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# Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

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# Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable LISA MURKOWSKI, a Senator from the State of Alaska.

PRAYER

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

Let us pray.

Our Lord and Ruler, Your Name is wonderful. We see Your glory in the heavens above and in the beauties of the Earth. Give us this day our marching orders. We seek Your wisdom. Guide our priorities so that we glorify Your Name. May even our thoughts be acceptable to You. Help our words and actions to be strengthened by Your precepts. Give us enough humility to acknowledge our dependence on You, for even our heartbeats are borrowed.

Strengthen our Senators for today's journey. Listen to their longings and give them Your peace. Protect and sustain their loved ones. We pray in Your strong Name. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable LISA MURKOWSKI, a Senator from the State of Alaska, led the Pledge of Allegiance, as follows:

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

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, March 8, 2005.*

*To the Senate:*

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

TED STEVENS,
*President pro tempore.*

Ms. MURKOWSKI 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. Madam President, this morning the Senate will resume debate on the bankruptcy legislation. Under the order, at 10:15 this morning we will begin 2 hours of debate on Senator SCHUMER's amendment related to abortion clinics. That vote will, therefore, occur at 12:15 today. Following that vote, the Senate will recess until 2:15 for our weekly policy luncheons to meet. When we return to session at 2:15, the Senate will proceed to vote on invoking cloture on the underlying bankruptcy bill. I hope and expect the Senate will be able to invoke cloture this afternoon so that we will be able to vote on passage this week. We will have germane amendments to consider postcloture and, therefore, additional votes can be expected.

## BANKRUPTCY REFORM

Mr. FRIST. Madam President, we have made tremendous progress on the bankruptcy bill over the last 2 weeks. Republicans and Democrats have stood together to support a bankruptcy reform package that the House will pass and the President will sign into law. The Senate has resisted attempts to renegotiate hard-fought compromises and legislate on unrelated issues. I do thank my colleagues, our colleagues, for staying focused on the bankruptcy bill.

There have been many attempts to sidetrack the Senate on this bill. But let me just take a moment to reiterate why we need bankruptcy reform and what this bill really does.

The bill before us establishes a means test based on a simple, fair principle: those who have the means should repay their debts. Personal bankruptcies are skyrocketing, and wealthy debtors are walking away from debts that they had the ability to repay. Opportunistic debtors who have the means to repay use the law to evade personal responsibility.

This abuse does not hurt the creditor only, it hurts all who pay higher fees and prices as a result. Every bill that you and I pay, that our families pay, includes a ''bankruptcy tax'' of about $400 a year per household. That tax is figured into every bill, every phone bill, every electric bill, every mortgage payment, every furniture purchase or car loan we pay. Interest rates are higher, downpayment requirements are larger, grace periods become shorter, late payment penalties become astronomical—all because some people are shirking their debt obligations.

This legislation is targeted to ensure that wealthy debtors who can pay their debts do so. It specifically exempts anyone who earns less than the median income in their State, and it also allows every consumer to show special circumstances if they cannot handle a repayment plan.

We know that one reason people file for bankruptcy is because of unexpected medical emergencies. Consequently, this legislation allows every filer to deduct 100 percent of their medical costs. We also know that education is a big outlay for many families. Under bankruptcy reform, parents can deduct private school tuition to protect their children's educational opportunities.

In addition, the bankruptcy bill strengthens protections for child support and alimony payments. It protects

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



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patient privacy and care during bankruptcy proceedings that involve health care facilities. It protects consumers from deceptive credit practice that can lead to financial distress, and it protects the system that allows America to be one of the most generous countries when it comes to bankruptcy.

There remain, however, some misconceptions about this bill that should be dispelled. The first regards our protections for Active-Duty military personnel and veterans. Some opponents of the bill charge that we do not adequately address the needs of our combat men and women who suffer financially.

Madam President, it should go without saying that the Senate and the American people deeply honor our men and women in uniform. Every day, these young soldiers sacrifice to protect us and to defend the freedom we enjoy. We are indebted to them for the dangers they face on the field, and we are indebted to their families they leave in order to fight for that freedom.

That is why last Tuesday we passed the Sessions amendment to help clarify protections for our military and others under a safe harbor in the bill. This provision, which passed with 63 votes, makes explicitly clear that Active-Duty military and low-income veterans are protected by the safe harbor. In addition, it also protects debtors with serious medical conditions.

On this issue, the other side has created a red herring designed to score political points and shift the debate away from bankruptcy abuse. Another red herring is the charge that the bankruptcy bill sacrifices consumers to benefit credit card companies. The truth is that the bill before us includes several carefully negotiated amendments that expressly protect credit card holders.

Among its beefed-up consumer protections are increased disclosure requirements for credit card statements and mandates that credit card companies assist borrowers in determining how long it will take to pay off their credit card balances, additional disclosures to borrowers buying and refinancing their homes, and additional disclosures regarding credit card introductory rates and new disclosures related to credit card late fees.

These protections are the result of lengthy and careful negotiation. Additional measures should be properly addressed in the Banking Committee. As Senator SESSIONS has pointed out, we are debating a bankruptcy bill designed to create a fair and commonsense process in the Federal courts.

Moreover, the bill before us has passed this body three times, with overwhelming bipartisan support. In the 105th Congress, it passed by a vote of 97 to 1. In the 106th Congress, it passed 83 to 14. And again in the 107th Congress, it passed by a vote of 82 to 16.

It is time to take action on this much needed reform that is supported by both sides of the aisle.

I am confident that by working together we can get this done in this Congress, this week, and see bankruptcy reform signed into law. I encourage our Members, this afternoon, to vote for cloture so we can bring this bill to fruition, to make it the reality we know the American people deserve.

