These countries are: China, Japan, South Korea, and Taiwan. This practice hurts American manufacturers: it impedes their ability to introduce new products and technologies and provide Americans with quality jobs. It has caused and continues to cause the current economic recovery to be a jobless one, particularly in the manufacturing sector.

Experts indicate that the United States has the right and the power to address unfair competitive practices under the following laws, rules and agreements: 1. Section 3004 of the Omnibus Trade and Competitiveness Act of 1988 2. Article IV of the Articles of Agreement of the International Monetary Fund Article 3. XV of the Exchange Agreements of the General Agreement on Tariffs and Trade 4. The Agreement on Subsidies and Countervailing Measures of the World Trade Organization (as described in section 101(d)(12)) of the Uruguay Round Agreements Act. 5. Article XXIII of the General Agreement on Tariffs and Trade. 6. Sections 301 and 406 of the Trade Act of 1974. 7. The provisions of the United States-China Bilateral Agreement on World Trade Organization Accession.

These laws, rules and agreements provide us with ample process to do this right and it is important we act now. Therefore, beginning on the date of enactment of this Act, the President will be required to start a 90 day period of negations. If these negotiations fail to bear fruit, he is required to seek redress through the various international trade laws by instituting appropriate proceedings, or report to congress in detail why this is not a proper course of action.

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. 377

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 ''Fair Currency Enforcement Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The manufacturing sector is an important driver of the United States economy, contributing almost 30 percent of our economic growth during the 1990's, and twice the productivity growth of the service sector during that period.

(2) The manufacturing sector contributes significantly to our Nation's development of new products and technologies for world markets, performing almost 60 percent of all research and development in the United States over the past two decades.

(3) The manufacturing sector provides high quality jobs, with average weekly wages between 20 and 30 percent higher than jobs in the service sector.

(4) The manufacturing growth creates a significant number of jobs and investments in other sectors of the economy, and this ''multiplier effect'' is reckoned by economists to be larger (2.43 to 1) than for any other significant sector of the economy.

(5) The ''jobless recovery'' from the recent recession has witnessed the worst job slump since the Great Depression and the weakest employment recovery on record.

(6) The manufacturing sector has been hit the hardest by the jobless recovery.

(7) A significant factor in the loss of valuable United States manufacturing jobs is the difficulty faced by United States manufacturers in competing effectively against lower priced foreign products.

(8) A significant obstacle to United States manufacturers in competing against foreign manufacturers is the practice of some governments of intervening aggressively in currency markets, or pegging their currencies at fixed rates, to maintain their own currencies at artificially low valuations, thus subsidizing their export sales and raising price barriers to imports from the United States.

(9) Certain Asian countries exemplify this practice. China, Japan, South Korea, and Taiwan together have accumulated approximately ½ of the world's total currency reserves. The vast majority of these reserves, perhaps as high as 90 percent, are in dollars. These same 4 countries account for 60 percent of the United States world trade deficit in manufactured goods. These reserves are symptomatic of a strategy of intervention to manipulate currency values.

(10) The People's Republic of China is particularly aggressive in intervening to maintain the value of its currency, the renminbi, at an artificially low rate. China maintains this rate by mandating foreign exchange sales at its central bank at a fixed exchange rate against the dollar, in effect, pegging the

renminbi at this rate. This low rate represents a significant reason why China has contributed the most to our trade deficit in manufactured goods.

(11) Economists estimate that as a result of this manipulation of the Chinese currency, the renminbi is undervalued by between 15 and 40 percent, effectively creating a 15- to 40-percent subsidy for Chinese exports and giving Chinese manufacturers a significant price advantage over United States and other competitors.

(12) The national currency of Japan is the yen. Experts estimate that the yen is undervalued by approximately 20 percent or more, giving Japanese manufacturers a significant price advantage over United States competitors.

(13) In addition to being placed at a competitive disadvantage by foreign competitors' exports that are unfairly subsidized by strategically undervalued currencies, United States manufacturers also may face significant nontariff barriers to their own exports to these same countries. For example, in the past in China, until remediated, a complex system involving that nation's value added tax and special tax rebates ensured that semiconductor devices imported into China were taxed at 17 percent while domestic devices are effectively taxed at 6 percent.

(14) The United States has the right and power to redress unfair competitive practices in international trade involving currency manipulation.

(15) Under section 3004 of the Omnibus Trade and Competitiveness Act of 1988, the Secretary of the Treasury is required to determine whether any country is manipulating the rate of exchange between its currency and the dollar for the purpose of preventing effective balance of payments adjustments or gaining unfair advantage in international trade. If such violations are found, the Secretary of the Treasury is required to undertake negotiations with any country that has a significant trade surplus.

(16) Article IV of the Articles of Agreement of the International Monetary Fund prohibits currency manipulation by a member for the purposes of gaining an unfair competitive advantage over other members, and the related surveillance provision defines ''manipulation'' to include ''protracted large-scale intervention in one direction in the exchange market''.

(17) Under Article XV of the Exchange Agreements of the General Agreement on Tariffs and Trade, all contracting parties ''shall not, by exchange action, frustrate the intent of the provisions of this Agreement, nor by trade action, the intent of the Articles of Agreement of the International Monetary Fund''. Such actions are actionable violations. The intent of the General Agreement on Tariffs and Trade Exchange Agreement, as stated in the preamble of that Agreement, includes the objective of ''entering into reciprocal and mutually advantageous arrangements directed to substantial reduction of tariffs and other barriers to trade,'' and currency manipulation may constitute a trade barrier disruptive to reciprocal and mutually advantageous trade arrangements.

(18) Deliberate currency manipulation by nations to significantly undervalue their currencies also may be interpreted as a violation of the Agreement on Subsidies and Countervailing Measures of the World Trade Organization (as described in section 101(d)(12)) of the Uruguay Round Agreements Act, which could lead to action and remedy under the World Trade Organization dispute settlement procedures.

(19) Deliberate, large-scale intervention by governments in currency markets to significantly undervalue their currencies may be a nullification and impairment of trade benefits precluded under Article XXIII of the General Agreement on Tariffs and Trade, and subject to remedy.

(20) The United States Trade Representative also has authority to pursue remedial actions under section 301 of the Trade Act of 1974.

(21) The United States has special rights to take action to redress market disruption under section 406 of the Trade Act of 1974 adopted pursuant to the provisions of the United States-China Bilateral Agreement on World Trade Organization Accession.

(22) While large-scale manipulation of currencies by certain major trading partners to achieve an unfair competitive advantage is one of the most pervasive barriers faces by the manufacturing sector in the United States, other factors are contributing to the decline of manufacturing and small and mid-sized manufacturing firms in the United States, including but not limited to non-tariff trade barriers, lax enforcement of existing trade agreements, and weak or under utilized government support for trade promotion.

SEC. 3. NEGOTIATION PERIOD REGARDING CURRENCY NEGOTIATIONS.

Beginning on the date of enactment of this Act, the President shall begin bilateral and multilateral negotiations for a 90-day period with those governments of nations determined to be engaged most egregiously in currency manipulation, as defined in section 7, to seek a prompt and orderly end to such currency manipulation and to ensure that the currencies of these countries are freely traded on international currency markets, or are established at a level that reflects a more appropriate and accurate market value. The President shall seek support in this process from international agencies and other nations and regions adversely affected by these currency practices.

SEC. 4. FINDINGS OF FACT AND REPORT REGARDING CURRENCY MANIPULATION.

(a) IN GENERAL.—During the 90-day negotiation period described in section 3, the International Trade Commission shall—

(1) ascertain and develop the full facts and details concerning how countries have acted to manipulate their currencies to increase their exports to the United States and limit their imports of United States products;

(2) quantify the extent of this currency manipulation;

(3) examine in detail how these currency practices have affected and will continue to affect United States manufacturers and United States trade levels, both for imports and exports;

(4) review whether and to what extent reduction of currency manipulation and the accumulation of dollar-denominated currency reserves and public debt instruments might adversely affect United States interest rates and public debt financing;

(5) make a determination of any and all available mechanisms for redress under applicable international trade treaties and agreements, including the Articles of Agreement of the International Monetary Fund, the General Agreement on Tariffs and Trade, the World Trade Organization Agreements, and United States trade laws; and

(6) undertake other appropriate evaluations of the issues described in paragraphs (1) through (5).

(b) REPORT.—Not later than 90 days after the date of enactment of this Act, the International Trade Commission shall provide a detailed report to the President, the United States Trade Representative, the Secretary of the Treasury, and the appropriate congressional committees on the findings made as a result of the reviews undertaken under paragraphs (1) through (6) of subsection (a).

SEC. 5. INSTITUTE PROCEEDINGS REGARDING CURRENCY MANIPULATION.

At the end of the 90-day negotiation period provided for in section 3, if agreements are not reached by the President to promptly end currency manipulation, the President shall institute proceedings under the relevant provisions of international law and United States trade laws including sections 301 and 406 of the Trade Act of 1974 with respect to those countries that, based on the findings of the International Trade Commission under section 4, continue to engage in the most egregious currency manipulation. In addition to seeking a prompt end to currency manipulation, the President shall seek appropriate damages and remedies for the Nation's manufacturers and other affected parties. If the President does not institute action, the President shall, not later than 120 days after the date of enactment of this Act, provide to the appropriate congressional committees a detailed explanation and accounting of precisely why the President has determined not to institute action.

SEC. 6. ADDITIONAL REPORTS AND RECOMMENDATIONS.

(a) NATIONAL SECURITY.—Within 90 days of the date of enactment of this Act, the Secretary of Defense shall provide a detailed report to the appropriate congressional committees evaluating the effects on our national security of countries engaging in significant currency manipulations, and the effect of such manipulation on critical manufacturing sectors.

(b) OTHER UNFAIR TRADE PRACTICES.—Within 90 days of the date of enactment of this Act, the United States Trade Representative and the International Trade Commission shall evaluate and report in detail to the appropriate congressional committees on other trade practices and trade barriers by major East Asian trading nations potentially in violation of international trade agreements, including the practice of maintaining a value-added or other tax regime that effectively discriminates against imports by underpricing domestically produced goods, or setting technology standards that effectively limit imports.

(c) TRADE ENFORCEMENT.—Within 90 days of the date of enactment of this Act, the United States Trade Representative and the International Trade Commission shall report in detail to the appropriate congressional committees on steps that could be taken to significantly improve trade enforcement efforts against unfair trade practices by competitor trading nations, including making recommendations for additional support for trade enforcement efforts.

(d) TRADE PROMOTION.—Within 90 days of the date of enactment of this Act, the Secretaries of State and Commerce, and the United States Trade Representative, shall prepare a detailed report with recommendations on steps that could be undertaken to significantly improve trade promotion for United States goods and services, including recommendations on additional support to improve trade promotion.

SEC. 7. CURRENCY MANIPULATION DEFINED.

In this Act, the term ''currency manipulation'' means—

(1) large-scale manipulation of exchange rates by a nation in order to gain an unfair competitive advantage as stated in Article IV of the Articles of Agreement of the International Monetary Fund and related surveillance provisions;

(2) sustained, large-scale currency intervention in one direction, through mandatory foreign exchange sales at a nation's central bank at a fixed exchange rate; or

(3) other mechanisms, used to maintain a currency at a fixed exchange rate relative to another currency.

By Mr. BIDEN (for himself, Mr. SPECTER, Mrs. FEINSTEIN, Mr. KYL, and Mr. ALLEN):

S. 378. A bill to make it a criminal act to willfully use a weapon with the intent to cause death or serious bodily injury to any person while on board a passenger vessel, and for other purposes; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, I rise today to introduce the Reducing Crime and Terrorism at America's Seaports Act, along with the Chairman of the Judiciary Committee Senator SPECTER, and the Chairman and Ranking Member of the Terrorism Subcommittee, Senators KYL and FEINSTEIN. My colleagues and I have worked on this legislation for the past four years and I am hopeful this package of commonsense criminal law improvements will be approved by the Senate early this Session.

The bipartisan legislation we introduce today should be familiar to my colleagues. It was introduced as S. 2653 in the 108th Congress, where I worked closely with the then-Chairman of the Committee Senator HATCH and Senator LEAHY to ensure they were comfortable with the bill's provisions. The language has been reviewed by the United States Coast Guard, the American Association of Port Authorities, the American Institute of Marine Underwriters, the Inland Marine Underwriters Association, the Maritime Exchange for the Delaware River and Bay, the Transportation Security Administration, and the AFL–CIO. Senator KYL included this language in his Tools to Fight Terrorism Act of 2004 and it was the subject of a hearing in the Judiciary Subcommittee on Terrorism on September 13, 2004. This Congress, identical language was introduced by Senator GREGG at Title IV of S. 3, the majority's Protecting America in the War on Terror Act of 2005.

Our bill will double the maximum term of imprisonment for anyone who fraudulently gains access to a seaport or waterfront. The Interagency Commission on Crime and Security at U.S. Seaports concluded that ''control of access to the seaport or sensitive areas within the seaports'' poses one of the greatest potential threats to port security. Such unauthorized access continues and exposes the nation's seaports, and the communities that surround them, to acts of terrorism, sabotage or theft. Our bill will help deter those who seek unauthorized access to our ports by imposing stiffer penalties.

Our bill would also increase penalties for noncompliance with certain manifest reporting and record-keeping requirements, including information regarding the content of cargo containers and the country from which the shipments originated. An estimated 95 percent of the cargo shipped to the U.S. from foreign countries, other than Canada and Mexico, arrives through our seaports. Accordingly, the Interagency Commission found that this enormous flow of goods through U.S. ports provides a tempting target for terrorists and others to smuggle illicit cargo into the country, while also making ''our ports potential targets for terrorist attacks.'' In addition, the smuggling of non-dangerous, but illicit, cargo may be used to finance terrorism. Despite the gravity of the threat, we continue to operate in an environment in which terrorists and criminals can evade detection by underreporting and misreporting the content of cargo. Increased penalties can help here.

The legislation we introduce today would also make it a crime for a vessel operator to fail to slow or stop a ship once ordered to do so by a Federal law enforcement officer, for any person on board a vessel to impede boarding or other law enforcement action authorized by Federal law, or for any person on board a vessel to provide false information to a Federal law enforcement officer. The Coast Guard is the main Federal agency responsible for law enforcement at sea. Yet, its ability to force a vessel to stop or be boarded is limited. While the Coast Guard has the authority to use whatever force is reasonably necessary, a vessel operator's refusal to stop is not currently a crime. This bill would create that offense.

In addition, the Coast Guard maintains over 50,000 navigational aids on more than 25,000 miles of waterways. These aids, which are relied upon by all commercial, military and recreational mariners, are critical for safe navigation by commercial and military vessels. They could be inviting targets for terrorists. Our legislation would make it a crime to endanger the safe navigation of a ship by damaging any maritime navigational aid maintained by the Coast Guard, place in the waters anything which is likely to damage a vessel or its cargo, interfere with a vessel's safe navigation, or interfere with maritime commerce, or dump a hazardous substance into U.S. waters with the intent to endanger human life or welfare.

Each year, thousands of ships enter and leave the U.S. through seaports, smugglers and terrorists exploit this massive flow of maritime traffic to transport dangerous materials and dangerous people into this country. This legislation would make it a crime to use a vessel to smuggle into the United States either a terrorist or any explosive or other dangerous material for use in committing a terrorist act. The bill would also make it a crime to damage or destroy any part of a ship, a maritime facility, or anything used to load or unload cargo and passengers, commit a violent assault on anyone at a maritime facility, or knowingly communicate a hoax in a way which endangers the safety of a vessel. In addition, the Interagency Commission concluded that existing laws are not stiff enough to stop certain crimes, including cargo theft, at seaports. Our legislation would increase the maximum term of imprisonment for low-level thefts of interstate or foreign shipments from 1 year to 3 years and expand the statute to outlaw theft of goods from trailers, cargo containers, warehouses, and similar venues.