It is long past time to stop the abuses of the Bankruptcy Code. The legislation before us is thoughtful. It is built on common sense. It offers the opportunity to give the system, and the people it is designed to help, a fresh start. In short, it promises to deliver meaningful solutions that will keep America moving forward.

Madam President, I yield the floor.

## RESERVATION OF LEADER TIME

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

## BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 256, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 256) to amend title 11 of the United States Code, and for other purposes.

Pending:

Dorgan/Durbin amendment No. 45, to establish a special committee of the Senate to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism.

Pryor amendment No. 40, to amend the Fair Credit Reporting Act to prohibit the use of any information in any consumer report by any credit card issuer that is unrelated to the transactions and experience of the card issuer with the consumer to increase the annual percentage rate applicable to credit extended to the consumer.

Reid (for Baucus) amendment No. 50, to amend section 524(g)(1) of title 11, United States Code, to predicate the discharge of debts in bankruptcy by an vermiculite mining company meeting certain criteria on the establishment of a health care trust fund for certain individuals suffering from an asbestos related disease.

Dodd amendment No. 52, to prohibit extensions of credit to underage consumers.

Dodd amendment No. 53, to require prior notice of rate increases.

Kennedy (for Leahy/Sarbanes) amendment No. 83, to modify the definition of disinterested person in the Bankruptcy Code.

Harkin amendment No. 66, to increase the accrual period for the employee wage priority in bankruptcy.

Dodd amendment No. 67, to modify the bill to protect families.

Kennedy amendment No. 68, to provide a maximum amount for a homestead exemption under State law.

Kennedy amendment No. 69, to amend the definition of current monthly income.

Kennedy amendment No. 70, to exempt debtors whose financial problems were caused by failure to receive alimony or child support, or both, from means testing.

Kennedy amendment No. 72, to ensure that families below median income are not subjected to means test requirements.

Kennedy amendment No. 71, to strike the provision relating to the presumption of luxury goods.

Kennedy amendment No. 119, to amend section 502(b) of title 11, United States Code, to limit usurious claims in bankruptcy.

Akaka amendment No. 105, to limit claims in bankruptcy by certain unsecured creditors.

Feingold amendment No. 87, to amend section 104 of title 11, United States Code, to include certain provisions in the triennial inflation adjustment of dollar amounts.

Feingold amendment No. 88, to amend the plan filing and confirmation deadlines.

Feingold amendment No. 89, to strike certain small business related bankruptcy provisions in the bill.

Feingold amendment No. 90, to amend the provision relating to fair notice given to creditors.

Feingold amendment No. 91, to amend section 303 of title 11, United States Code, with respect to the sealing and expungement of court records relating to fraudulent involuntary bankruptcy petitions.

Feingold amendment No. 92, to amend the credit counseling provision.

Feingold amendment No. 93, to modify the disclosure requirements for debt relief agencies providing bankruptcy assistance.

Feingold amendment No. 94, to clarify the application of the term disposable income.

Feingold amendment No. 95, to amend the provisions relating to the discharge of taxes under chapter 13.

Feingold amendment No. 96, to amend the provisions relating to chapter 13 plans to have a 5-year duration in certain cases and to amend the definition of disposable income for purposes of chapter 13.

Feingold amendment No. 97, to amend the provisions relating to chapter 13 plans to have a 5-year duration in certain cases and to amend the definition of disposable income for purposes of chapter 13.

Feingold amendment No. 98, to modify the disclosure requirements for debt relief agencies providing bankruptcy assistance.

Feingold amendment No. 99, to provide no bankruptcy protection for insolvent political committees.

Feingold amendment No. 100, to provide authority for a court to order disgorgement or other remedies relating to an agreement that is not enforceable.

Feingold amendment No. 101, to amend the definition of small business debtor.

Talent amendment No. 121, to deter corporate fraud and prevent the abuse of State self-settled trust law.

Schumer amendment No. 129 (to amendment No. 121), to limit the exemption for asset protection trusts.

Durbin amendment No. 110, to clarify that the means test does not apply to debtors below median income.

Durbin amendment No. 111, to protect veterans and members of the armed forces on active duty or performing homeland security activities from means testing in bankruptcy.

Durbin amendment No. 112, to protect disabled veterans from means testing in bankruptcy under certain circumstances.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I understand that at 10:15, the Senator from New York is to be recognized to offer an amendment?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. KENNEDY. Madam President, this bankruptcy bill is mean-spirited and unfair. In anything like its present form, it should and will be an embarrassment to anyone who votes for it. It is a bonanza for the credit card companies, which made $30 billion in profits

last year, and a nightmare for the poorest of the poor and the weakest of the weak.

It favors the credit card companies, the giant banks, and the big car loan companies at every turn. It favors the worst of the credit industry—the interest rate gougers, the payday lenders, and the abusive collection agencies. It hurts real people who lose their savings because of a medical crisis or lose their jobs because of outsourcing or suffer major loss of income because they were called up for duty in Iraq or Afghanistan.

It protects corporate interests at the expense of the needs of real people. It does absolutely nothing about the glaring abuses of the bankruptcy system by the executives of giant companies such as Enron, WorldCom, and Polaroid, who lined their own pockets but left thousands of employees and retirees out in the cold.

It favors companies like MBNA, a top credit card issuer, with over $80 billion in loans, which has contributed $7 million to Federal candidates, a half a million dollars to President Bush alone, and spent over $20 million in lobbying, since 1997, when their lobbyists wrote this bill.