These are improvements we should make to our criminal code. I am under no illusion, however, that enactment of our bill will guarantee the security of our seaports. We need to dramatically increase the financial assistance we are giving our ports so that they can harden their own facilities against potential attackers. I was disappointed to read in the Administration's budget that the President wants to eliminate the Department of Homeland Security's dedicated port security grant program. His budget instead will force our ports to compete against all other transit systems for scarce federal funds. We've spent only about $750 million to secure seaports since September 11th—the Coast Guard reports that is not nearly enough to meet the requirements of the Maritime Transportation Security Act. We also need to increase the number of inspections of ships and shipping containers that are coming into our ports. But the amendments to Federal criminal law that we propose here will provide an important deterrent effect and they will give Federal prosecutors new tools to go after terrorists who would target our seaports. I urge my colleagues to support our bill, and I look forward to its prompt consideration.

By Ms. MIKULSKI (for herself, Mr. SARBANES, Mr. DURBIN, and Mr. OBAMA).

S. 379. A bill to build capacity at community colleges in order to meet increased demand for community college education while maintaining the affordable tuition rates and the open-door policy that are the hallmarks on the community college system; to the Committee on Health, Education, Labor, and Pensions.

Ms. MIKULSKI. Mr. President, I rise to introduce the ''Community College Opportunity Act.'' Community colleges are the gateway to the future—for first time students looking for an affordable college education, and for mid-career students looking to get ahead in the workplace. As college tuition at four-year colleges continues to rise, more and more students are turning to community colleges for the education they need to prepare for 21st century jobs.

Yet soon we may not be able to count on our community colleges being available to everyone. The combination of budget cuts and increased enrollments is forcing community colleges to make tough choices—between raising tuition and turning students away. This important legislation will help keep the doors of our community colleges open to increasing numbers of students without sending tuition through the roof. My bill authorizes $500 million for a competitive grant program to help community colleges serve more students. Community colleges could apply

for a grant to help with the cost of constructing or renovating facilities, hiring faculty, purchasing new computers and scientific equipment, and investing in creative ways of addressing overcrowding—like distance learning.

Why is this important? Community colleges are one of the great American social inventions. I used to teach night school at Baltimore City Community College. I know firsthand the vital role they play in our communities. Their low cost, convenient location, and open door admissions policy have made them the key to the American dream for so many. Many generations of immigrants pursued the American dream by working all day and going to night school at night. After World War II, the GI bill gave returning veterans a chance to get ahead by going to local junior colleges.

Now, more than ever, it's important to invest in community colleges. In the next ten years, 40 percent of new jobs will require college education. At the same time, college tuition is on the rise. Tuition at the University of Maryland is up by as much as 32 percent. That's causing many students to take a second look at community colleges because they're more affordable. They're also leaders in training workers for 21st century jobs—from nurses to computer techies, and even lab techs for new industries, like biotechnology. They're playing a key role in addressing shortages in nursing and teaching. In Maryland, community colleges train 55 percent of new nurses.

Yet our community colleges are bursting at the seams. They're growing faster than 4-year colleges. Enrollment at Maryland's community colleges is expected to grow 30 percent in the next 10 years, while 4-year colleges will grow by 15 percent. Community colleges are holding classes from 7 in the morning to 10 at night, on weekends, and over the internet. In my own State of Maryland, they are starting to turn students away because there isn't enough room. Almost 1,000 students were shut out of Montgomery College last spring because they couldn't get into the classes they needed or they couldn't afford the cost. Prince George's Community College had to turn away 630 prospective nursing students and 1,000 prospective education students.

It's great that so many Americans are going to community colleges. For so many Americans, community colleges are the only way to get the education they need to be competitive for 21st century jobs. Yet the rapid increase of students is threatening the very mission of community colleges. If we want a world-class workforce, we need to invest in higher education. We need to make sure we always have institutions available to everyone who wants a college degree—or just a couple of courses. That means investing in our community colleges, so they can continue to be affordable, accessible, and successful at training the next generation of nurses, teachers, and techies.

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. 379

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COMMUNITY COLLEGE CAPACITY-BUILDING GRANT PROGRAM.

Title III of the Higher Education Act of 1965 (20 U.S.C. 1051 et seq.) is amended—

(1) by redesignating part F as part G; and

(2) by inserting after part E the following:

"PART F—COMMUNITY COLLEGES

"SEC. 371. COMMUNITY COLLEGE CAPACITY-BUILDING GRANT PROGRAM.

''(a) PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—From amounts appropriated under section 399(a)(6) for a fiscal year, the Secretary shall award grants to eligible entities, on a competitive basis, for the purpose of building capacity at community colleges to meet the increased demand for community colleges while maintaining the affordable tuition rates and the open-door policy that are the hallmarks of the community college system.

''(2) DURATION.—Grants awarded under this section shall be for a period not to exceed 3 years.

''(b) DEFINITIONS.—In this section:

''(1) COMMUNITY COLLEGE.—The term 'community college' means a public institution of higher education (as defined in section 101(a)) whose highest degree awarded is predominantly the associate degree.

''(2) ELIGIBLE ENTITY.—The term 'eligible entity' means a community college, or a consortium of 2 or more community colleges, that demonstrates capacity challenges at not less than 1 of the community colleges in the eligible entity, such as—

''(A) an identified workforce shortage in the community served by the community college that will be addressed by increased enrollment at the community college;

''(B) a wait list for a class or for a degree or a certificate program;

''(C) a faculty shortage;

''(D) a significant enrollment growth;

''(E) a significant projected enrollment growth;

''(F) an increase in the student-faculty ratio;

''(G) a shortage of laboratory space or equipment;

''(H) a shortage of computer equipment and technology;

''(I) out-of-date computer equipment and technology;

''(J) a decrease in State or county funding or a related budget shortfall; or

''(K) another demonstrated capacity shortfall.

''(c) APPLICATION.—Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require by regulation.

''(d) AWARD BASIS.—In awarding grants under subsection (a), the Secretary shall take into consideration—

''(1) the relative need for assistance under this section of the community colleges;

''(2) the probable impact and overall quality of the proposed activities on the capacity problem of the community college;

''(3) providing an equitable geographic distribution of grant funds under this section throughout the United States and among urban, suburban, and rural areas of the United States; and

''(4) providing an equitable distribution among small, medium, and large community colleges.

''(e) USE OF FUNDS.—Grant funds provided under subsection (a) may be used for activities that expand community college capacity, including—

''(1) the construction, maintenance, renovation, and improvement of classroom, library, laboratory, and other instructional facilities;

''(2) the purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional research purposes;

''(3) the development, improvement, or expansion of technology;

''(4) preparation and professional development of faculty;

''(5) recruitment, hiring, and retention of faculty;

''(6) curriculum development and academic instruction;

''(7) the purchase of library books, periodicals, and other educational materials, including telecommunications program material;

''(8) the joint use of facilities, such as laboratories and libraries; or

''(9) the development of partnerships with local businesses to increase community college capacity.

"SEC. 372. APPLICABILITY.

''The provisions of part G (other than section 399) shall not apply to this part.''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 399(a) of the Higher Education Act of 1965 (20 U.S.C. 1068h(a)) is amended by adding at the end the following:

''(6) PART F.—There are authorized to be appropriated to carry out part F, $500,000,000 for fiscal year 2006, and such sums as may be necessary for each of the 4 succeeding fiscal years.''.

By Ms. COLLINS (for herself, Mr. PRYOR, Mr. DEWINE, Mr. BINGAMAN, Mr. SMITH, Mr. LIEBERMAN, and Mr. COLEMAN):

S. 380. A bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children; to the Committee on Health, Education, Labor, and Pensions.

Ms. COLLINS. Mr. President, I am very pleased today to join several of my colleagues—Senator PRYOR, Senator DEWINE, Senator BINGAMAN, Senator SMITH, Senator LIEBERMAN, and the Presiding Officer, Senator COLEMAN—in introducing the Keeping Families Together Act. This legislation is intended to reduce the barriers to care for children who are struggling with serious mental illness. It is intended to ensure their parents are no longer forced to give up custody of their children solely for the purpose of securing mental health treatment.

As the Presiding Officer is well aware, because he was an active participant in them, the Governmental Affairs Committee in the last Congress held extensive hearings on this issue.

What we heard was a tragedy. We heard case after case where families

made the wrenching choice to give up custody of their children in order to secure the mental health treatment that they needed. No family should ever be forced to make that decision.

Imagine what it feels like for a child who is suffering from mental illness to be wrenched from his family, put into either the juvenile justice system or the foster care system simply because that is the only way to get that child the care that he so desperately needs.

Serious mental illness afflicts millions of our Nation's children and adolescents. It is estimated that as many as 20 percent of American children under the age of 17 suffer from a mental, emotional or behavioral illness. What I find most disturbing, however, is the fact that two-thirds of all young people who need mental health treatment are not getting it.

Behind each of these statistics is a family that is struggling to do the best it can to help a son or a daughter with serious mental health needs to be just like every other kid—to develop friendships, to do well in school, and to get along with their siblings and other family members. These children are almost always involved with more than one social service agency, including the mental health, special education, child welfare, or the juvenile justice systems. Yet no one agency, at either the State or the Federal level, is clearly responsible or accountable for helping these children and their families.

My interest in this issue was triggered by a compelling series of stories by Barbara Walsh in the Portland Press Herald which detailed the obstacles that many Maine families have faced in getting desperately needed mental health services for their children. Too many families in Maine and elsewhere have been forced to make wrenching decisions when they have been advised that the only way to get the care that their children so desperately need is to relinquish custody and place them in either the child welfare or juvenile justice system.

When a child has a serious physical health problem like diabetes or a heart condition, the family turns to their doctor. When the family includes a child with a serious mental illness, it is often forced to go to the child welfare or juvenile justice system to secure treatment.

Yet neither system is intended to serve children with serious mental illness. Child welfare systems are designed to protect children who have been abused or neglected. Juvenile justice systems are designed to rehabilitate children who have committed criminal or delinquent acts. While neither of these systems is equipped to care for a child with a serious mental illness, in far too many cases, there is nowhere else for the family to turn.

In some extreme cases, families feel forced to file charges against their child or to declare that they have abused or neglected them in order to get the care that they need. As one family advocate observed, ''Beat 'em up, lock 'em up, or give 'em up,'' characterizes the choices that some families face in their efforts to get help for their children's mental illness.

In 2003, the Government Accountability Office, GAO, issued a report that I requested with Representatives PETE STARK and PATRICK KENNEDY that found that, in 2001, parents placed more than 12,700 children into the child welfare or juvenile justice systems so that these children could receive mental health services. I believe that this is just the tip of the iceberg, since 32 States—including five States with the largest populations of children—did not provide the GAO with any data.

Other studies indicate that the problem is even more pervasive. A 1999 survey by the National Alliance for the Mentally Ill found that 23 percent—or one in four of the parents surveyed—had been told by public officials that they needed to relinquish custody of their children to get care, and that one in five of these families had done so.

Some States have passed laws to limit custody or prohibit custody relinquishment. Simply banning the practice is not a solution, however, since it can leave children with mental illness and their families without services and care. Custody relinquishment is merely a symptom of the much larger problem, which is the lack of available, affordable and appropriate mental health services and support systems for these children and their families.

Last Congress, I chaired a series of hearings in the Governmental Affairs Committee to examine this issue further. We heard compelling testimony from mothers who told us that they were advised that the only way to get the intensive care and services that their children needed was to relinquish custody and place them in the child welfare or juvenile justice system. This is a wrenching decision that no family should be forced to make. No parent should have to give up custody of his or her child just to get the services that the child needs.

The mothers also described the barriers they faced in getting care for their children. They told us about the limitations in both public and private insurance coverage. They also talked about the lack of coordination and communication among the various agencies and programs that service children with mental health needs. One parent, desperate for help for her twin boys, searched for 2 years until she finally located a program—which she characterized as ''the best kept secret in Illinois''—that was able to help.

Parents should not be bounced from agency to agency, knocking on every door they come to, in the hope that they will happen upon someone who has an answer. It simply should not be such a struggle for parents to get services and treatment for their children.

We also need to question what happens to these children when they are turned over to the child welfare or juvenile justice authorities. I released a report last year with Congressman HENRY WAXMAN that found that all too often they are simply left to languish in juvenile detention centers, which are ill-equipped to meet their needs, while they wait for scarce mental health services.

Our report, which was based on a national survey of juvenile detention centers, found that the use of juvenile detention facilities to ''warehouse'' children with mental disorders is a serious national problem. It found that, over a six month period, nearly 15,000 young people—roughly 7 percent of all of the children in the centers surveyed—were detained solely because they were waiting for mental health services outside the juvenile justice system. Many were held without any charges pending against them, and the young people incarcerated unnecessarily while waiting for treatment were as young as seven years old. Finally, the report estimated that juvenile detention facilities are spending an estimated $100 million of the taxpayers' money each year simply to warehouse children and teenagers while they are waiting for mental health services.

The Keeping Families Together Act, which we are introducing today, will help to improve access to mental health services and assist states in eliminating the practice of parents relinquishing custody of their children solely for the purpose of securing treatment.

The legislation authorizes $55 million over 6 years for competitive grants to states to create an infrastructure to support and sustain statewide systems of care to serve children who are in custody or at risk of entering custody of the State for the purpose of receiving mental health services. States already dedicate significant dollars to serve children in state custody. These Family Support Grants would help States to serve children more effectively and efficiently, while keeping them at home with their families.

The legislation would also remove a current statutory barrier that prevents more States from using the Medicaid home and community-based services waiver to serve children with serious mental health needs. This waiver provides a promising way for States to address the underlying lack of mental health services for children that often leads to custody relinquishment. While a number of States have requested these waivers to serve children with developmental disabilities, very few have done so for children with serious mental health conditions. Our legislation would provide parity to children with mental illness by making it easier for States to offer them home- and community-based services under this waiver as an alternative to institutional care.

And finally, the legislation calls for the creation of a federal interagency task force to examine mental health issues in the child welfare and juvenile

justice systems and the role of those agencies in promoting access by children and youth to needed mental health services. The task force would also be charged with monitoring the Family Support grants, making recommendations to Congress on how to improve mental health services, and fostering interagency cooperation and removing interagency barriers that contribute to the problem of custody relinquishment.

The Keeping Families Together Act takes a critical step forward to meeting the needs of children with serious mental or emotional disorders. Our legislation has been endorsed by a broad coalition of mental health and children's groups, including the National Alliance for the Mentally Ill, the Federation of Families for Children's Mental Health, the Bazelon Center for Mental Health Law, the National Child Welfare League, the National Mental Health Association, the American Correctional Association, the American Psychological Association, the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry, and Fight Crime, Invest in Kids.

Mr. President, I ask unanimous consent that their letters of endorsement for the bill be printed in the CONGRESSIONAL RECORD, and I urge all of our colleagues to join us as cosponsors.

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

FEBRUARY 14, 2005.

Hon. SUSAN COLLINS,
Hon. MARK PRYOR,
U.S. Senate,
Washington, DC.
Hon. JIM RAMSTAD,
Hon. NANCY JOHNSON,
Hon. PETE STARK,
Hon. PATRICK KENNEDY,
U.S. House of Representatives,
Washington, DC.

DEAR SENATORS COLLINS AND PRYOR AND REPRESENTATIVES RAMSTAD, JOHNSON, STARK, AND KENNEDY: As national organizations representing mental health consumers, families, advocates, professionals and providers dedicated to improving the lives of children and adolescents living with mental disorders and their families, we applaud your leadership in reintroducing the Keeping Families Together Act in the 109th Congress.

This legislation promises to help end a scandal that has lingered too long in states throughout our nation. As you know, thousands of families every year are forced to give up custody of their children to the state in order to secure vitally necessary mental health services. This unthinkable practice tears families apart, is devastating for parents and caregivers and leaves children feeling abandoned in their hour of greatest need.

This practice occurs because most families have discriminatory and restrictive caps on their private mental health coverage or insurers fail to cover the required treatment. The majority of these families are not eligible for Medicaid coverage because of their income. This truly unfortunate practice also exists because of the lack of appropriate mental health services in many states and communities for children and adolescents with mental disorders. This was well documented in President Bush's New Freedom Commission report on mental health (July 2003).

This legislation promises to help end this growing crisis by providing grants to states to establish interagency systems of care for children and adolescents with serious mental disorders. The grants will allow states to build more efficient and effective mental health systems for children and families. It also eliminates barriers to home and community-based care for children by enabling a greater number of children to receive mental health services under the Section 1915(c) Medicaid home- and community-based waiver. The waiver promises to make appropriate services available to children in their homes and communities and close to their loved ones at a considerable cost savings over providing those services in an institutional setting.

The legislation also calls for the creation of a federal interagency task force to examine mental health issues in the child welfare and juvenile justice systems. A GAO report released in April 2003 showed that when parents give up custody of their child to secure mental health services, those children are placed in one of these two systems—neither of which is designed to be a mental health service agency.

No family in our nation should ever be asked to make the heart-wrenching decision to give up parental rights of their seriously ill child in exchange for mental health treatment and services.

We welcome this legislation as a critical step toward ending this practice and toward delivering more cost effective and appropriate services for children and families.

Once again, we thank you for your leadership and commitment to ending this practice and for continuing to stand up for children, families and common sense.

Sincerely,

Adoptions Together, Inc.
Alabama Foster and Adoptive Association.
Alliance for Children and Families.
American Academy of Child & Adolescent Psychiatry.
American Correctional Association.
American Counseling Association.
American Mental Health Counselors Association.
American Association for Marriage and Family Therapy.
American Psychiatric Association.
American Psychological Association.
Association of University Centers on Disabilities.
Bazelon Center for Mental Health Law.
Child and Adolescent Bipolar Foundation.
Children's Action Alliance.
Children and Adults with Attention-Deficit/Hyperactivity Disorder.
Child Welfare League of America.
Children Awaiting Parents.
Children's Defense Fund.
Depression and Bipolar Alliance.
Family Voices.
Federation of Families for Children's Mental Health.
Foster Family-based Treatment Association.
Girls Incorporated of Memphis.
Learning Disabilities Association of America.
Lutheran Children and Family Service.
National Alliance for the Mentally Ill.
National Association for Children of Alcoholics.
National Association for Children's Behavioral Health.
National Association of County Behavioral Health and Disability Directors.
National Association of Mental Health Planning and Advisory Councils.
National Association of Protection and Advocacy Systems.
National Association of School Psychology.
National Association of Social Workers.
National Association of State Mental Health Program Directors.
National CASA Association (Court Appointed Special Advocates).
National Foster Parent Association.
National Independent Living Association.
National Mental Health Association.
National Respite Coalition.
Physicians for Human Rights.
School Social Work Association of America.
Suicide Prevention Action Network USA.
Supportive Child Adult Network, Inc. (Stop Child Abuse Now, Inc.)
The Rebecca Project for Human Rights.
Voice for Adoption.
Volunteers of America.
Youth Law Center.

FIGHT CRIME: INVEST IN KIDS,
Washington, DC, February 15, 2005.

Hon. SUSAN COLLINS,
U.S. Senate,
Washington, DC.

DEAR SENATOR COLLINS: On behalf of the more than 2,000 sheriffs, police chiefs, prosecutors, and victims of violence who constitute the national anti-crime group FIGHT CRIME: INVEST IN KIDS, thank you for introducing the Keeping Families Together Act. This bill would take an important step toward ending the practice of inappropriately placing kids in juvenile detention facilities solely because of the absence of affordable and accessible mental health treatment for them. These placements drain significant resources from an already underfunded juvenile justice system, diverting funding that would otherwise support effective violence prevention programs for at-risk kids and intervention programs for kids who have already committed a criminal or delinquent act.

A July 2003 General Accounting Office report, Child Welfare and Juvenile Justice: Several Factors Influence the Placement of Children Solely to Obtain Mental Health Services, revealed that over 9,000 kids in selected counties in 17 states were placed in the juvenile justice system merely to obtain mental health services. Furthermore, a House Committee on Government Reform report demonstrated that two-thirds of juvenile detention facilities inappropriately hold kids waiting for mental health services. In 33 states, kids who did not have any criminal charges were held in detention facilities while awaiting community mental health treatment. Other kids had been charged with an offense but would not have been placed in detention but for the lack of available mental health treatment. In fact, the House Committee report revealed that, each night, nearly 2,000 kids wait in detention for community mental health services, representing 7 percent of all youth held in juvenile detention. It is estimated that juvenile detention facilities spend approximately $100 million each year to keep kids who are inappropriately placed as they wait for mental health treatment. This cost does not account for the additional service provision and staff time often needed in juvenile facilities to care for kids with severe mental health problems, although over half of responding facilities reported that staff receives poor, very poor, or no mental health training.

Every year, 1.4 million kids are charged with an offense for which an adult could be tried in a criminal court. The juvenile justice system is responsible for rehabilitating these kids so that they can leave the system and become productive citizens instead of continuing a life of crime, as well as for preventing such acts in the first place. Inappropriately placing kids who need mental health treatment in juvenile detention facilities places an unnecessary financial burden on the inadequately-resourced juvenile

justice system, and jeopardizes the safety of our communities. The Keeping Families Together Act would provide grants to help states provide and coordinate the needed array of mental health services to children so that families do not need to relinquish their kids to the juvenile justice system. This legislation would also establish a federal interagency task force to examine mental health issues in the child welfare and juvenile justice systems.

We are proud that our Senator introduced the Keeping Families Together Act to help keep families together, focus juvenile justice resources on delinquent and at-risk kids, and make our communities safer.

Sincerely,

MARK WESTRUM,
Sheriff, Sagadahoc County, ME.

Mr. SMITH. Mr. President, I rise today to join my colleagues, Senator COLLINS and Senator PRYOR, in introducing the ''Keeping Families Together Act''. This bill will expand Medicaid's home and community based services waiver to cover children and adolescents in residential treatment facilities. Currently, most state Medicaid agencies, including Oregon, do not cover this intensive treatment.

In 2001, 101 Oregon children and adolescents were placed in State custody because this was the only way they could get the mental health treatment they need. This situation occurs most often in middle-income families, where the family's employer-based insurance does not cover intensive treatment for serious mental illness, but the family income is too high for them to qualify for Medicaid services. With no other way to get their child treatment, parents are forced to choose between custody and care. Passage of this legislation is urgently needed so that thousands of parents are not forced to relinquish their custody rights to State child welfare or juvenile agencies in order to obtain mental health care for their seriously mentally ill children.

In Oregon, children with serious mental illnesses are being taken away from their families at a time when they most need to be close to home. The availability of family support services, community-based services and other effective interventions will help reduce the need for costly residential care and consequently reduce the need to place children in a setting away from their homes, families and communities. Keeping Families Together Act will also establish a Federal interagency task force to examine mental health issues in the child welfare and juvenile justice systems so that we can hopefully see an end to this practice, not just in Oregon, but in every State in our nation.

I urge my colleagues to join me in support of this critical legislation.

By Mr. SMITH (for himself, Mr. CONRAD, MS. SNOWE, and Mrs. CLINTON):

S. 381. A bill to amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments from annuities and similar payments of life insurance proceeds at dates later than death by excluding from income a portion of such payments; to the Committee on Finance.

Mr. SMITH. Mr. President, America will soon be facing a new and serious retirement challenge. Americans are living longer. Yet, recent economic and demographic shifts will put the retirement security of many retirees at risk. Current projections regarding the solvency of the Social Security program are not favorable. And, with 77 million baby boomers set to begin retiring in 2008, the number of retirees in the Social Security program is expected to double. In addition, fewer retirees in the future will be able to depend on monthly pension checks that many employers once paid. A growing number of retirees will be facing the difficult challenge of managing their own savings.

In response to these trends, I am offering legislation aimed at assisting Americans maintain their financial independence and their standard of living throughout their retirement by making it easier for them to secure a steady income for life. Under the Retirement Security for Life Act that Senator CONRAD and I are introducing today, a tax incentive would be enacted that encourages retirees to provide themselves with a guaranteed lifetime income. Specifically, the proposal would exclude from federal taxes one-half of the income payments from an annuity purchased with after tax dollars, a so- called non-qualified annuity.

Importantly, we have proposed a cap on the exclusion so that no more that $20,000 could be excluded in a year. For a typical American in the 25 percent tax bracket, this would provide an annual maximum tax savings of up to $5,000. I believe that this modest tax incentive will enable some retirees to consider annuitizing a portion of their nest egg so that they have a guaranteed lifetime of income.

In recent years, the ''retirement security'' debate in Congress has almost entirely focused on the need to accumulate a nest egg prior to retirement. And, Congress is doing much to encourage personal saving and employer-provided retirement plans. I am proud of both our successes and our continuing efforts in these areas. Encouraging more savings is an important step, but it is not enough. What has received little attention is the retirement income or ''payout'' phase of the retirement security equation. That is, we need to be thinking about the management of market and longevity risk so that a life's savings can provide a secure retirement. Longevity risk—the risk of outliving one's savings—is one of the biggest risks facing retirees. While we have some control over when we retire, we have very little control over how long we will live. It is my goal that Americans will be able to enjoy a lifetime of income from their hard-earned savings long after they have put their years in the workforce behind them.

Please join me in supporting our proposal as a crucial step in providing a secure retirement for all Americans. I ask unanimous consent that the text of the 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. 381

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 ''Retirement Security for Life Act of 2005''.

SEC. 2. EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.

(a) LIFETIME ANNUITY PAYMENTS UNDER ANNUITY CONTRACTS.—Section 72(b) of the Internal Revenue Code of 1986 (relating to exclusion ratio) is amended by adding at the end the following new paragraph:

''(5) EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.—

''(A) IN GENERAL.—In the case of lifetime annuity payments received under one or more annuity contracts in any taxable year, gross income shall not include 50 percent of the portion of lifetime annuity payments otherwise includible (without regard to this paragraph) in gross income under this section. For purposes of the preceding sentence, the amount excludible from gross income in any taxable year shall not exceed $20,000.

''(B) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning after December 31, 2006, the $20,000 amount in subparagraph (A) shall be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2005' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500.

''(C) APPLICATION OF PARAGRAPH.—Subparagraph (A) shall not apply to—

''(i) any amount received under an eligible deferred compensation plan (as defined in section 457(b)) or under a qualified retirement plan (as defined in section 4974(c)),

''(ii) any amount paid under an annuity contract that is received by the beneficiary under the contract—

''(I) after the death of the annuitant in the case of payments described in subsection (c)(5)(A)(ii)(III), unless the beneficiary is the surviving spouse of the annuitant, or

''(II) after the death of the annuitant and joint annuitant in the case of payments described in subsection (c)(5)(A)(ii)(IV), unless the beneficiary is the surviving spouse of the last to die of the annuitant and the joint annuitant, or

''(iii) any annuity contract that is a qualified funding asset (as defined in section 130(d)), but without regard to whether there is a qualified assignment.

''(D) INVESTMENT IN THE CONTRACT.—For purposes of this section, the investment in the contract shall be determined without regard to this paragraph.''.

(b) DEFINITIONS.—Subsection (c) of section 72 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(5) LIFETIME ANNUITY PAYMENT.—

''(A) IN GENERAL.—For purposes of subsection (b)(5), the term 'lifetime annuity payment' means any amount received as an annuity under any portion of an annuity contract, but only if—

''(i) the only person (or persons in the case of payments described in subclause (II) or (IV) of clause (ii)) legally entitled (by operation of the contract, a trust, or other legally enforceable means) to receive such amount during the life of the annuitant or joint annuitant is such annuitant or joint annuitant, and

''(ii) such amount is part of a series of substantially equal periodic payments made not less frequently than annually over—

''(I) the life of the annuitant,

''(II) the lives of the annuitant and a joint annuitant, but only if the annuitant is the spouse of the joint annuitant as of the annuity starting date or the difference in age between the annuitant and joint annuitant is 15 years or less,

''(III) the life of the annuitant with a minimum period of payments or with a minimum amount that must be paid in any event, or

''(IV) the lives of the annuitant and a joint annuitant with a minimum period of payments or with a minimum amount that must be paid in any event, but only if the annuitant is the spouse of the joint annuitant as of the annuity starting date or the difference in age between the annuitant and joint annuitant is 15 years or less.

''(iii) EXCEPTIONS.—For purposes of clause (ii), annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments—

''(I) because the amount of the periodic payments may vary in accordance with investment experience, reallocations among investment options, actuarial gains or losses, cost of living indices, a constant percentage applied not less frequently than annually, or similar fluctuating criteria,

''(II) due to the existence of, or modification of the duration of, a provision in the contract permitting a lump sum withdrawal after the annuity starting date, or

''(III) because the period between each such payment is lengthened or shortened, but only if at all times such period is no longer than one calendar year.

''(B) ANNUITY CONTRACT.—For purposes of subparagraph (A) and subsections (b)(5) and (w), the term 'annuity contract' means a commercial annuity (as defined by section 3405(e)(6)), other than an endowment or life insurance contract.

''(C) MINIMUM PERIOD OF PAYMENTS.—For purposes of subparagraph (A), the term 'minimum period of payments' means a guaranteed term of payments that does not exceed the greater of 10 years or—

''(i) the life expectancy of the annuitant as of the annuity starting date, in the case of lifetime annuity payments described in subparagraph (A)(ii)(III), or

''(ii) the life expectancy of the annuitant and joint annuitant as of the annuity starting date, in the case of lifetime annuity payments described in subparagraph (A)(ii)(IV).

For purposes of this subparagraph, life expectancy shall be computed with reference to the tables prescribed by the Secretary under paragraph (3). For purposes of subsection (w)(1)(C)(ii), the permissible minimum period of payments shall be determined as of the annuity starting date and reduced by one for each subsequent year.

''(D) MINIMUM AMOUNT THAT MUST BE PAID IN ANY EVENT.—For purposes of subparagraph (A), the term 'minimum amount that must be paid in any event' means an amount payable to the designated beneficiary under an annuity contract that is in the nature of a refund and does not exceed the greater of the amount applied to produce the lifetime annuity payments under the contract or the amount, if any, available for withdrawal under the contract on the date of death.''.

(c) RECAPTURE TAX FOR LIFETIME ANNUITY PAYMENTS.—Section 72 of the Internal Revenue Code of 1986 is amended by redesignating subsection (x) as subsection (y) and by inserting after subsection (x) the following new subsection:

''(x) RECAPTURE TAX FOR MODIFICATIONS TO OR REDUCTIONS IN LIFETIME ANNUITY PAYMENTS.—

''(1) IN GENERAL.—If any amount received under an annuity contract is excluded from income by reason of subsection (b)(5) (relating to lifetime annuity payments), and—

''(A) the series of payments under such contract is subsequently modified so any future payments are not lifetime annuity payments,

''(B) after the date of receipt of the first lifetime annuity payment under the contract an annuitant receives a lump sum and thereafter is to receive annuity payments in a reduced amount under the contract, or

''(C) after the date of receipt of the first lifetime annuity payment under the contract the dollar amount of any subsequent annuity payment is reduced and a lump sum is not paid in connection with the reduction, unless such reduction is—

''(i) due to an event described in subsection (c)(5)(A)(iii), or

''(ii) due to the addition of, or increase in, a minimum period of payments within the meaning of subsection (c)(5)(C) or a minimum amount that must be paid in any event (within the meaning of subsection (c)(5)(D)), then gross income for the first taxable year in which such modification or reduction occurs shall be increased by the recapture amount.

''(2) RECAPTURE AMOUNT.—

''(A) IN GENERAL.—For purposes of this subsection, the recapture amount shall be the amount, determined under rules prescribed by the Secretary, equal to the amount that (but for subsection (b)(5)) would have been includible in the taxpayer's gross income if the modification or reduction described in paragraph (1) had been in effect at all times, plus interest for the deferral period at the underpayment rate established by section 6621.

''(B) DEFERRAL PERIOD.—For purposes of this subsection, the term 'deferral period' means the period beginning with the taxable year in which (without regard to subsection (b)(5)) the payment would have been includible in gross income and ending with the taxable year in which the modification described in paragraph (1) occurs.