On the other side are people like special ed teacher Fatemeh Hosseini on the front page of Sunday's Washington Post. She fell on hard times when her husband left her and their three children. After her credit card debt reached $25,000, she stopped using the cards and took a second job to try to pay down that debt. She paid $2,000 a month but was hit with very high interest rates, which were raised even higher because of missed payments, heavy late fees, and over-limit penalties.

She made no new purchases, but by last June her $25,000 debt had nearly doubled to almost $50,000. The longer she tried to pay what her statements told her were her minimum payments, the more her debt went up. When all of her salary was going for payments, she had no choice: she was forced into bankruptcy, in the hope of getting the ''fresh start'' the Nation has long provided to its working people when they hit bottom.

This bill says to companies like MBNA: We'll help you scare that teacher out of going into bankruptcy by making the bankruptcy process expensive and burdensome to people like her. If we can't scare her away, we will help you squeeze your high interest rates out of her for a few years longer, even though she can't possibly pay off the amount she owes. We will take sides with companies like you and against people like her.

That is what this bill says. We all know that is wrong. How could the Senate possibly do something so immoral and unreasonable and unfair to our constituents when they are most in need of our help? Where are the vaunted values our colleagues talk about so much? Why didn't the Judiciary Committee do something about this travesty before it reached the floor? Why haven't we fixed it on the floor after more than a week of debate?

This bill was bulldozed through the committee on the pretense that we should not deal with its serious problems there but should wait until it reached the full Senate for serious negotiations and basic improvements. We were assured that there would be good-faith discussions and compromises and that all reasonable amendments would be given fair consideration.

But now there has been no good faith at all—no meaningful discussions, no negotiation, no real consideration of any of the very reasonable amendments that have been proposed to give this bill some shred of balance and fairness. On the contrary, the Republican leadership has invoked the strictest possible party discipline. When individual Republicans say they want to support or offer constructive amendments, they are ordered not to do so. Even when a Republican identifies a serious gap in the bill, such as the very basic jurisdiction outrage pointed out by Senator CORNYN, an outrage that has prejudiced workers and retirees in almost every State, the Republican leadership said no and refused to let the amendment be called up.

The excuse for this bad faith and breach of promise is itself bizarre. The Republican leaders say they cannot upset the delicate compromise reached two Congresses ago, but the only real compromise was the one that had the Schumer amendment in it, and this year's bill doesn't have that amendment in it. In committee Senator SCHUMER discussed his amendment, but I didn't see the other side jumping up to adopt it in order to restore and preserve the so-called compromise. The floor leaders have not indicated that they plan to accept this amendment to restore and preserve the supposed compromise.

Let's be clear—any pretense of protecting a previous compromise disappeared when the bill's sponsors unilaterally took the Schumer amendment out of the bill before introducing it this year. So there is no compromise before us in the first place. What's more, even the 2001 bill is now totally obsolete.

A great deal has happened in the past 4 years that helps us understand the real issues in this bill and shows that abuse of the system by consumers is not the real problem. We have now felt the full impact of the Bush economic decline, the broad record levels of sustained unemployment.

We have seen an explosion of medical costs, prescription drug costs, and health insurance costs. We have seen job after job eliminated or downgraded or outsourced.

A half million guardsmen and reservists have been called to active duty in Afghanistan or Iraq, leaving their families and their jobs and their small businesses behind to suffer the economic consequences, but this Senate said no to the Durbin amendment.

We have seen the enormous harm caused to employees and retirees by corporate mismanagement and fraud at major companies like Enron and WorldCom and Polaroid, which abused the bankruptcy laws to avoid their obligation to their own loyal workers. We have seen credit card rates go higher and higher and higher, as high as 30 percent or more, plus fees and penalties and charges, raising credit card profits by another $10 billion, even as general interest rates remain low.

We have seen the credit card companies use a self-help remedy for the problems they create by their own indiscriminate and predatory marketing practices. They charge still higher risk-based rates to the very same people who can't even afford the lower bait-and-switch rates.

We now know a lot more about the abuse of bankruptcy this bill was supposedly designed to address. Four years ago we were told we were a nation of bankruptcy abusers. But now, thanks to the careful study of actual bankruptcy case files, we know the truth. We know that 50 percent of the families who go bankrupt have suffered from serious medical problems and have exhausted their savings. Most of those families had paid for health insurance, but it still left them with no financial protection from serious illness or accidents.

If the family is impacted by cancer, you know right at the outset, even if they have health insurance, they are going to have a $35,000 bill. If it is the heart or stroke, it may be $20,000. If they have a child, spina bifida, autism, other kinds of serious children's diseases, it is going to be $15,000 to $20,000. We know that right at the start. And in too many instances, that is just enough to throw hard-working Americans into the bankruptcy system and the harsh provisions of this legislation. Most of these families tried in every possible way to avoid bankruptcy for years. They gave up food and medicine and utilities and other necessities of life and even transferred their elderly parents into less adequate nursing homes in order to try and avoid bankruptcy. But facts like these don't bother the sponsors of this bill. They just make it up as they go along.

In the past week, for example, some of us offered amendments that would exempt people from the burdensome procedures in this bill if their finances were devastated by medical problems or because they were called up for military duty, and they were voted down. Instead the bill's sponsors introduced and adopted a devious amendment that they said would do what our amendment did. But, of course, it did nothing of the kind. It simply added some words about medical costs and military callups in a way that did not change the real substance of the committee's bill.

The sponsors also said our amendments exempting those below the median income from the means test were

unnecessary because low-income filers were already exempt. If they really mean what they say about no means testing for people below the median income, then they should not be refusing to accept our amendment which makes that exemption absolutely clear.

Another Democratic amendment would have placed a generous limit of 30 percent on the interest rates any credit card company could charge. It very carefully stated that it would not change the status quo in States which already had lower limits. That didn't stop the bill's supporters from claiming that the bill would be an intrusion on States rights because it would lift the limit in States with a lower limit.

And perhaps the most outrageous claim of all, one which I thought was dead and buried after it was dragged out in 2001, was dragged out again—a big blue chart and all—and further inflated in their debate. The sponsors repeated the old chestnut that every American family is paying $400 a year in a hidden bankruptcy tax for abuses that this bill would stop. Only now they say this mysterious tax has risen to $550 per person per year.

How is the original $400 number calculated? The debts discharged from all consumer bankruptcies each year are about $40 billion. There are 100 million families in the United States. Therefore, those consumer bankruptcies must be costing each family $400 per family. But this phony math assumes that every dollar discharged in bankruptcy, 100 percent, could have been collected in full, if not for the massive abuse of the system by every consumer who goes bankrupt.

It assumes that the credit card companies and payday lenders and other lenders who collect this debt under the bill would somehow distribute it to all 100 million American families instead of keeping it for themselves. Obviously, neither of these assumptions is true. Even the bill's supporters have long ago conceded that the maximum conceivable amount recoverable from the consumer bankruptcies is about 10 percent of the total. Other estimates conclude that the real number is a small fraction of that.

We don't have to guess what a responsible lender's loss from bankruptcy abuse might be. The lead-off pro-bill witness at our hearing on the bill was the head of the Wisconsin community credit union, testifying for the national credit union lobby. He told us in the last 9 years his credit union has had an average of 10 bankruptcies a year from 11,000 members. He estimated that the 9-year loss from abusive cases was $15,000 to $75,000, with the higher figure based on an unlikely assumption of 15 percent abuse. His credit union's loss from possible abuse spread across its entire membership was 15 to 74 cents a year per member—not per every family in his county or state, but just his members. Yes, a real 15 cents instead of the mythical $400 dollars we have heard about for years on this floor.

Why is that lender's loss from abuse so low? Because that credit union cares about its members, who are also its owners. It gives them a credit level appropriate to their finances, and does not promote across-the-board increases in credit limits. It routinely monitors credit card debt for signs of trouble. When members hit hard times, the credit union does not pounce on them. It looks for ways to help them out. In short, it is a careful and responsible lender, not a predatory lender.

Hello? Could this tell us something about the real problem here? Perhaps the credit card companies who are really pushing this bill should think again about having solicitation desks every fifty feet in the airport, offering gifts to anyone who signs up for a card. Perhaps they should think twice about offering multiple cards to young college students. Perhaps they should not encourage people to raise their card limits recklessly or send them pre-printed checks against their accounts in junk mailings. Perhaps they should not send monthly statements urging their customers to pay only the monthly minimum and pile up their debt.

This bill does nothing to prevent the enticements that the credit card companies use to run up their profits. It does nothing to prevent the real abuses of the system by those who use unlimited homestead exemptions or ''protective'' trusts to hide tens of millions of dollars from the bankruptcy process.

We still have time for common sense amendments on all of these issues, but unless there is a change in direction, Republican party discipline will be invoked to defeat them.

In fact, the present bankruptcy system has an effective way of dealing with real abusers. Bankruptcy judges can and do deny the petitions of those who have defrauded or abused the bankruptcy process. The corporate sponsors of this bill know that, but their real motivation is only partly to squeeze millions more dollars from the people who do get into the bankruptcy system.

The more insidious purpose of this bill is to frighten people away from the system altogether, by making it so burdensome and expensive, that they delay filing for bankruptcy or never file. That way, the predatory lenders can continue to collect excessive interest and fees and penalties month after month from people who cannot afford to pay them.

What this bill does to catch the very small number of potential abusers—most of whom can be caught and screened out under the existing system—is to impose huge new paperwork and filing and counseling and other barriers on all those who seek to enter the system, whether they are above or below the median income level, and whether or not there is the slightest indication that they are trying to game the system.

Why else would the bill place such strict and intolerable personal liability on the bankruptcy lawyer for mistakes made in the detailed information provided by the client? In Boston and throughout the country, pro-bono lawyers from leading firms now lend a hand with bankruptcy filings to people down on their luck. The sponsors know that if this bill passes, those firms will not let their lawyers do that public interest work, because the risk will be too high.

There is so much wrong with this bill that we must take the time to get it right. That is why we must have a serious discussion and negotiation and amendment process.

That is why we must defeat tomorrow's cloture vote and continue to seek a bill that is not an embarrassment to the Senate and the fundamental principle of fairness and simple justice for all. It's wrong, deeply wrong, for the Senate to rubber-stamp the greed of the credit card industry.

In a few moments, the Senator from New York will be recognized. I wanted to add a word of support for his amendment. His amendment is not about abortion. It is about violence. Those who promote the culture of life should not be encouraging acts of violence against any members of our society. There is no legitimate reason to oppose this amendment. Those who break the law through violence and intimidation should not have bankruptcy as a shield.

Finally, in a vote later this afternoon, the Senate will declare its true loyalties. Do we stand with low- and middle-income families who fall on hard times, or do we stand with the credit card companies looking for higher and higher profits at any cost? If we are true to our values, we will stand with America's families and defeat this bill because above all else, America stands for freedom and fairness and opportunity. There is nothing fair about a single parent struggling to make ends meet only to be gouged by credit card companies with double-digit rates. There is no freedom in falling ill with cancer and facing a mountain of medical bills only to be hounded by credit card companies to pay them first.

And what is fair when an average American who has done everything right still has to go alone into bankruptcy court and stand up against the big credit card companies and all their might and try to make a fresh start?