''(3) EXCEPTIONS TO RECAPTURE TAX.—Paragraph (1) shall not apply in the case of any modification or reduction that occurs because an annuitant—

''(A) dies or becomes disabled (within the meaning of subsection (m)(7)),

''(B) becomes a chronically ill individual within the meaning of section 7702B(c)(2), or

''(C) encounters hardship.''.

(d) LIFETIME DISTRIBUTIONS OF LIFE INSURANCE DEATH BENEFITS.—

(1) IN GENERAL.—Section 101(d) of the Internal Revenue Code of 1986 (relating to payment of life insurance proceeds at a date later than death) is amended by adding at the end the following new paragraph:

''(4) EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.—

''(A) IN GENERAL.—In the case of amounts to which this subsection applies, gross income shall not include the lesser of—

''(i) 50 percent of the portion of lifetime annuity payments otherwise includible in gross income under this section (determined without regard to this paragraph), or

''(ii) the amount in effect under section 72(b)(5).

''(B) RULES OF SECTION 72(b)(5) TO APPLY.—For purposes of this paragraph, rules similar to the rules of section 72(b)(5) and section 72(x) shall apply, substituting the term 'beneficiary of the life insurance contract' for the term 'annuitant' wherever it appears, and substituting the term 'life insurance contract' for the term 'annuity contract' wherever it appears.''.

(2) CONFORMING AMENDMENT.—Section 101(d)(1) of such Code is amended by inserting ''or paragraph (4)'' after ''to the extent not excluded by the preceding sentence''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts received in calendar years beginning after the date of the enactment of this Act.

(2) SPECIAL RULE FOR EXISTING CONTRACTS.—In the case of a contract in force on the date of the enactment of this Act that does not satisfy the requirements of section 72(c)(5)(A) of the Internal Revenue Code of 1986 (as added by this section), or requirements similar to such section 72(c)(5)(A) in the case of a life insurance contract), any modification to such contract (including a change in ownership) or to the payments thereunder that is made to satisfy the requirements of such section (or similar requirements) shall not result in the recognition of any gain or loss, any amount being included in gross income, or any addition to tax that otherwise might result from such modification, but only if the modification is completed prior to the date that is 2 years after the date of the enactment of this Act.

By Mr. MCCAIN:

S. 383. A bill to shorten the term of broadcasting licenses under the Communications Act of 1934 from 8 to 3 years, to provide better public access to broadcasters' public interest issues and programs lists and children's programming reports, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, I rise today to introduce the ''Localism in Broadcasting Reform Act of 2005.'' This legislation would reduce the license term for broadcasters from 8 years to 3 years, thereby requiring broadcasters to provide the Federal Communications Commission (FCC or Commission) with information every 3 years on why their license should be renewed. Prior to 1981, broadcast licenses were granted for a term of 3 years.

The bill would require the full Commission to review 5 percent of all license and renewal applications. Currently, the Media Bureau randomly audits 5 percent of all license renewal applications. The FCC first started an audit process back in the 1980s when the FCC changed its license renewal process from one where stations submitted evidence of ''public interest'' obligations compliance to one where stations self certify compliance, critics call it a ''post card renewal''. This section would take the audit process a step further by requiring the Commissioners to review the applications selected for audit rather than the Media Bureau.

The bill would command broadcasters to post on their Internet sites information detailing their commitment to local public affairs programming and children's programming. The bill also calls for the FCC to complete

its proceeding on whether public interest obligations should apply to broadcasters in the digital era.

To ensure that viewers or listeners can fully participate in a broadcaster's license renewal, the bill would codify the Commission's rule that a viewer or listener has standing to challenge a license if he demonstrates either that he resides in the station's service area or that he regularly listens or views the station and that such listening or viewing is not the result of transient contacts with the station.

Lastly, the bill would allow the Commission, during a license renewal proceeding, to review not only the performance of the station seeking renewal, but also the performance of all stations owned by the licensee seeking renewal. The current statute restricts the Commission's review only to that station seeking the renewal.

Last June, FCC Chairman Michael Powell and I challenged all local broadcast television and radio stations to provide their local communities with significant information on the local political issues facing communities, the local candidates' campaign platforms, and the local candidate debates during the 2004 election. In response to the challenge, many broadcasters sent volumes of material detailing their extensive election coverage and committing to increase their coverage in 2004. Today, the Norman Lear Center at the Annenberg School for Communication at the University of Southern California released findings showing that local news coverage of local political campaigns is dismal. Specifically, the study found that 92 percent of the news broadcasts studied contained no stories about races for the U.S. House, State senate or assembly, mayor, city council, law-enforcement posts, judgeships, education offices, or regional or county offices.

Therefore, I feel it is now time to introduce legislation to bring local back into local broadcasting. I believe this legislation is a step in the right direction. It will have a small impact on those stations that are currently meeting their public interest obligations, but it should have a large impact on those citizens whose local broadcaster is not meeting its obligations. I refuse to believe that the ''public interest'' is served by minimal campaign coverage, such as a 12 second sound bite on from a candidate during a half-hour local news program as found in the study. Citizens deserve more from their local broadcaster.

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. 383

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 ''Localism in Broadcasting Reform Act of 2005''.

SEC. 2. 3-YEAR TERM FOR BROADCAST LICENSES.

(a) IN GENERAL.—Section 307(c)(1) of the Communications Act of 1934 (47 U.S.C. 307(c)(1)) is amended by striking ''8'' each place it appears and inserting ''3''.

(b) EXISTING LICENSES.—The amendment made by subsection (a) shall apply to licenses granted or renewed after the date of enactment of this Act.

SEC. 3. FULL COMMISSION REVIEW REQUIRED FOR 5 PERCENT OF APPLICATIONS.

Section 309(a) of the Communications Act of 1934 (47 U.S.C. 309(a)) is amended by adding at the end the following: ''The determination required by this subsection shall be made by the full Commission en banc in no fewer than 5 percent of the applications filed with it in each calendar year to which section 308 applies.''.

SEC. 4. ISSUES AND PROGRAMS REPORTS; CHILDREN'S TELEVISION REPORTS.

(a) IN GENERAL.—

(1) ELECTRONIC FILING.—The Commission shall amend its regulations to require every broadcaster to file, electronically, a copy of its public interest issues and programs list and its children's programming reports with the Commission, in such form as the Commission may require, within 10 days after the end of each calendar quarter.

(2) WAIVER.—The Commission may waive or defer compliance with the regulations promulgated in paragraph (1) by a broadcaster in any specific instance for good cause shown where such action would be consistent with the public interest.

(b) LICENSEE WEBSITE REQUIREMENT.—The Commission shall amend its regulations to require every broadcast station for which there is a publicly accessible website on the Internet—

(1) to make its public interest issues and programs list and its children's programming reports available to the public on that website; or

(2) to provide a hyperlink on that website to that information on the Commission's website.

(c) COMMISSION WEBSITE REQUIREMENT.—The Commission shall provide access to the public to the public interest issues and programs lists and children's programming reports filed electronically by broadcasting stations with the Commission.

(d) TIMEFRAME.—The Commission shall amend its regulations to carry out the requirements of this section not later than 180 days after the date of enactment of this Act.

SEC. 5. STANDARDS FOR BROADCAST STATION RENEWAL TO INCLUDE REVIEW OF LICENSEE'S OTHER STATIONS.

Section 309(k)(1) of the Communications Act of 1934 (47 U.S.C. 309(k)(1)) is amended—

(1) by striking ''with respect to that station,'' and inserting ''with respect to that station (and all stations operated by the licensee),'';

(2) by striking ''its'' and inserting ''that station's''; and

(3) in subparagraph (A), by striking ''the station has'' and inserting ''the station has, and such other stations have,''.

SEC. 6. PARTY IN INTEREST REQUIREMENT FOR PETITIONS TO OPPOSE THE GRANT OR RENEWAL OF A LICENSE.

Section 309(d) of the Communications Act of 1934 (47 U.S.C. 309(d)(1)) is amended by adding at the end the following:

''(3) For purposes of paragraph (1), the term 'party in interest' includes any individual who—

''(A) is a listener or viewer of the specific station to which the application relates (determined without regard to such individual's place of residence);

''(B) asserts an interest in vindicating the general public interest; and

''(C) makes the specific allegations and showings required by this subsection.''.

SEC. 7. COMPLETION OF CERTAIN PENDING PROCEEDINGS.

(a) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Commission shall complete action on—

(1) In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket No. 00–168; and

(2) In the Matter of Public Interest Obligations of Television Broadcast Licensees, MM Docket No. 99–360.

(b) STANDARDIZED FORMS FOR ELECTRONICALLY FILED REPORTS.—As part of the proceedings described in subsection (a), the Commission shall—

(1) give consideration to requiring standardized forms for broadcasters to use in preparing public interest issues and programs lists for electronic filing; and

(2) if it determines that such standardized forms would be in the public interest, develop and promulgate such forms and require their use by permittees and licensees.

SEC. 8. DEFINITIONS.

In this Act:

(1) BROADCASTER.—The term ''broadcaster'' means a permittee or licensee of a commercial or non-commercial television or radio broadcast station.

(2) CHILDREN'S PROGRAMMING REPORTS.—The term ''children's programming reports'' means the information that a broadcaster is required to provide for public inspection by paragraph (e)(11)(iii) of section 73.3526 of title 47, Code of Federal Regulations.

(3) COMMISSION.—The term ''Commission'' means the Federal Communications Commission.

(4) PUBLIC INTEREST ISSUES AND PROGRAMS LIST.—The term ''public interest issues and programs list'' means the information that—

(A) a commercial broadcast station is required to provide for public inspection by paragraphs (e)(11)(i) and (12) of section 73.3526 of title 47, Code of Federal Regulations; and

(B) a non-commercial broadcast station is required to provide for public inspection by paragraph (e)(8) of section 73.3527 of title 47, Code of Federal Regulations.

By Mr. GRASSLEY (for himself, Mr. DORGAN, Mr. HAGEL, and Mr. JOHNSON):

S. 385. A bill to amend the Food Security Act of 1985 to restore integrity to and strengthen payment limitation rules for commodity payments and benefits; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. GRASSLEY. Mr. President, the American people recognize the importance of the family farmer to our Nation, and the need to provide an adequate safety net for family farmers. In recent years, however, assistance to farmers has come under increasing scrutiny.

Critics of farm payments have argued that the largest corporate farms reap most program benefits. The reality is over 72 percent of the payments have gone to only 10 percent of our Nation's farmers. There is good reason to be critical of our farm programs.

What's more, farm payments that were originally designed to benefit small- and medium-sized family farmers have contributed to their own demise. Unlimited farm payments have placed upward pressure on land prices

and have contributed to overproduction and lower commodity prices, driving many family farmers off the farm.

The Senate has agreed, by an overwhelming bipartisan vote during the 2002 farm bill debate and two Senate Budget Committee markups that targeting Federal assistance to small- and medium-sized family farmers is the right thing to do.

It has been my hope since the 2002 farm bill conference committee dropped the payment limit amendment that Congress would establish legitimate, reasonable payment limits similar to S. 667, the payment limits bill we introduced last session.

While we have not yet achieved our ultimate goal, no one can question that the votes have been there for payment limits. Unfortunately, a two-thirds majority in the Senate hasn't been enough to protect this issue in conference. But times are clearly changing thanks to the President's support for payment limits in his budget proposal.

The legislation we are introducing today adopts the President's proposed cap of $250,000, while maintaining other concepts from S. 667 that the President has embraced like limiting the subterfuge surrounding the three-entity rule, curtailing the use of generic certificates, and developing a measurable standard to determine who should and should not be receiving farm subsidies.

I look forward to working with Senator DORGAN again on this issue. With the President's support I believe we will have success.

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. 385

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 ''Rural America Preservation Act''.

SEC. 2. PAYMENT LIMITATIONS.

Section 1001 of the Food Security of 1985 (7 U.S.C. 1308) is amended—

(1) in subsection (b)(1), by striking ''$40,000'' and inserting ''$20,000'';

(2) in subsection (c)(1), by striking ''$65,000'' and inserting ''$30,000'';

(3) in subsection (d), by striking ''(d)'' and all that follows through the end of paragraph (1) and inserting the following:

''(d) LIMITATIONS ON MARKETING LOAN GAINS, LOAN DEFICIENCY PAYMENTS, AND COMMODITY CERTIFICATE TRANSACTIONS.—

''(1) LOAN COMMODITIES.—The total amount of the following gains and payments that a person may receive during any crop year may not exceed $75,000:

''(A)(i) Any gain realized by a producer from repaying a marketing assistance loan for 1 or more loan commodities under subtitle B of title I of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7931 et seq.) at a lower level than the original loan rate established for the loan commodity under that subtitle.

''(ii) In the case of settlement of a marketing assistance loan for 1 or more loan commodities under that subtitle by forfeiture, the amount by which the loan amount exceeds the repayment amount for the loan if the loan had been settled by repayment instead of forfeiture.

''(B) Any loan deficiency payments received for 1 or more loan commodities under that subtitle.

''(C) Any gain realized from the use of a commodity certificate issued by the Commodity Credit Corporation for 1 or more loan commodities, as determined by the Secretary, including the use of a certificate for the settlement of a marketing assistance loan made under that subtitle, with the gain reported annually to the Internal Revenue Service and to the taxpayer in the same manner as gains under subparagraphs (A) and (B).'';

(4) by adding at the end the following:

''(h) SINGLE FARMING OPERATION.—

''(1) IN GENERAL.—Notwithstanding subsections (b) through (d), subject to paragraph (2), if a person participates only in a single farming operation and receives, directly or indirectly, any payment or gain covered by this section through the farming operation, the total amount of payments or gains (as applicable) covered by this section that the person may receive during any crop year may be up to but not exceed twice the applicable dollar amounts specified in subsections (b), (c), and (d).

''(2) INDIVIDUALS.—The total amount of payments or gains (as applicable) covered by this section that an individual person may receive during any crop year may not exceed $250,000.

''(i) SPOUSE EQUITY.—Notwithstanding subsections (b) through (d), except as provided in subsection (e)(2)(C)(i), if an individual and spouse are covered by subsection (e)(2)(C) and receive, directly or indirectly, any payment or gain covered by this section, the total amount of payments or gains (as applicable) covered by this section that the individual and spouse may jointly receive during any crop year may not exceed twice the applicable dollar amounts specified in subsections (b), (c), and (d).

''(j) REGULATIONS.—

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Secretary shall promulgate regulations—

''(A) to ensure that total payments and gains described in this section made to or through joint operations or multiple entities under the primary control of a person, in combination with the payments and gains received directly by the person, shall not exceed twice the applicable dollar amounts specified in subsections (b), (c), and (d);

''(B) in the case of a person that in the aggregate owns, conducts farming operations, or provides custom farming services on land with respect to which the aggregate payments exceed the applicable dollar amounts specified in subsections (b), (c), and (d), to attribute all payments and gains made on crops produced on the land to—

''(i) a person that rents land as lessee or lessor through a crop share lease and receives a share of the payments that is less than the usual and customary share of the crop received by the lessee or lessor, as determined by the Secretary;

''(ii) a person that provides custom farming services through arrangements under which—

''(I) all or part of the compensation for the services is at risk;

''(II) farm management services are provided by—

''(aa) the same person;

''(bb) an immediate family member; or

''(cc) an entity or individual that has a business relationship that is not an arm's length relationship, as determined by the Secretary; or

''(III) more than ⅔ of the farming operations are conducted as custom farming services provided by—

''(aa) the same person;

''(bb) an immediate family member; or

''(cc) an entity or individual that has a business relationship that is not an arm's length relationship, as determined by the Secretary; or

''(iii) a person under such other arrangements as the Secretary determines are established to transfer payments from persons that would otherwise exceed the applicable dollar amounts specified in subsections (b), (c), and (d); and

''(C) to ensure that payments attributed under this section to a person other than the direct recipient shall also count toward the limit of the direct recipient.

''(2) PRIMARY CONTROL.—The regulations under paragraph (1) shall define 'primary control' to include a joint operation or multiple entity in which a person owns an interest that is equal to or greater than the interest of any other 1 or more persons that materially participate on a regular, substantial, and continuous basis in the management of the operation or entity.''.

SEC. 3. SCHEMES OR DEVICES.

Section 1001B of the Food Security Act of 1985 (7 U.S.C. 1308–2) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''If''; and

(2) by adding at the end the following:

''(b) FRAUD.—If fraud is committed by a person in connection with a scheme or device to evade, or that has the purpose of evading, section 1001, 1001A, or 1001C, the person shall be ineligible to receive farm program payments (as described in subsections (b), (c), and (d) of section 1001 as being subject to limitation) applicable to the crop year for which the scheme or device is adopted and the succeeding 5 crop years.''.

SEC. 4. REGULATIONS.

(a) IN GENERAL.—The Secretary of Agriculture may promulgate such regulations as are necessary to implement this Act and the amendments made by this Act.

(b) PROCEDURE.—The promulgation of the regulations and administration of this Act and the amendments made by this Act shall be made without regard to—

(1) the notice and comment provisions of section 553 of title 5, United States Code;

(2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(3) chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act'').

(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

By Mr. HAGEL (for himself, Mr. ALEXANDER, Mr. CRAIG, and Mrs. DOLE):

S. 386. A bill to direct the Secretary of State to carry out activities that promote the adoption of technologies that reduce greenhouse gas intensity in developing countries, while promoting economic development, and for other purposes; to the Committee on Foreign Relations.

By Mr. HAGEL (for himself, Mr. ALEXANDER, Mr. CRAIG, and Mrs. DOLE):

S. 387. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives for the investment in greenhouse gas intensity reduction projects, and for other purposes; to the Committee on Finance.

By Mr. HAGEL (for himself, Mr. ALEXANDER, Mr. CRAIG, and Mrs. DOLE):

S. 388. A bill to amend the Energy Policy Act of 1992 to direct the Secretary of Energy to carry out activities that promote the adoption of technologies that reduce greenhouse gas intensity and to provide credit-based financial assistance and investment protection for projects that employ advanced climate technologies or systems, to provide for the establishment of a national greenhouse gas registry, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. HAGEL. Mr. President, on Wednesday, the U.N. Global Climate Treaty known as the Kyoto Protocol will enter into force, requiring more than 30 industrialized nations to significantly cut manmade greenhouse gas emissions by 2012.

I rise today to introduce three pieces of legislation which I believe can help contribute to a new domestic and international consensus on climate change. This legislation builds upon three principles: the need for shared responsibilities between developed and developing countries; the linkages between environmental, economic, and energy policies; and the employment of greenhouse gas intensity as the best measurement upon which to build an effective climate policy.

I thank Senators ALEXANDER, CRAIG, and DOLE for their support and for agreeing to cosponsor these bills, which are titled: The Climate Change Technology Deployment in Developing Countries Act; The Climate Change Technology Deployment Act; and, The Climate Change Technology Tax Incentives Act.

Global climate policy affects the world's economic, energy, and environmental policies. These circles of interest in policy are interconnected. Climate change does not recognize national borders. It is a shared responsibility for all nations. Dealing with global climate policy requires a level of diplomatic intensity and coordination worthy of the magnitude of the challenge.

We all agree on the need for a clean environment and stable climate. The debate is about solutions. The question we face is not whether we should take action, but what kind of action we should take.

Climate change initiatives should include commitments to research and development, technology, and a more efficient and productive use of energy and resources.

My climate change legislation authorizes new programs, policies, and incentives to address the reduction of greenhouse gas emissions.

It focuses on the role of technology, private and public partnerships, and developing countries.

Any climate policy initiative must include clear metrics that recognize the links between energy, the economy, and the environment. Too often these policies are considered in vacuums. It is a global issue.

Bringing in the private sector and creating incentives for technological innovation will be critical to real progress on global climate policy. I believe that greenhouse gas intensity, or the amount of carbon emitted relative to economic output, is the best measurement for dealing with climate change.

Greenhouse gas emission intensity is the measurement of how efficiently a nation uses carbon emitting fuels and technology in producing goods and services. It captures the links between energy efficiency, economic development, and the environment.

The first bill, the Climate Change Technology Deployment in Developing Countries Act, provides the Secretary of State with new authority for coordinating assistance to developing countries for projects and technologies that reduce greenhouse gas intensity.

It supports the development of a U.S. global climate strategy to expand the role of the private sector, develop public-private partnerships, and encourage the deployment of greenhouse gas reducing technologies in developing countries. This bill directs the Secretary of State to engage global climate change as a foreign policy issue.

It directs the U.S. Trade Representative to negotiate the removal of trade-related barriers to the export of greenhouse gas intensity reducing technologies, and establishes an inter-agency working group to promote the export of greenhouse gas intensity reducing technologies and practices from the United States.

The legislation authorizes fellowship and exchange programs for foreign officials to visit the United States and acquire the expertise and knowledge to reduce greenhouse gas intensity in their countries. Current international approaches to global climate change overlook the role of developing countries as part of either the problem or the solution.

In July 1997, months before the Protocol was signed, the Senate unanimously passed. S. Res. 98, the Byrd-Hagel Resolution, which called on the President not to sign any treaty or agreement in Kyoto unless two conditions were met.

First, the United States should not be party to any legally binding obligations on greenhouse gas emission reductions unless developing country, parties are required to meet the same standards. Second, the President should not sign any treaty that ''would result in serious harm to the economy of the United States.''

Kyoto does not meet either of these conditions. As it stands, developing countries are exempt from the Kyoto obligations, leaving more than 30 developed countries to address greenhouse gas emissions. Developing nations are becoming the major emitters of greenhouse gases, but they are exempted from the Kyoto Protocol.

A recent Congressional Budget Office—CB0—report explains that developing countries are projected within the next 20 years to account for two-thirds of the growth in carbon dioxide emissions as their populations and economies expand. There are reasons for this.

Developing nations cannot achieve. greenhouse gas reductions until they achieve higher standards of living. They lack clean energy technology and they cannot absorb the economic impact of the changes necessary for emissions reductions. New policies will require recognition of the limitations of developing nations to meet these standards, and the necessity of including them in any successful future initiative.

Because Kyoto does not include developing countries, its approach is unrealistic. Any reduction in greenhouse gas emissions by the United States and other developed countries will soon be eclipsed by emissions from developing nations, such as China, which will soon be the world's largest emitter of manmade greenhouse gases.

It is in the shared interests of the United States and industrialized nations to help developing countries by sharing cleaner technology. Developing countries can then ''leapfrog'' over the highly polluting stages of development that countries like the U.S. have already been through.

My legislation includes tax incentives for American businesses to work with foreign countries to help develop clean energy projects and fuel-efficient technologies.

Our second bill, the Climate Change Technology Deployment Act, supports establishing domestic public-private partnerships for demonstration projects that employ greenhouse gas intensity reduction technologies. Our plan provides credit-based financial assistance and investment protection for American businesses and projects that deploy advanced climate technologies or systems. Federal financial assistance includes direct loans, loan guarantees, standby interest coverage, and power production incentive payments.

We are most successful in confronting the most difficult issues when we draw on the strength of the private sector. Public-private partnerships meld together the institutional leverage of the government with the innovation of industry.

This bill directs the Secretary of Energy to lead an inter-agency process to develop and implement a national climate strategy provided by the Office of Science and Technology Policy. It establishes a Climate Coordinating Committee and Climate Credit Board to assess, approve, and fund these projects.

Our third bill, the Climate Change Technology Tax Incentives Act, amends the tax code to provide incentives for investment in climate change technology. It also expresses our support for making permanent the current research and development tax credit, which otherwise expires on December 31, 2005. An article in the Wall Street Journal on February 4, 2005, reported on the potential for ''geologic storage'' of carbon dioxide as a means to dramatically reduce carbon dioxide emissions.

Geologic storage involves pumping carbon dioxide into the ground, rather than dumping it into the atmosphere. BP has been using geologic storage in Algeria's Sahara Desert and Statoil has been working on this in Norway's North Sea. Chevron Texaco is planning a project off the coast of Australia.

The article reports that:

> the concept is drawing growing interest because it could curb global warming more quickly than switching to alternative energy sources or cutting energy use.

There is still much work to be done. But this kind of technology that was described in the Wall Street Journal article is the kind of technology that must be employed around the world to achieve results in reducing greenhouse gas emissions. My legislation would support more of this type of activity.

The American people and all global citizens need to better understand global climate change, its connections to our economic and energy policies, and what the realistic options are for addressing this challenge. Any recommendations regarding climate policy must meet the demands of economic growth and development, especially in the developing world. This will require a market-driven, technology-based approach that complements the world's environmental interests, and connects the public and private sectors.

Achieving reductions in greenhouse gas emissions is one of the important challenges of our time. America has an opportunity and a responsibility for global climate policy leadership. But it is a responsibility to be shared by all nations. I look forward to working with my colleagues in the Congress, the Bush administration, the private sector, public interest groups, and America's allies on achievable climate change policy.

By harnessing our many strengths, we can help shape a worthy future for all people, and build a better world.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I am pleased to be on the floor at this moment to join my colleague CHUCK HAGEL in the introduction of legislation that he has put together out of a variety of avenues of interest and importance to deal with the issue of climate change, a issue in which he and I have been engaged for a good long while. I am not quite sure how many years ago it was that I, as the freshman chairman of the Republican Policy Committee, turned to CHUCK to see if he could bring Senators together in a bipartisan way on what we believed at the moment—and we still believe today—was a critically important issue to be addressed.

Out of that effort grew the Hagel-Byrd resolution which passed this body by an overwhelming vote, and was a very clear message to America—and to the world—on what we believed was necessary and important if we were to responsibly and effectively engage in the debate of climate change outside and well beyond the Kyoto protocol.

The legislation Senator HAGEL brings to the floor today, of which I am proud to be a cosponsor, is what I believe is a needed and necessary next step to work cooperatively with this administration and with countries around the world to begin to recognize all that is the makeup of this issue.

Our policy must recognize the legitimate needs of our bilateral trading partners to use their resources to meet the needs of their people. Yet, at the same time, the initial debate basically suggested that if in fact human involvement in the climate of the world was changing the climate of the world, the only way you could save the climate was to turn the lights out. It did not address the human need. It did not address the economic growth that was critically necessary at that time. That is why our country pushed back and said no, we would not ratify Kyoto; that we would go much further than that in bringing about the changes that were necessary and that this administration engaged in.

This legislation does a great deal more toward recognizing the need for bringing resources together.

Senator HAGEL has made clear the other important things this legislation will do. Above all, this legislation is a true acknowledgment that climate variability and change is a top priority as an issue for the United States—and for all nations—to be involved in.

There can be an honest debate about whether the United States should do more or whether too much reliance is being placed on voluntary initiatives, but to claim that the United States is not acting seriously reflects, at best, a lack of knowledge or, at worst, political posturing.

An objective review of Government and private sector programs to reduce increases in greenhouse gas now and in the future would have to conclude that the United States is doing at least as much, if not more, than countries that are part of the Kyoto Protocol which will go into effect tomorrow. The best evidence of this is our domestic rate of improvement in greenhouse gas intensity relative to the improvements other countries are making.

The term I just used, ''greenhouse gas intensity,'' is defined in legislation as the ratio of greenhouse gas emissions to economic output. This is a far wiser measure of progress because it complements, rather than conflicts with, a nation's goal of growing its economy and meeting the needs and aspirations of its people.

Too much attention is being paid to the mandatory nature of Kyoto. Too little results are being achieved. It is very interesting to note that most of the countries that ratified Kyoto will not meet the greenhouse gas reduction targets by the deadlines required by Kyoto. Indeed, when I and Senator CRAIG THOMAS and Congressman JOE BARTON were in Buenos Aires at the COP–10 conference in December, many nations were quietly acknowledging that they could not get to where they promised they would get, and, in fact, some have even suggested that by 2012 they would find it incumbent upon themselves and their nations to back out of Kyoto. However, all still recognize the importance of this issue, understanding it, and clearly defining it.

What Senator HAGEL's legislation does is shape for us a variety of things that are already underway, while still allowing us clearly to define them and to say, both here at home with our domestic policy as well as internationally, that we mean what we say and we mean what we do.

The United States is currently spending in excess of $5 billion annually in scientific and technological initiatives. When we were in Buenos Aires, I was very proud to stand before my colleagues from around the world and before nongovernmental organizational groups and state that the United States is spending more on this issue, in both advances in science and technological change, than the rest of the world combined times two. Then I reminded them that all that we do, they could have also: that our technology would be in the world, that our science would be available to them, and that to work our way out of or to change the character of our economies without damaging those economies would in large part be the responsibility of new technologies.

This legislation does not pick one technology over another or one energy source over another. That has always been the debate. Somehow we had to go around and selectively turn out the lights if we were going to change the climate around us. We knew that was not acceptable to the developing world and in large part that is why the developing world would not come along. How can you deny a country the right to use its resources for the economic, humanitarian, and health benefits of its people? You cannot do that. Nor should we be engaged in trying to do that.

What we can do as a developed and advanced Nation is offer up exactly what we are doing; offer up what the Hagel legislation brings together. That is all we are doing now, and advancing and incentivizing, through this legislation, countries to do more in the area of technology.

These programs are designed to advance our state of knowledge, accelerate the development and the deployment of energy technologies, aid developing countries in using energy more efficiently, and achieve an 18-percent reduction in energy intensity by 2012—a phenomenally responsive goal and something we clearly can take to the world community.

Our administration today in a series of bilateral agreements is working with other countries to help them get to where we want and where they want to get, and for the sake of the environment, where we all want us all to go.

I was extremely proud sitting in different forums in Buenos Aires to see the United States talk about the leadership role it has taken and the bilateral partnerships it has agreed to, and all the things that we can help with in the world of change today. It is clearly to our advantage and to the advantage of the world at large.

What Senator HAGEL has effectively done today is to get our arms around this issue to try to more directly define it, and to show that we are sensitive to it; that we are responding to the issue as clearly as our administration has and continues to do.

Domestically, the United States has and continues to make world leading investments in climate change science technology. The United States has also implemented a wide range of national greenhouse control initiatives, cash sequestration programs, and international collaborative programs. All of those are bound up within the bilaterals I have talked about that we are engaged in.

The legislation we have introduced today furthers all of these goals.

President Bush has consistently acknowledged how human activity can affect our climate, and that the climate variability does not recognize national borders. The key issue is not whether there is any human-influenced effect. Instead, the issues are how large any human influence may be as compared to natural variability; how costly and how effective human intervention may be in reversing climate variability; and how and what technology may be required over the near and the long term as determined by developments in climate science.

As I said, there can be a legitimate debate about whether more can be done while meeting our Nation's economic objectives. I, for one, support doing more in the areas of technological development to help lift developing countries from the depths of their plights and to advance their cause as we advance ours. That is why I am proud to be working with my colleagues in the Senate. I thank Senator HAGEL, Senator ALEXANDER, Senator DOLE, and others for the hard work they have put in and the cooperative effort reflected in the bill introduced this afternoon.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I salute Senator HAGEL for his leadership and his contribution on this issue. I am glad to be here with my colleague, Senator CRAIG, who is one of the Senate's real authorities on energy.

We have had some trouble passing an energy bill in the Senate. We are having some trouble passing a clean air bill in the Senate. If we are being logical—which is hard for a Senate to be—we would set clean air objectives and pass a clean energy bill to help reach that objective, do it at once, and give ourselves a low cost, reliable supply of energy, less dependent on the rest of the world, and do it in a way that is environmentally sound.

That is our objective. We have different approaches on this, but Senator HAGEL has put his emphasis today exactly where it needs to be. The United States of America is a country that has about a third of all the GDP in the world. We have 5 to 6 percent of the people and a third of all the money is one way to put it.