I am reminded of the words of Leviticus in the 25th chapter which reads: If one of your brethren becomes poor and falls into poverty among you, then you shall help him, like a stranger or a sojourner, that he may live with you. Take no usury or interest from him, but fear your God that your brother may live with you. You shall not lend him your money for usury nor lend him your food at a profit.

One glance at the story of Fatemeh Hosseini shows that even when you try your hardest to repay your debts, you are met by the cold, cruel world of the credit card companies. With our vote

this afternoon, we have an opportunity to live up to the words of Leviticus and our basic values as Americans and vote against this bill.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I thank the Senator from Massachusetts for his leadership on this legislation. The bill we are considering today, S. 256, is the bankruptcy reform bill. For American families who have been absolutely devastated by medical bills, by loss of jobs from outsourcing of jobs overseas, by family circumstances beyond their control, this bill makes it more difficult to go to bankruptcy court to put whatever they have on the table and to try to start anew. It was written by the financial industry, by credit card companies, and big banks in an effort to make certain that people in debt never get out of debt. They want to make certain that debt will hound you and trail you for a lifetime.

When Senator KENNEDY offers an amendment and says should we not at least say to people who have been devastated by a medical crisis in their family and go through bankruptcy that they will have a roof over their heads, that we will protect their home for $150,000 worth of value, the Republicans on this side of the aisle said no. They should put that home up, lose it if necessary, if they want to file for bankruptcy.

I offered an amendment that said what about the Guard and Reserve units, men and women who are serving overseas leaving behind businesses that go bankrupt? Should we not give them some consideration in this bill? Should not the harshest aspects of this bill not apply to men and women in uniform serving our country? The Republican side of the aisle said no; apply the law as harshly as possible to these soldiers as you would to everyone else.

Time and again, as we have offered amendments to try to stand up for those who were struggling in America to get by in a tough economy, in difficult times, facing family disasters, the Republican side of the aisle said it is more important that the credit card companies get another dollar from those families. It is more important that the banks prevail. Even if the loans they offered in the first place are illegal, we have to stand by the credit industry.

The credit industry will win this battle. American families, American soldiers, and those struggling with medical bills will be the losers.

I hope before this bill is completed that a few basic amendments that show common decency and common sense will prevail.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the hour of 10:15 a.m. having arrived, the Senate will proceed to the consideration of amendment No. 47 to be offered by the Senator from New York. The time until 12:15 p.m. will be equally divided for debate.

Does the Senator offer the amendment?

AMENDMENT NO. 47

Mr. SCHUMER. Mr. President, I offer the amendment, and I ask unanimous consent that Senator FEINSTEIN be added as a cosponsor to the amendment.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER], for himself, Mr. REID, Mr. LEAHY, Mrs. MURRAY, and Mrs. FEINSTEIN, proposes an amendment numbered 47.

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

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

The amendment is as follows:

(Purpose: To prohibit the discharge, in bankruptcy, of a debt resulting from the debtor's unlawful interference with the provision of lawful goods or services or damage to property used to provide lawful goods or services)

On page 205, between lines 16 and 17, insert the following:

**SEC. 332. NONDISCHARGEABILITY OF DEBTS INCURRED THROUGH VIOLATIONS OF LAWS RELATING TO THE PROVISION OF LAWFUL GOODS AND SERVICES.**

Section 523(a) of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (18), by striking ''or'' at the end;

(2) in paragraph (19), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (19) the following:

''(20) that results from any judgment, order, consent order, or decree entered in any Federal or State court, or contained in any settlement agreement entered into by the debtor, including any court ordered damages, fine, penalty, citation, or attorney fee or cost owed by the debtor, arising from—

''(A) an action alleging the violation of any Federal, State, or local statute, including but not limited to a violation of section 247 or 248 of title 18, that results from the debtor's—

''(i) harassment of, intimidation of, interference with, obstruction of, injury to, threat to, or violence against, any person—

''(I) because that person provides, or has provided, lawful goods or services;

''(II) because that person is, or has been, obtaining lawful goods or services; or

''(III) to deter that person, any other person, or a class of persons, from obtaining or providing lawful goods or services; or

''(ii) damage to, or destruction of, property of a facility providing lawful goods or services; or

''(B) a violation of a court order or injunction that protects access to—

''(i) a facility that provides lawful goods or services; or

''(ii) the provision of lawful goods or services.

Nothing in paragraph (20) shall be construed to affect any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the first amendment to the Constitution of the United States.''.

Mr. SCHUMER. Mr. President, I hope everybody will pay attention to this debate, which has been going on intermittently in the Chamber for the last 4 or 5 years. Not much has changed, except the votes of some of my colleagues, if you can believe the press reports.

Let me start by saying I believe in bankruptcy reform. It is very wrong for people to abuse the code. But reform should be across the board, it should be applied fairly. It should not be just for some interests. When some interests are abused, we legislate on that, but when other interests are abused, we do not. It should not sweep under the rug people who have real needs, as the amendments of some of my colleagues—the Senator from Massachusetts and the Senator from Illinois—have tried to address. A reform bill should not contain a trove of treats for some supposed victims of the system, such as banks and credit card companies, but leave others shivering in the cold.

For this reason, the bankruptcy bill before us today does not do the trick. It has many deficiencies and, to my mind, a glaring, gaping hole. While the bill supporters give lipservice to fairness, they have carved out a loophole for those who use violence, for those who seek to use bankruptcy for a purpose it was never intended. It is a loophole that I cannot live with, and, once upon a time, in a different world, the vast majority of Senators agreed with me and voted to close this loophole.

Most of you are already familiar with this provision. After all, most of you have voted for it before. Indeed, this is identical language; there is not a single word change in this amendment, the Schumer-Reid amendment, from the amendment that was added to the bill a few years ago. This identical language was contained in the compromise bill we have heard so much about this past week.