How did we get that money? How did we get our position? The National Academy of Sciences says that since World War II, half our new jobs have come from advances in science and technology. There are other countries in the world—a growing number of countries—that have great capacity for science and technology. Some of the greatest scientists and engineers who have worked in this country have come from other countries in the world. But if any country in the world ought to be putting a focus on science and technology as a way of helping not just their country but the rest of the world deal with the issue of greenhouse gases, it ought to be the United States of America. Senator HAGEL is exactly right to put the spotlight there. He does it in a three-part bill. In the first part, he talks about international cooperation. That also makes a lot of sense.

Three weeks ago, I was visiting with the chairman of one of the largest energy companies in Germany. If there is a country in the world that has a more irrational energy policy than we do, it would be Germany. They have just decided to close 19 nuclear powerplants at the same time, across the Rhine river, France is 85 percent nuclear power. Of course, Germany will never do that because they will not be able to meet the Kyoto carbon standards if they close the plants. But the point that my friend from Germany was making is that we are headed, in his words, toward an energy catastrophe.

It is a catastrophe of two kinds. One is energy supply, and one is clean air. Now, why is that? It is because other countries in the world are growing. In China, the average Chinese person uses about one-sixth the amount of energy that the average person in the European Union uses, in the 15 original countries. Now, in China, when the average Chinese person, with all the people there, gets up to three-sixths or four-sixths or five-sixths or six-sixths, as they will, there will be an unbelievable demand for energy in this country. We are already seeing it in the prices for natural gas, in the prices for oil.

The figures we heard in our Energy Committee were that over the next 25 years—and my numbers are approximate—China might build 650 new coal plants to begin to supply its energy, and India might build 800. That does not count the rest of Southeast Asia or what Brazil might do. So we cannot just look at this issue in terms of what is happening in the United States.

If there is not a supply of energy, and the other countries are demanding so much, our prices will be so high that our million chemical jobs in the country will move overseas looking for cheap natural gas. And it will not make much difference how we clean the air in the United States of America if China and India and Brazil build so many old coal plants and throw stuff up in the air because it will blow around the world and come over here.

So we have, on two counts, a major, major challenge: energy supply and clean air. It would make enormous sense for the scientists and engineers in the United States to work with the scientists and engineers in Germany who have exactly the same challenge and the scientists and engineers in China who have even more of a challenge. They have just stopped 26 of their coal plants because of environmental concerns, but they will not be able to stop them for long because of their need for an energy supply.

What the Senator from Nebraska has done is to say to us, hey, we are talking about mandates and rules and regulations, but what we ought to be trying to do is to create a solution to the problem using the thing that we in the United States do better than anybody, or historically have, and that is our science and technology. This is the country with the 50 great research universities. This is the country with the 20 National Laboratories. The Oak Ridge National Laboratory, in my home State, is already doing important work on how we recapture carbon.

One of the things we can do in the Senate, without arguing about Kyoto, without arguing about mandates, is to say, let's see if we can—through technology, working with people in other parts of the world, and encouraging our own businesses and laboratories—find better ways to deal with greenhouse gases. I salute the Senator for that. I am glad to have a chance to be associated with this bill.

Now, the second thing I would like to say is that is not all there is to do. We have different opinions in this body about so-called global warming. I believe, of course, there is global warming. Our grandparents can tell us that. The question, as Senator CRAIG said, is, What is causing it? And do we know enough about it to take steps? We have different opinions about that issue. That does not mean we are all unconcerned about it; we just have different

degrees of understanding of it and different opinions about the evidence we see.

I have a little different opinion than the Senator from Idaho. I support legislation that Senator CARPER and Senator CHAFEE and Senator GREGG and I supported in the last session of Congress that put modest caps on the utilities section for the production of carbon. I was not willing to go further than that because of the science I read and I'm not sure we know exactly how to solve this problem. My reading of it did not persuade me, one, that we know all that we need to know about global warming; and, two, maybe more importantly, I was not sure we knew what we were doing by just saying, OK, we will do this, and without having the solution.

Again, Senator HAGEL has suggested, well, let's come up with some technology. Let's come up with some science. And then we can make a better assessment about what we would be able to do if we were to put a cap on it.

I would suggest that in addition to Senator HAGEL's technology that he encourages in his legislation—that is one way to do it—a second way to do it is with some kind of caps, and there are a variety of proposals in this body to do that. That also encourages, in my opinion, technology. But then there is also a third point to make, and that takes us out of the debate as to whether it is a good idea or a bad idea to put on mandatory caps.

If China is going to build hundreds of coal-fired powerplants and India is going to build hundreds of coal-fired powerplants because that is the only technology available to them and the only source of fuel they have readily available, then we had better get busy trying to figure out a way to recapture carbon—not to comply with the Kyoto Treaty, but because we are going to have to have it in this world. Any realistic look at the sources of energy in the world says that for the next 20 or 25 years, nuclear power, natural gas, oil, and coal will be almost all of it.

There is a lot of support for renewable energy. Some people want to put up wind turbines taller than football fields covering square miles. I do not. I think that destroys the American landscape, and it does not produce much energy.

But one of the most thoughtful presentations I have heard on the solution to our common issues of clean energy and clean air has come from the National Resources Defense Council, one of the leading environmental organizations in this country. They are in favor of a coal solution—I hope I am attributing this correctly to them—of a coal solution for our clean air, clean energy policy. A big part of their reasoning is, they see what is happening in the rest of the world. If the United States, they reason, can figure out a way to gasify coal and then recapture the carbon, that gets rid of most of the noxious pollutants—sulfur, nitrogen, mercury. It recaptures the carbon, which we have not really figured out how to do yet, but it does not just do that for the United States, it shows the rest of the world how to do it. And then China, instead of building 800 new coal plants with the old technology, will build 800 coal gasification plants and recapture the carbon. India will do the same, and maybe Germany will do the same. There will be more energy, and we will all be able to breathe. And that is quite irrespective of mandatory caps.

One of the things I like about Senator HAGEL's proposal is there is not any way to study the technology of how we deal with greenhouse gases without getting into questions of coal gasification and the recapturing of carbon. There is not any way to do that. He is leading us to the tantalizing possibility that in the United States we might one day be able to say: We are the Saudi Arabia of coal. We have 500 years' worth of it. We can turn it into gas. We can recapture the carbon. We can use that to create the hydrogen for the hydrogen economy that we think might one day be down the road, and that, plus our supplies of natural gas and nuclear power, will give us clean energy and will give us clean air and will show the world how to do the same.

The Senator from Nebraska has put the spotlight where the spotlight ought to be. The United States of America, of all countries, should start with technology and science and say: Greenhouse gases is a problem. We are still researching how much of a problem it is. But we should, working with other countries, use our science and technology to deal with it and, in the process, see if it can lead us toward that brilliant intersection of clean energy and clean air that will one day give us a steady supply of energy and clean air that we can breathe.

I salute the Senator for his leadership and am glad to be a cosponsor. I look forward to working with him. As chairman of the Senate subcommittee on energy, we have some jurisdiction over global warming as well as energy technology commercialization. Senator Domenici, chairman of our full committee, had a full roundtable the other day on natural gas. We have one coming up on coal and coal gasification. I can assure my colleagues that the Hagel legislation will be an important part of that roundtable. I will do my best to make it an important part of energy hearings.

By Mr. DURBIN:

S. 389. A bill to provide for fire safety standards for cigarettes, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. DURBIN. Mr. President, I rise today to introduce the Fire Safe Cigarette Act of 2005. Last year the State of New York enacted a bold new law. As of June 2004, all cigarettes sold in the State are tested for fire safety and required to self-extinguish.

Nationwide the statistics regarding cigarette-related fires are startling. Cigarette-ignited fires account for an estimated 140,800 fires in the United States, representing the most common ignition source for fatal home fires and causing 30 percent of the fire deaths in the United States. Such fires cause more than 900 deaths and 2,400 injuries every year. Annually, more than $400 million in property damage is reported due to a fire caused by a cigarette. According to the National Fire Protection Association, one out of every four fire deaths in the United States are attributed to tobacco products—by far the leading cause of fatal home fires in the United States. Overall, the Consumer Product Safety Commission estimates that the cost of the loss of human life and personal property from not having a fire-safe cigarette standard is approximately $4.6 billion per year.

In my State of Illinois, cigarette-related fires have also caused too many senseless tragedies. In 1998 alone, the most recent year for which we have data, there were more than 1,700 cigarette-related fires, of which more than 900 were in people's homes. These fires led to 109 injuries and 8 deaths.

Tobacco companies spend billions on marketing and learning how to make cigarettes appealing to kids. It is not unreasonable to ask those same companies to invest in safer cigarette paper to make their products less likely to bum down a house. As of today cigarettes are designed to continue burning when left unattended. A common scenario is the delayed ignition of a sofa or mattress by a lit cigarette dropped by a smoker.

The Fire Safe Cigarette Act of 2005 requires the Consumer Product Safety Commission to promulgate a fire safety standard, specified in the legislation, for cigarettes. The CPSC would also have the authority to regulate the ignition propensity of cigarette paper for roll-your-own tobacco products. The Act gives the Consumer Product Safety Commission authority over cigarettes only for purposes of implementing and enforcing compliance with this Act and with the standard promulgated under the Act. It also allows states to pass more stringent fire-safety standards for cigarettes.

Two decades ago Joe Moakley set out to ensure that the tragic cigarette-caused fire that killed five children and their parents in Westwood, MA was not repeated. He introduced three bills, two of which passed. One commissioned a study that concluded it was technically feasible to produce a cigarette with a reduced propensity to start fires. The second required that the National Institute of Standards and Technology develop a test method for cigarette fire safety, and the last and final bill, the Fire-Safe Cigarette Act of 1999, mandates that the Consumer Product Safety Commission use this knowledge to regulate cigarettes with regard to fire safety.

Today I respectfully introduce this bill to bring fire-safe standards to all cigarettes sold in this country. I hope that the Commerce Committee will consider this legislation very soon and that my Colleagues will join me in supporting this effort. Now that New York serves as an example of success, it is time to establish a national standard to ensure that our Nation's children, elderly and families are protected.

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. 389

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 ''Cigarette Fire Safety Act of 2005''.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) Cigarette ignited fires are the leading cause of fire deaths in the United States.

(2) In 1999 there were 807 deaths from cigarette ignited fires, 2,193 civilian injuries from such fires, and $559,100,000 in property damage caused by such fires.

(3) Nearly 100 children are killed each year from cigarette related fires.

(4) For over 20 years former Member of Congress Joseph Moakley worked on behalf of burn victims, firefighters, and every individual who has lost a loved one in a fire. By securing enactment of the Cigarette Safety Act of 1984 and the Fire Safe Cigarette Act of 1990, Joseph Moakley completed the necessary technical work for a cigarette fire safety standard and paved the way for a national standard.

(5) It is appropriate for the Congress to require by law the establishment of a cigarette fire safety standard for the manufacture and importation of cigarettes.

(6) A recent study by the Consumer Product Safety Commission found that the cost of the loss of human life and personal property from not having a cigarette fire safety standard is $4,600,000,000 per year.

(7) It is appropriate that the regulatory expertise of the Consumer Product Safety Commission be used to implement a cigarette fire safety standard.

SEC. 3. CIGARETTE FIRE SAFETY STANDARD.

(a) IN GENERAL.—

(1) REQUIREMENT FOR STANDARD.—Not later than 18 months after the date of the enactment of this Act, the Commission shall, by rule, prescribe one or more fire safety standards for cigarettes that, except as provided in this Act, are substantively the same as the standards set forth by the State of New York in Part 429 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York, as promulgated on December 31, 2003 (in this Act referred to as the ''New York standard''), including the Appendix to such Part.

(2) CIGARETTES WITH UNIQUE CHARACTERISTICS.—In adapting section 4(c) of such Part 429, if the Commission determines that a cigarette, because of its unique or nontraditional characteristics, cannot be tested in accordance with the test method prescribed by the Commission, the manufacturer of such cigarette may propose a test method and performance standard for such cigarette. If the Commission finds the proposed method and standard to be equivalent to the test method and performance standard otherwise established by the Commission, the Commission may approve the method and standard and the manufacturer of such cigarette may employ such test method and performance standard to certify the cigarette pursuant to rules prescribed by this Act.

(3) COMMISSION.—In this Act, the term ''Commission'' means the Consumer Product Safety Commission.

(b) PROCEDURE.—

(1) IN GENERAL.—The rule under subsection (a), and any modification thereof, shall be prescribed in accordance with section 553 of title 5, United States Code.

(2) MODIFICATIONS.—

(A) MODIFICATION BY SPONSOR.—If the sponsor of the testing methodology used under subsection (a)(2) modifies the testing methodology in any material respect, the sponsor shall notify the Commission of the modification, and the Commission may incorporate the modification in the rule prescribed under subsection (a) if the Commission determines that the modification will enhance a fire safety standard established under subsection (a)(2).

(B) MODIFICATION BY COMMISSION.—The Commission may modify the rule prescribed under subsection (a), including the test requirements specified in subsection (a)(2), in whole or in part, only if the Commission determines that compliance with such modification is technically feasible and will enhance a fire safety standard established under that subsection. Any such modification shall not take effect earlier than 3 years after the date on which the rule is first issued.

(3) INAPPLICABILITY OF CERTAIN LAWS.—

(A) IN GENERAL.—No Federal law or Executive order, including the laws listed in subparagraph (B) but not including chapters 5, 6, 7, and 8 of title 5, United States Code, commonly referred to as the Administrative Procedures Act, may be construed to apply to the promulgation of the rule required by subsection (a), or a modification of the rule under paragraph (2) of this subsection.

(B) INCLUDED LAWS.—The Federal laws referred to in subparagraph (A) include the following:

(i) The Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

(ii) Chapter 6 of title 5, United States Code.

(iii) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(iv) The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), and the amendments made by that Act.

(c) EFFECTIVE DATE.—The Commission shall specify in the rule prescribed under subsection (a) the effective date of the rule. The effective date may not be later than 24 months after the date of the enactment of this Act.

(d) TREATMENT OF STANDARD.—

(1) IN GENERAL.—The fire safety standard promulgated under subsection (a) shall be treated as a consumer product safety standard promulgated under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.), except as provided in section 4.

(2) TREATMENT OF CIGARETTES.—A cigarette shall be treated as a consumer product under section 3(a)(1)(B) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)(B)) for purposes of this Act and for purposes of sections 17 and 18 of the Consumer Product Safety Act (15 U.S.C. 2066, 2067).

SEC. 4. PREEMPTION.

(a) IN GENERAL.—This Act, and any cigarette fire safety standard established or modified pursuant to section 3, may not be construed to preempt or otherwise affect in any way any law or regulation that prescribes a fire safety standard for cigarettes—

(1) set forth by the State of New York in the New York standard; or

(2) promulgated by any State that is more stringent than the fire safety standard for cigarettes established under this section.

(b) PRIVATE REMEDIES.—The provisions of section 25 of the Consumer Product Safety Act (15 U.S.C. 2074) shall apply with respect to the fire safety standard promulgated under section 3(a) of this Act.

SEC. 5. SCOPE OF JURISDICTION OF CONSUMER PRODUCT SAFETY COMMISSION.

Except as otherwise provided in this Act, the Commission shall have no jurisdiction over tobacco or tobacco products.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Consumer Product Safety Commission for fiscal year 2006, $2,000,000 for purposes of carrying out this Act.

(b) AVAILABILITY.—Amounts appropriated pursuant to subsection (a) shall remain available until expended.

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

S. 390. A bill to amend title XVIII of the Social Security Act to provide for coverage of ultrasound screening for abdominal aortic aneurysms under part B of the medicare program; to the Committee on Finance.

Mr. DODD. Mr. President, I come to the floor today, along with my colleague Senator JIM BUNNING, to introduce the Screening Abdominal Aortic Aneurysms Very Efficiently SAAAVE Act of 2005. This important legislation would provide Medicare coverage for screening for a dangerous condition known as abdominal aortic aneurysm—or AAA.