Along with Senator REID, I am reintroducing the provision that would close this loophole once and for all. I am pleased that Senators LEAHY, FEINSTEIN, and MURRAY are also cosponsors of the amendment.

Put simply, the Schumer-Reid amendment would end the ability of violent extremists to hide behind bankruptcy laws to escape court-imposed debts. The amendment is very simple: If you use violence or the threat of violence to achieve a goal, a political goal, and you are successfully sued—as you should be—by the person or persons you have used violence against, you cannot then go back home to a bankruptcy court and say, protect me. Has anyone who ever envisioned the bankruptcy law felt that it should be used to protect those who use violence or threats of violence? I doubt it.

There is talk by some of ''peaceful protests.'' As I will talk about later, the bill explicitly protects peaceful protests but not violence or the threat of violence. It doesn't matter if you are

an extremist in the pro-life movement or the animal rights movement or any other movement; if you believe you are so right that you have the ability to take the law into your own hands and threaten others and do violence to others because your knowledge and feelings are superior to everybody else's, you are wrong. That is not American. Again, you should not be allowed to use the Bankruptcy Code to protect yourself from a rightfully imposed civil remedy.

This amendment could really be called the Schumer-Reid-Hatch amendment because in 2001 Senator HATCH sat down with me and together we worked out this compromise. We worked out this precise language in a bipartisan fashion over 4 years ago. There is only one difference—that since we worked out this compromise, which a large number of colleagues on the other side of the aisle supported, including those who disagree with me on the issue of choice, we have found that a small group in the House has been able to block the bill if it had this amendment in it. There is no reconsideration of the merits of the amendment. There is no argument made against the amendment that hasn't been made before and rejected overwhelmingly by this body. It is simply allowing a small few in the other body to dictate what we are doing here.

If reason and logic prevail, this amendment would be considered among the least controversial and most sensible fixes to the current bill. If bipartisanship and consistency were the order of the day, this provision, which was unceremoniously stripped from the current bill, would pass again overwhelmingly. The bill is intended to curb abuses of the Bankruptcy Code. But why are we curbing abuses when the victim is a credit card company or a bank but not anybody else? Why not also when the victim is a woman pursuing her constitutional rights? Does that woman have any less rights than a bank or credit card company, or a doctor pursuing a living, doing what he believes is right and what is allowed by law, according to the Supreme Court and enshrined in the Constitution, and this doctor tries to prevent people from hounding his children, from threatening them with violence, and then you say, no, we are going to protect the credit card companies and the banks but not that doctor, not that woman; is that fair? Is this bill fair and balanced?

We want to reform bankruptcy; there are abuses. But why are we only reforming the abuses that affect some and not others? Why are we only reforming the abuses that affect some of the most powerful interests and not those who are weaker or more helpless?

In the current climate, I am sad to say that there appears to be an edict from the leadership on the other side to vote down every amendment, no matter what its wisdom for efficacy. That is not what the Senate is about, that is not what America is all about, and that is not what our constituents sent us here to do. It would be a tragedy if that sort of marching-in-lockstep attitude affected the Schumer-Reid amendment.

Let me take a minute to describe the history of this amendment, to refresh the recollection of many of my colleagues who may have forgotten it. Let me tell you what happened. Of course, Roe v. Wade was passed by the Supreme Court in 1973. Many opposed Roe v. Wade; they felt it was against their religious beliefs. I respect those religious beliefs. A large movement of protests developed, the vast majority of which was peaceful. The former bishop in my home of Brooklyn would stand in front of a clinic every week and pray the rosary. That is an American thing to do. That is a peaceful protest. But there were some—an extreme few—who decided that they were so right, that what they heard from God prevailed over what anybody else heard from God, and that they should take the issue into their own hands. Some used the methods of blockade, passive resistance. Others went further. They would put acid on clinics that would render them useless—a destruction of personal and private property, if there ever was. They would threaten doctors. They would follow their children going home from school and harass them. Inhumane. They would even encourage people to kill doctors. We know doctors who were killed.

This protest movement was largely successful. It shut down about 80 percent of the clinics in America. There were some States and many counties where a woman who was seeking her own right to choose would not get that right, and, as a result, a number of us worked on a law—I was a sponsor in the House, and I believe Senator BOXER was a sponsor in the Senate—that would give the clinics that offered people a way to effect their right to choose some help. The law made it a Federal crime to use violence or the threat of violence against clinics. That was necessary because you had large jurisdictions where the elected sheriff said, I will not enforce the law, taking matters into his own hands.

As we were discussing what to do with this bill, I remember a meeting in New York, and a young woman from one of the defense funds that represent women said: Why don't you include the right to sue, so if the Federal Government is unwilling or slow and cumbersome in protecting this Federal right, the clinic could sue. We put it in the bill as an afterthought, but it really proved to be the hope and the salvation of the clinics because they began to sue those who would blockade them when police forces would not enforce the law.

There was Dobbs Ferry in New York, where they wanted to enforce the law. They had a police force of three, and hundreds of people were protesting violently and blockading—not peacefully—and the police force was overwhelmed. But the right to sue opened up these clinics and, once again, the constitutional right, available voluntarily to women.

No woman is forced to avail herself of this right; it is choice. That is what it is all about—choice. Your beliefs may be different from mine, but I respect yours; I hope you respect mine. I am not imposing mine on you, and you should not impose yours on me, particularly when they are deeply held religious beliefs. That is America.

So the clinics were open again. Many of these violent protesters sort of faded away. They realized the legislatures were going to keep the Roe v. Wade law, that they could not succeed in overturning it. If you believe the polls, over 60 percent of Americans support the right to choose. They had turned to violence and threats of violence, and now the FACE law had stymied them in that decidedly un-American way to enforce your views or effect your views. So we offered an amendment.