The SAAAVE Act is designed to save the lives of those suffering from abdominal aortic aneurysms, a silent killer that claims the lives of 15,000 Americans each year. AAAs occur when there is a weakening of the walls of the aorta, the body's largest blood vessel. This artery begins to bulge, most often very slowly and without symptoms, and can lead to rupture and severe internal bleeding. AAA is a devastating condition that is often fatal without detection, with less than 15 percent of those afflicted with a ruptured aorta surviving. Estimates indicate that 2.7 million Americans suffer from AAA.

With introduction of this important legislation, Congress recognizes abdominal aortic aneurysm screening as essential to stopping its deadly effects. Research indicates that when detected before rupturing, AAAs are treatable and curable in 95 percent of the cases. And while most AAAs are never diagnosed, nearly all can be detected through an inexpensive and painless screening.

I am particularly pleased that the U.S. Preventive Services Task Force recently recommended AAA screening for all men between the ages of 65 and 75 that have ever smoked. This independent panel of experts in primary care and prevention concluded that screening for abdominal aortic aneurysms for this particularly vulnerable population is especially important. The

recognition of this screening measure by this respected body makes perfectly clear the lifesaving potential offered by AAA screening.

For more than four decades the Medicare program has provided a literal lifeline for America's seniors and individuals with disabilities. However, for far too long this valuable program—originally crafted only to provide needed care after an illness—failed to cover valuable preventive services. Recently, though, Medicare has evolved to include a number of preventive measures, such as mammography and colorectal screenings. With today's introduction of the SAAAVE Act, we again move Medicare toward greater inclusion of lifesaving preventive measures. This legislation reflects the changing attitudes toward the value of preventive health care services and moves us toward modernizing the Medicare program to better meet the needs of its more than 40 million beneficiaries. With enactment of the SAAAVE Act, instead of waiting to treat a ruptured aorta, Medicare will now help high-risk seniors avert this often-deadly disease through preventive and lifesaving screening.

Lastly, I want to thank the legislation's chief sponsors in the House of Representatives, GENE GREEN and JOHN SHIMKUS. Representatives GREEN and SHIMKUS have been tireless advocates on behalf of patients suffering from abdominal aortic aneurysms and their devotion to modernizing the Medicare program to include greater preventive services is truly admirable. I look forward to continuing working with my colleagues from the House to advance the SAAAVE Act in the 109th Congress.

When Senator BUNNING and I first introduced this legislation in the last Congress, we were joined by patients who had suffered a ruptured aorta as result of an AAA and their families. At this event these patients shared with us their harrowing and personal stories of battling this deadly condition. It is because of struggles like theirs that we are here today at the outset of an effort to prevent abdominal aortic aneurysms from advancing to the point of rupture by providing coverage for a simple yet lifesaving screening. Simply, Mr. President, this legislation is about saving lives. I urge all of my colleagues to support the SAAAVE Act.

Mr. BUNNING. Mr. President, I am pleased to be joining Senator DODD from Connecticut today in re-introducing the Screening Abdominal Aortic Aneurysms Very Efficiently Act of 2005—also known as the SAAAVE Act—in the 109th Congress.

This is an important bill that could potentially save the lives of many Medicare beneficiaries. Unfortunately, too many Americans die from ruptured abdominal aortic aneurysms each year without ever knowing they had this condition. In fact, less than 15 percent of people who have a ruptured abdominal aortic aneurysm survive.

That is why our bill is so important. The SAAAVE Act would add a new screening benefit to Medicare so that people at risk for abdominal aortic aneurysms could be tested. The test is simple. In fact, it's just an ultrasound test, which is painless, non-invasive and inexpensive.

Medicare beneficiaries found to have an abdominal aortic aneurysm could have surgery if needed or could simply be monitored by their doctors.

Early detection is the key to preventing ruptures of these aneurysms and preventing deaths. In fact, these aneurysms can be successfully treated 95 percent of the time if they are detected before rupturing.

The legislation also includes a national educational and information campaign to get the word out about the health risks associated with abdominal aortic aneurysms. Too often, those with these aneurysms simply don't know they have one until it ruptures. The educational campaign requires the Department of Health and Human Services to focus their education efforts not only on the general public, but also among health care practitioners as well.

I am pleased we are introducing this bill today, and I look forward to working with my colleague from Connecticut in getting it passed.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 52—HONORING SHIRLEY CHISHOLM FOR HER SERVICE TO THE NATION AND EXPRESSING CONDOLENCES TO HER FAMILY, FRIENDS, AND SUPPORTERS ON HER DEATH

Mrs. CLINTON (for herself and Mr. LEVIN) submitted the following resolution; which was considered and agreed to:

S. RES. 52

Whereas Shirley Chisholm was born Shirley Anita St. Hill on November 30, 1924, in Brooklyn, New York, to Charles and Ruby St. Hill, immigrants from British Guyana and Barbados;

Whereas in 1949, Shirley Chisholm was a founding member of the Bedford-Stuyvesant Political League;

Whereas in 1960, she established the Unity Democratic Club, which was instrumental in mobilizing black and Hispanic voters;

Whereas in 1964, Chisholm ran for a New York State Assembly seat and won;

Whereas in 1968, Chisholm became the first African-American woman elected to Congress, representing New York's Twelfth Congressional District;

Whereas as a member of Congress, Chisholm hired women only for her staff, was an advocate for civil rights, women's rights, and the poor, and spoke out against the Vietnam War;

Whereas Shirley Chisholm co-founded the National Organization for Women;

Whereas she remained an outspoken advocate of women's rights throughout her career, saying, ''Women in this country must become revolutionaries. We must refuse to accept the old, the traditional roles and stereotypes.'';

Whereas in 1969, Shirley Chisholm, along with other African-American members of Congress, founded the Congressional Black Caucus;

Whereas on January 25, 1972, Chisholm announced her candidacy for President and became the first African-American to be considered for the presidential nomination by a major national political party;

Whereas although Chisholm did not win the nomination at the 1972 Democratic National Convention in Miami, she received the votes of 151 delegates;

Whereas Shirley Chisholm served 7 terms in the House of Representatives before retiring from politics in 1982;

Whereas Shirley Chisholm was a dedicated member of Delta Sigma Theta Sorority and received the sorority's highest award, the Mary Church Terrell Award, in 1977 for her political activism and contributions to the Civil Rights Movement;

Whereas Shirley Chisholm was a model public servant and an example for African-American women, and her strength and perseverance serve as an inspiration for all people striving for change; and

Whereas on January 1, 2005, Shirley Chisholm died at the age of 80: Now, therefore, be it

Resolved, That the Senate—

(1) honors Shirley Chisholm for her service to the Nation, her work to improve the lives of women and minorities, her steadfast commitment to demonstrating the power of compassion, and her dedication to justice and equality; and

(2) expresses its deepest condolences to her family, friends, and supporters.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 12—PROVIDING THAT ANY AGREEMENT RELATING TO TRADE AND INVESTMENT THAT IS NEGOTIATED BY THE EXECUTIVE BRANCH WITH ANOTHER COUNTRY MUST COMPLY WITH CERTAIN MINIMUM STANDARDS

Mr. FEINGOLD submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 12

Whereas there is general consensus among the American public and the global community that, with respect to international trade and investment rules—

(1) global environmental, labor, health, food security, and other public interest standards must be strengthened to prevent a global ''race to the bottom'';

(2) domestic environmental, labor, health, food security, and other public interest standards and policies must not be undermined, including those based on the use of the precautionary principle (the internationally recognized legal principle that holds that, when there is scientific uncertainty regarding the potential adverse effects of an action, a product or technology, a government should act in a way that minimizes the risk of harm to human health and the environment);

(3) provision and regulation of public services such as education, health care, transportation, energy, water, and other utilities are basic functions of democratic government and must not be undermined;

(4) raising standards in developing countries requires additional assistance and respect for diversity of policies and priorities;

(5) countries must be allowed to design and implement policies to sustain family farms and achieve food security;

(6) healthy national economies are essential to a healthy global economy, and the right of governments to pursue policies to maintain and create jobs must be upheld;

(7) the right of State and local and comparable regional governments of all countries to create and enforce diverse policies must be safeguarded from imposed downward harmonization; and

(8) rules for the global economy must be developed and implemented democratically and with transparency and accountability; and

Whereas many international trade and investment agreements in existence and currently being negotiated do not serve these interests, and have caused substantial harm to the health and well-being of communities in the United States and within countries that are trading partners of the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That any agreement relating to trade and investment that is negotiated by the executive branch with another country should comply with the following:

(1) REGARDING INVESTOR AND INVESTMENT POLICY.—No such agreement that includes any provision relating to foreign investment may permit a foreign investor to challenge or seek compensation because of a measure of a government at the national, State, or local level that protects the public interest, including, but not limited to, public health, safety, and welfare, the environment, and worker protections, unless a foreign investor demonstrates that the measure was enacted or applied primarily for the purpose of discriminating against a foreign investor or foreign investment.

(2) REGARDING SERVICES.—Any such agreement, to the extent applicable, shall comply with the following:

(A)(i) The agreement may not discipline a government measure relating to—

(I) a public service, including public services for which the government is not the sole provider;

(II) a service that requires extensive regulation;

(III) an essential human service; and

(IV) a service that has an essentially social component.

(ii) A service described in clause (i) includes, but is not limited to, a public benefit program, health care, health insurance, public health, child care, education and training, the distribution of a controlled substance or product (including alcohol, tobacco, and firearms), research and development on a natural or social science, a utility (including an energy utility, water, waste disposal, and sanitation), national security, maritime, air, surface, and other transportation services, a postal service, energy extraction and any related service, and a correctional service.

(B) The agreement shall permit a country that has made a commitment in an area described in subparagraph (A) to revise that commitment for the purposes of public interest regulation without any financial or other trade-related penalty.

(C) The agreement shall ensure that any rule governing a subsidy or government procurement fully protects the ability of a government to support and purchase a service in a way that promotes economic development, social justice and equity, public health, environmental quality, human rights, and the rights of workers.

(D) The agreement shall not make a new commitment on the temporary entry of workers because such policies should be determined by the Congress, after consideration by the congressional committees with jurisdiction over immigration to avoid an array of inconsistent policies and any policy that fails to—

(i) include labor market tests that ensure that the employment of temporary workers will not adversely affect other similarly employed workers;

(ii) involve labor unions in the labor certification process implemented under the immigration program for temporary workers under section 101(a)(15)(H)(i) of the Immigration and Nationality Act, including the filing by an employer of an application under section 212(n)(1) of that Act; and

(iii) guarantee the same workplace protections for temporary workers that are available to all workers.

(E) The agreement shall guarantee that all governments that are parties to the agreement can regulate foreign investors in services and other service providers in order to protect public health and safety, consumers, the environment, and workers' rights, without requiring the governments to establish their regulations to be the least burdensome option for foreign service providers.

(3) REGARDING POLICIES TO SUPPORT AMERICAN WORKERS AND SMALL, MINORITY, AND WOMEN-OWNED BUSINESSES.—Any such agreement shall preserve the right of Federal, State, and local governments to maintain or establish policies to support American workers and small, minority, or women-owned businesses, including, but not limited to, policies with respect to government procurement, loans, and subsidies.

(4) REGARDING ENVIRONMENTAL, LABOR, AND OTHER PUBLIC INTEREST STANDARDS.—Any such agreement—

(A) may not supersede the rights and obligations of parties under multilateral environmental, labor, and human rights agreements; and

(B) shall, to the extent applicable, include commitments, subject to binding enforcement on the same terms as commercial provisions—

(i) to adhere to specified workers' rights and environmental standards;

(ii) not to diminish or fail to enforce existing domestic labor and environmental provisions; and

(iii) to abide by the core labor standards of the International Labor Organization (ILO).

(5) REGARDING UNITED STATES TRADE LAWS.—No such agreement may—

(A) contain a provision which modifies or amends, or requires a modification of or an amendment to, any law of the United States that provides to United States businesses or workers safeguards from unfair foreign trade practices, including any law providing for—

(i) the imposition of countervailing or antidumping duties;

(ii) protection from unfair methods of competition or unfair acts in the importation of articles;

(iii) relief from injury caused by import competition;

(iv) relief from unfair trade practices; or

(v) the imposition of import restrictions to protect the national security; or

(B) weaken the existing terms of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, or the Agreement on Subsidies and Countervailing Measures, of the World Trade Organization, including through the domestic implementation of rulings of dispute settlement bodies.

(6) REGARDING FOOD SAFETY.—No such agreement may—

(A) restrict the ability of the United States to ensure that food products entering the United States are rigorously inspected to establish that they meet all food safety standards in the United States, including inspection standards;

(B) force acceptance of different food safety standards as ''equivalent'', or require international harmonization of food safety standards, which undermine the level of human health protection provided under domestic law; or

(C) restrict the ability of governments to enact policies to guarantee the right of consumers to know where and how their food is produced.

(7) REGARDING AGRICULTURE AND FOOD SECURITY.—No such agreement may, with respect to food and other agricultural commodities—

(A) contain provisions that prevent countries from—

(i) establishing domestic and global reserves,

(ii) managing supply,

(iii) enforcing antidumping disciplines,

(iv) ensuring fair market prices, or

(v) vigorously enforcing antitrust laws, in order to guarantee competitive markets for family farmers; or

(B) prevent countries from developing the necessary sanitary and phytosanitary standards to prevent the introduction of pathogens or other potentially invasive species which may adversely affect agriculture, human health, or the environment.

(8) REGARDING TRANSPARENCY.—(A) The process of negotiating any such agreement must be open and transparent, including through—

(i) prompt and regular disclosure of full negotiating texts; and

(ii) prompt and regular disclosure of negotiating positions of the United States.

(B) In negotiating any such agreement, any request or offer relating to investment, procurement, or trade in services must be made public within 10 days after its submission if such request or offer—

(i) proposes specific Federal, State, and local laws and regulations in the United States to be changed, eliminated, or scheduled under such an agreement, including, but not limited to, subsidies, tax rules, procurement rules, professional standards, and rules on temporary entry of persons;

(ii) proposes for coverage under such an agreement—

(I) specific essential public services, including, but not limited to, public benefits programs, health care, education, national security, sanitation, water, energy, and other utilities; or

(II) private service sectors that require extensive regulation or have an inherently social component, including, but not limited to, maritime, air transport, trucking, and other transportation services, postal services, utilities such as water, energy, and sanitation, corrections, education and childcare, and health care; or

(iii) proposes a discipline or process of general application which may interfere with the ability of the United States or State, local, or tribal governments to adopt, implement, or enforce laws and regulations identified in clause (i) or provide or regulate services identified in clause (ii).

(C) The broad array of constituencies representing the majority of the people of the United States, including labor unions, environmental organizations, consumer groups, family farm groups, public health advocates, faith-based organizations, and civil rights groups, must have at least the same representation on trade advisory committees and access to trade negotiators and negotiating fora as those constituencies representing commercial interests.

(D) Any dispute resolution mechanism established in any such agreement must be

open and transparent, including through disclosure to the public of documents and access to hearings, and must permit participation by nonparties through the filing of amicus briefs, as well as provide for standing for State and local governments as intervenors.

(9) REGARDING GOVERNMENTAL AUTHORITY.—No such agreement may contain provisions that bind national, State, local, or comparable regional governments to limiting regulatory, taxation, spending, or procurement authority without an opportunity for public review and comment described in paragraph (8), and without the explicit, informed consent of the national, State, local, or comparable regional legislative body concerned, through such means as is decided by such legislative body.

(10) REGARDING ACCESS TO MEDICINES AND SEEDS.—(A) No such agreement may contain provisions that prevent countries from taking measures to protect public health by ensuring access to medicines.

(B) No such agreement may constrain the rights of farmers to save, use, exchange, or sell farm-saved seeds and other publicly available seed varieties.

(11) REGARDING DEVELOPING COUNTRIES.—Any such agreement must grant special and differential treatment for developing countries with regard to the timeframe for implementation of the agreement as well as other concerns.

Mr. FEINGOLD. Mr. President, I am resubmitting a measure to help begin to address one of the central problems our Nation faces, namely the loss of family-supporting jobs because of our flawed trade policies.

Florence, WI is a town in the far northeastern corner of my home State. It is just a few miles from the border with the Upper Peninsula of Michigan.

Like most Americans, the residents of Florence are probably too busy with their own lives to pay close attention to the trade policies of our Nation. But a few weeks ago, a hundred families in that small community got a sharp introduction to the realities of those policies. Pride Manufacturing, the world's largest maker of golf tees, announced that it would be closing down its plant in Florence, and moving that operation and the hundred or so jobs that go with it to China.

That announcement probably wasn't noticed by many people outside of my home State—one company in one small community in the far northeastern corner of Wisconsin leaving for China doesn't raise many eyebrows in Washington or Wall Street. But it is a serious matter for the families whose livelihood is directly affected by the move. And it will certainly have an impact on the community in which they live. Some families may try to stay, but some may be forced to look elsewhere for jobs. The local school district is already trying to cope with declining enrollment and the challenges of a largely rural district. The prospect of losing additional families will only make matters worse. Local businesses that relied on the custom of those families will be hit. Car dealers, grocery stores, hardware stores, clothing stores, everyone will be potentially impacted.

All because a local business is closing down as a result of the trade policies of this government.

We have seen that story repeated across Wisconsin. Our manufacturing sector has been hit particularly hard. And I know Wisconsin is not alone in that experience.

The record of the major trade agreements into which our Nation has entered over the past few years has been dismal. Thanks in great part to the flawed fast track rules that govern consideration of legislation implementing trade agreements, the United States has entered into a number of trade agreements that have contributed to the significant job loss we have seen in recent years, and have laid open to assault various laws and regulations established to protect workers, the environment, and our health and safety.

Indeed, those agreements undermine the very democratic institutions through which we govern ourselves.

The loss of jobs, especially manufacturing jobs, to other countries has been devastating to Wisconsin, and to the entire country. When I opposed the North American Free Trade Agreement, the Uruguay round of the General Agreement on Tariffs and Trade, Permanent Normal Trade Relations for China, and other flawed trade measures, I did so in great part because I believed they would lead to a significant loss of jobs. But even as an opponent of those agreements, I don't think I could have imagined just how bad things would get in so short a time.

The trade policy of this country over the past several years has been appalling. The trade agreements into which we have entered have contributed to the loss of key employers, ravaging entire communities. But despite that clear evidence, we continue to see trade agreements being reached that will only aggravate this problem.

This has to stop. We cannot afford to pursue trade policies that gut our manufacturing sector and send good jobs overseas. We cannot afford to undermine the protections we have established for workers, the environment, and our public health and safety. And we cannot afford to squander our democratic heritage by entering into trade agreements that supersede our right to govern ourselves through open, democratic institutions.

The legislation I am pleased to reintroduce today addresses this problem, at least in part. It establishes some minimum standards for the trade agreements into which our nation enters. I introduced an identical resolution in the last Congress as a companion to a resolution introduced in the other body by my colleague from Ohio, Mr. SHERROD BROWN).

This measure sets forth principles for future trade agreements. It is a break with the so called NAFTA model, and instead advocates the kinds of sound trade policies that will spur economic growth and sustainable development.

The principles set forth in this resolution are not complex. They are straightforward and achievable. The resolution calls for enforceable worker protections, including the core International Labor Organization standards.

It preserves the ability of the United States to enact and enforce its own trade laws.

It protects foreign investors, but states that foreign investors should not be provided with greater rights than those provided under U.S. law, and it protects public interest laws from challenge by foreign investors in secret tribunals.

It ensures that food entering into our country meets domestic food safety standards.

It preserves the ability of Federal, State, and local governments to maintain essential public services and to relate private sector services in the public interest.

It requires that trade agreements contain environmental provisions subject to the same enforcement as commercial provisions.

It preserves the right of Federal, State, and local governments to use procurement as a policy tool, including through Buy American laws, environmental laws such as recycled content, and purchasing preferences for small, minority, or women-owned businesses.

It requires that trade negotiations and the implementation of trade agreements be conducted openly.

These are sensible policies. They are entirely consistent with the goal of increased international commerce, and in fact they advance that goal.

The outgrowth of the major trade agreements I referenced earlier has been a race to the bottom in labor standards, environmental health and safety standards, in nearly every aspect of our economy. A race to the bottom is a race in which even the winners lose.

For any who doubt this, I invite you to ask the families in Florence, WI who will watch their jobs move to China.

We can't let this continue to happen. We need to turn our trade policies around. We need to pursue trade agreements that will promote sustainable economic growth for our Nation and for our trading partners. The resolution I submit today will begin to put us on that path, and I urge my colleagues to support it.

SENATE CONCURRENT RESOLUTION 13—CONGRATULATING ASME ON THEIR 125TH ANNIVERSARY, CELEBRATING THE ACHIEVEMENTS OF ASME MEMBERS, AND EXPRESSING THE GRATITUDE OF THE AMERICAN PEOPLE FOR ASME'S CONTRIBUTIONS

Mr. SUNUNU submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 13

Whereas in 2005, ASME, incorporated in 1880 as the American Society of Mechanical Engineers, celebrates its 125th anniversary as one of the premier professional organizations focused on technical, educational, and

research issues of the engineering community;

Whereas ASME plays a key role in protecting the welfare and safety of the public through the development and promulgation of over 600 codes and standards, including codes governing the manufacture of boilers, pressure vessels, elevators, escalators, petroleum and hazardous liquid pipelines, cranes, forklifts, power tools, screw threads and fasteners, and many other products routinely used by industry and people in the United States and around the world;

Whereas ASME, through its 120,000 members, works diligently to ensure the provision of quality science, technology, engineering, and mathematics education for young people as a way to foster and encourage the advancement of technology;

Whereas industrial pioneers and ASME members such as Thomas Edison, Henry Ford, and George Westinghouse helped to build ASME's engineering society even as ASME was helping to build the economy of the United States;

Whereas ASME members help to ensure the development and operation of quality and technologically advanced transportation systems, including automobile, rail, and air travel;

Whereas ASME members contribute to research and development that identifies emerging and future technical needs in evolving and multidisciplinary areas;

Whereas ASME continues to provide quality continuing education programs designed to keep engineers at the cutting edge of technology; and

Whereas in the aftermath of the terrorist attacks on the United States of September 11, 2001, ASME members have intensified efforts to develop technologies for homeland security and the protection of the critical assets of this Nation: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) congratulates ASME on its 125th anniversary;

(2) recognizes and celebrates the achievements of all ASME members;

(3) expresses the gratitude of the people of the United States for ASME's contributions to the health, safety, and economic well-being of the citizenry; and

(4) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the president of ASME.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. ISAKSON. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on February 15, 2005, at 9:30 a.m., in open session to receive testimony on the priorities and plans for the Atomic Energy Defense activities of the Department of Energy and to review the defense authorization request for fiscal year 2006.

The PRESIDING OFFICER. Without objection, it is to ordered:

COMMITTEE ON ARMED SERVICES

Mr. ISAKSON. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on February 15, 2005, at 4 p.m., in open session to consider the following nominations:

Mr. John Paul Woodley, Jr., to be Assistant Secretary of the Army for Civil Works; Mr. Buddie J. Penn to be Assistant Secretary of the Navy for Installations and Environment; and Admiral William J. Fallon, USN, for reappointment to the grade of Admiral and to be Commander, U.S. Pacific Command.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ISAKSON. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, February 15, 2005, at 10 a.m., on the President's FY 2006 Budget request for the Department of Homeland Security's Transportation Security Administration (TSA) and related programs.

THE PRESIDING OFFICER. Without objection, it so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. ISAKSON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, February 15, 2004 at 9:30 a.m. to hold a nomination hearing.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. ISAKSON. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Tuesday, February 15, 2005, for a hearing on the administration's proposed fiscal year 2006 Department of Veterans' Affairs budget.

The hearing will take place in room 418 of the Russell Senate Office Building at 10 a.m.

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

SUBCOMMITTEE ON ENERGY

Mr. ISAKSON. Mr. President, I ask unanimous consent that the subcommittee on Energy be authorized to meet during the session of the Senate on Tuesday, February 15th at 2:30 p.m. to receive testimony regarding the prospects for liquefied natural gas (LNG) in the United States (panel 1) and to discuss the safety and security issues related to LNG development (panel 2). Witnesses will be the FERC, the Coast Guard, State authorities, and industry stakeholders. Issues that will be discussed include LNG siting process; risk assessment; and the State and local level's role.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. ISAKSON. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations be authorized to meet on Tuesday, February 15, 2005, at 9:30 a.m., for a hearing entitled ''The United Nations' Management and Oversight of the Oil-for-Food Program.''

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

PRIVILEGE OF THE FLOOR

Mr. ALEXANDER. Mr. President, I ask unanimous consent that Jeff Muhs be granted privileges of the floor during my remarks.

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

CONGRATULATING THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 13, which was submitted earlier today by Senator SUNUNU.

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

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 13) congratulating ASME on their 125th anniversary, celebrating the achievements of ASME members, and expressing the gratitude of the American people for ASME's contributions.

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

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, en bloc, and that any statements relating to the resolution be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 13) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 13

Whereas in 2005, ASME, incorporated in 1880 as the American Society of Mechanical Engineers, celebrates its 125th anniversary as one of the premier professional organizations focused on technical, educational, and research issues of the engineering community;

Whereas ASME plays a key role in protecting the welfare and safety of the public through the development and promulgation of over 600 codes and standards, including codes governing the manufacture of boilers, pressure vessels, elevators, escalators, petroleum and hazardous liquid pipelines, cranes, forklifts, power tools, screw threads and fasteners, and many other products routinely used by industry and people in the United States and around the world;

Whereas ASME, through its 120,000 members, works diligently to ensure the provision of quality science, technology, engineering, and mathematics education for young people as a way to foster and encourage the advancement of technology;

Whereas industrial pioneers and ASME members such as Thomas Edison, Henry Ford, and George Westinghouse helped to build ASME's engineering society even as ASME was helping to build the economy of the United States;

Whereas ASME members help to ensure the development and operation of quality and technologically advanced transportation systems, including automobile, rail, and air travel;

Whereas ASME members contribute to research and development that identifies emerging and future technical needs in evolving and multidisciplinary areas;

Whereas ASME continues to provide quality continuing education programs designed to keep engineers at the cutting edge of technology; and

Whereas in the aftermath of the terrorist attacks on the United States of September 11, 2001, ASME members have intensified efforts to develop technologies for homeland security and the protection of the critical assets of this Nation: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) congratulates ASME on its 125th anniversary;

(2) recognizes and celebrates the achievements of all ASME members;

(3) expresses the gratitude of the people of the United States for ASME's contributions to the health, safety, and economic well-being of the citizenry; and

(4) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the president of ASME.

UNANIMOUS CONSENT AGREEMENT—S. 384

Mr. FRIST. Mr. President, I ask unanimous consent that at 11 a.m. on Wednesday, February 16, the Senate proceed to the consideration of S. 384, a bill to extend the existence of the Nazi War Crimes Working Group; provided that there be 90 minutes of debate equally divided between the majority leader or his designee and the Democratic leader or his designee; provided further that no amendments be in order, and that following the use or yielding back of the time the bill be read a third time and the Senate proceed to a vote on passage without any intervening action or debate.

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

Mr. FRIST. I further ask unanimous consent that S. 384 be placed on the Senate Calendar.

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

ORDERS FOR WEDNESDAY, FEBRUARY 16, 2005

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, the Senate adjourn until 9:30 a.m. on Wednesday, February 16. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to a period for morning business for up to 90 minutes, with the first 30 minutes under the control of the majority leader or his designee and the second 30 minutes under the control of the Democratic leader or his designee; provided that following morning business, the Senate proceed to the consideration of S. 384, the Nazi War Crimes Working Group Extension Act as provided under the previous order.

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

The Democratic leader.

Mr. REID. Mr. President, if the distinguished majority leader would yield, I am disappointed but I understand that we are not going to be able to move tomorrow to the genetic nondiscrimination matter. It is my understanding that there is a potential blue-slip problem with the House. I had hoped we could get that done. That is something that is very important to do. We will be happy to cooperate with the majority leader in any way we can to move that along. It passed last time with 90-some-odd votes. I hope we can get that done. Even with a little bump in the road, maybe we can still get that done this week.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. In response through the Chair, this bill is a critically important bill, in my mind, in that we have worked on it for 7 years. We have passed it with an overwhelming majority in this body. It does good things for people who have a whole range of illnesses. It really represents the great advances in science today, advances in research, advances that come in large part because of what this body did with the human genome project in funding over a period of about 10 years, the unraveling of the genetic code which makes us all human, which is still mind-boggling. With that, it introduces all sorts of privacy issues and a potential for discrimination and this comes back and addresses it head on. It is a bill upon which we generally have all agreed.

We are working with the Finance Committee and with the HELP Committee internally as well as with the House. I do not want to be overly optimistic, but I think by tomorrow we will work this out and get it to the Senate floor.

Mr. REID. Mr. President, if the distinguished leader would yield again, I am sure others have felt this way in the past, but it is interesting to me that anytime there is anything that the distinguished majority leader talks about that deals with medicine, it is almost as if there is a light that comes on. It is just so apparent why he was such a good physician.

Mr. FRIST. Mr. President, we will move on.

The PRESIDING OFFICER. The majority leader.

PROGRAM

Mr. FRIST. Tomorrow, following morning business, the Senate will begin consideration of a 2-year extension of the Nazi War Crimes Working Group. We will have limited debate on this measure prior to its passage. We have not received any requests for a rollcall vote on this bill. I anticipate that we can pass it with a voice vote.

For the remainder of the day we will consider any legislative or executive item cleared for action.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. 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 5:45 p.m., adjourned until Wednesday, February 16, 2005, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 15, 2005:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

LESTER M. CRAWFORD, OF MARYLAND, TO BE COMMISSIONER OF FOOD AND DRUGS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, VICE MARK B. MCCLELLAN.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. STANLEY E. GREEN, 0000

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

GERALD L. DUNLAP, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

ROBERT D. SAXON, 0000

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

RICHARD R. GUZZETTA, 0000
ROBERT J. JOHNSON, 0000

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

JAMES R. HAJDUK, 0000
FRITZ W. KIRKLIGHTER, 0000

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

BRIAN E. BACA, 0000
ANTHONY E. BAKER, SR., 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY DENTAL CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be colonel

JOHN M. BALAS, JR., 0000
WILLIAM T. BURNS, 0000
LOUIS F. CAMPANA II, 0000
JOSE J. CONDE, 0000
RICHARD F. DRUCKMAN, 0000
JOHN E. DULSKI, 0000
JOHN W. * ETZENBACH, 0000
DAVID K. FIASCHETTI, 0000
ROGER S. FIEDLER, 0000
RAYMOND G. HYNSON, 0000
SHANNON S. MCGEE, 0000
DAVID L. MOSS, 0000
STEVEN ROBERTS, 0000
WALTER F. RONGEY, 0000
STEVEN P. RUBCZAK, 0000
BORIS J. SIDOW, 0000
ASHTON C. TRIER, 0000
DAVID A. VINCENT, 0000
VINCENT P. VISSICHELLI, 0000
JAMES O. WALMANN, 0000
PAUL J. WARDEN, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY NURSE CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be colonel

ROBERT D. BOWMAN, 0000
NANCY J. HUGHES, 0000
KATHY D. KING, 0000
PAUL M. KONDRAT, 0000
RUTH E. LEE, 0000
LAWRENCE A. MARQUEZ, 0000
BRENDA C. MCDANIEL, 0000
CAROL A. NEWMAN, 0000
TIMOTHY D. REESE, 0000
JUDITH RUIZ, 0000
ARTHUR C. SAVIGNAC, 0000
THERESA M. SULLIVAN, 0000

CONFIRMATION

Executive nomination confirmed by the Senate: Tuesday, February 15, 2005.

DEPARTMENT OF HOMELAND SECURITY

MICHAEL CHERTOFF, OF NEW JERSEY, TO BE SECRETARY OF HOMELAND SECURITY.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.