I skipped one point. Some of the more militant of these groups—the militant of the militant—came up with a new way to avoid these civil suits that the FACE law allowed. They said: Go back and declare bankruptcy once you are sued, and then they cannot pursue the money judgment used against you. This was made particularly difficult because most of the groups that used violence or threats of violence were not indigenous. They were not from the local community. There were a lot of people against the clinics in the legal community, but they, like most Americans, effected their views peacefully. But these were sort of roving bands of groups from across the country. They would be sued successfully, and then they would each go back to their home jurisdiction and file for bankruptcy.

It was impossible for these clinics, most of which were small and not terribly well funded, to then file after they won the first suit—a burden enough to them. They should not have had to do it. It should have been the Federal Government or the local government enforcing the law. But they went back home, declared bankruptcy, and the clinics were not able to pursue each of those suits in their home States.

An example is that of the notorious Nuremberg files case that took place in Portland, OR. The defendants created, in that case, a Web site that collected personal information about providers of abortion, clinic staff, law enforcement officials, judges, and even Senators. The site listed the names of those wounded in gray type and for those who had been killed—including Dr. Barnett Slepian in my State who was murdered in front of his family in 1998—they crossed out the names, as if they had achieved something good.

Doctors and their families targeted by this Web site had to wear bulletproof vests, install security systems, and take other precautions. As one witness testified before the Judiciary

Committee, speaking of the targeted doctors:

> They are not secure in their homes or in their offices. They do not sit by windows in restaurants, and they even refrain from hugging their children in front of open windows.

Can you imagine? Under the FACE law, the victimized doctors sued these violent radicals who would threaten them. Judges and juries sided with the victims and issued verdicts. For example, there was a $109 million verdict against the Nuremberg defendants. In another case, Operation Rescue President Randall Terry ran up $1.6 million in fines on account of his acts of clinic violence. But did these violent extremists pay up? No. They instead filed for bankruptcy to avoid responsibility for their heinous acts. In fact, many of these public defendants publicly bragged about being judgment proof and thumbed their noses at their victims, forcing years of protracted litigation.

Randall Terry, for example, blithely filed for bankruptcy to avoid paying his debts. And the Nuremberg file defendants forced bankruptcy litigation for years in six different jurisdictions to avoid their debts. Some of the extremist groups even recruited people and had as a criteria for admission to the group that you make yourself judgment proof. One radical group, for instance, the American Coalition of Life Activists, drafted its Constitution to state that members of the organization ''must have their assets protected from possible civil lawsuits (judgment proof).''

As one can imagine, with these tactics, it took years to enforce the judgments against these violent radicals, and victimized doctors, families, and clinics could not get the justice they deserved. We all know that the wheels of justice are sometimes too slow, but tactics such as this made a mockery of our system.

So when the bankruptcy bill came before the Senate back in 1999, I offered an amendment to stop this awful abuse of the system. It made sense. It was not adding a new issue to the bill. The bill was supposed to deal with abuses of bankruptcy, and if there was ever an abuse of bankruptcy, what these violent extremists did was an abuse of the bankruptcy law. No one, when they wrote the bankruptcy law, thought the Randall Terrys of the world deserved protection.

When I offered the amendment, Senator HATCH and others—some pro-choice, some pro-life—came to me and said: Why are we singling out pro-life activists who engage in violence and take the law into their own hands? What about other extremists who abuse the Bankruptcy Code by using violence or the threat of violence?

They were right. So we sat down. We had a fruitful discussion. From this, Senator HATCH and I worked out a compromise with which everyone could live. We hammered out an amendment that was not particular to the issue of the clinics but dealt with anybody who would use violence or the threat of violence in the same way—blockades, arson, whatever. They, too, if they had a judgment against them, could not go to bankruptcy court and successfully ask for protection.

The amendment we have does not mention the word ''abortion'' or ''choice.'' It simply talks about anyone who uses violence. It would be applied with equal force and vigor to animal rights activists, to the environmental extremists in the ELF movement. It only affects, frankly, those on the far right or the far left who believe they are so morally superior to all of us that they can avoid this constitutional democracy and, with violence, take actions into their own hands. Anyone who violently or misguidedly blocks access to services, whether in the name of the pro-life movement, the animal rights movement, the environmental movement, or any other movement, would lose the ability to hide behind the Bankruptcy Code.

It would apply equally. It did apply equally to pro-life extremists and ecoterrorists, one on the far right and one on the far left. Indeed, if militants in the pro-choice movement should block a facility that was pushing abstinence, it would apply to them, too. If violent atheists blocked access or burned down a church, it would apply to them. It applies to anybody who uses violence and then seeks protection of the Bankruptcy Code.

This amendment is not about abortion, as its critics attack it. It did have its origins there because that is where violence was used, but now, after the Schumer-Hatch compromise, it is an amendment simply about the rule of law, something everyone of any political party, of any political belief who is an American—when you swear your loyalty to the Constitution of the United States, you are basically swearing loyalty to the rule of law.

Let me underscore this: It does no harm, none, not 2-percent harm, not 1-percent harm, not .1-percent harm; it does zero harm to legitimate protesters who do not engage in violence or threats of violence. The amendment expressly states that ''nothing in this provision shall be construed to affect any expressive conduct, including peaceful picketing or peaceful demonstration, protected from legal prohibition by the first amendment to the Constitution of the United States.'' If you protest peacefully, you are protected. If you use violence or the threat of violence, you are not. That is the American way, and we made it clear.

People who are against this amendment say it stands in the way of peaceful protests. I ask them to cite me a single example where that has happened. It has not.

This was a fair amendment. It applied to anyone who used violence to effect their means and, in overwhelming numbers, Democrats and Republicans supported it. Virtually all of my Republican colleagues now on the Judiciary Committee, including some leading pro-life Senators, supported it—Senators HATCH, GRASSLEY, KYL, and SESSIONS. I take off my hat to them. They were being fair. I am sure they received a little pressure: Don't do this. Maybe there were some winks: Hey, maybe this violence is OK because we feel so passionately about an issue. But they stood up. To their credit, these Senators, even though they are staunchly pro-life, were reasonable and sensible about the issue.

Then on March 15, 2001, a bankruptcy bill, largely identical to the one before us today, except that it had the Schumer-Reid-Hatch language in it, passed in the Senate by a vote of 83 to 15. Only two Republicans voted against it, and that was for reasons other than this amendment.

Then, of course, the bill was sent to the House. It looked like as if would pass. I supported the bill with this amendment in it. I have always said I will be for the bill with this amendment because I think this amendment is so important, even though I am not happy with other provisions in the bill. I am, frankly, less happy today with the other provisions in the bill.

The bill was sent to the other body, and a fight ensued within the Republican caucus. A large number, probably a majority of the Republican caucus, wanted to support the bill, but a small number who were the most fervent in their pro-life beliefs said no bill. The Republican leadership in the House said since this divides our caucus, even though a vast majority of the House would have supported the legislation, in my judgment, they pulled the bill.

So now we are back to where we are today. We have basically the same compromise as last year but without the Schumer-Hatch compromise. All I am doing today is adding that compromise word for word. Again, not a comma, jot, or tittle has been changed in the bill.

I have watched while amendment after amendment offered by Democratic Senators to end abuses and close loopholes has been beaten back because of an edict that this ''negotiated compromise''—not negotiated certainly with many of us on this side—should be delivered pristine to the House.

Republicans defeated an amendment to protect veterans because it was not part of the compromise. That was offered by the Senator from Illinois, Mr. DURBIN. For example, a National Guard man or woman, a reservist sent overseas does not make the same money they made before, and maybe they have to go into bankruptcy. Do we want to come down like a hammer on these people the same as we would come down on somebody who squandered whatever money they had in Las Vegas gambling? Absolutely not. But the amendment was defeated.

There was an amendment that was defeated to protect victims of identity

theft. I believe that was done by my colleague from Florida, Senator NELSON, because it was not part of the compromise.

Senator KENNEDY has eloquently spoken of those who have to go into bankruptcy because they do not have adequate health insurance or any health insurance, and they are putting their every last nickel to save their husband or their wife or their mother or their father or their child. Again, no protection.

An amendment I offered which said millionaires could not abuse the code by setting up a trust and putting all their assets in this trust and then declaring bankruptcy and shedding themselves of debt also was not allowed because of the compromise.

Mr. President, do you know what was part of the original compromise? The Schumer-Reid amendment or, more correctly, the Schumer-Reid-Hatch amendment. Yet this provision was stripped from the current bankruptcy bill.

If Senator HATCH continues to suggest we should honor the grand compromise from last time and not change it, then let's do it for everybody. Let's not just take out this provision.

What, I ask, has changed since the bill of this language passed by a vote of 85 to 13? Absolutely nothing. It was a good law then, it is a good law now. On what basis can my colleagues now oppose the Schumer-Reid amendment because it targets, among others, those who take the law into their own hands to oppose a woman's right to choose? That is nonsense. Senator REID is the lead cosponsor of the amendment, and he is pro-life. And as I have said, the language is not particular to abortion.

Let me ask my Republican colleagues a question. I hope they are listening: Would my Republican colleagues oppose a broadly worded murder statute because, among other things, prosecutors could bring charges against someone who killed a doctor who would provide abortion services? Would they oppose a neutrally drafted arson statute because men and women who burn down health clinics might come under its ambit?

There is no moral reason, no legal reason, no logical reason, for Senators who once overwhelmingly supported this language to now oppose the Schumer-Reid amendment. Some of my colleagues have said they are still in favor of this amendment but do not want the entire bankruptcy bill to be held up because of it. My purpose is not to hold up the bankruptcy bill, and I think my colleagues on the other side who worked with me over the years on this bill understand that. My purpose is to preserve the rights of those who seek to do constitutionally protected acts in the face of violence.

So I ask my colleagues to please think about what they are doing. If they vote against this amendment, they are voting against the rule of law. If they vote against this amendment, they are voting against the fundamental way we do things in America. If they vote against this amendment, many of my colleagues are voting exactly the opposite of what they did a few years ago. I ask my colleagues not to change their vote because of political expediency. If my colleagues turn their back on this amendment now, it will be a turnaround, an about-face, on fairness, on reform, and on bipartisanship.

As I have said, this is not pro-choice or pro-life. It is pro rule of law and it is antiviolence. No matter how strongly people feel—and I respect people's passions; I respect their passions whether they come from religion or politics or anything else—the greatest danger our Republic faces is apathy, so people who feel passionately are good. Because someone feels passionately, they should not be allowed to take the law into their own hands and then hide like a coward behind the bankruptcy law.

Just as we are trying to end the abuses of the bankruptcy law when it affects banks, we should also end abuses of that law when it affects victims of violence. It is vital that we make the law perfectly clear that debts incurred by violent extremists who take the law into their own hands are nondischargeable, and that is all this amendment does, no more or no less. If we do not, individuals and organizations seeking to shut down public facilities, whether they be clinics, powerplants or animal laboratories, will continue to force victims of clinics and other violence into a world of perpetual litigation by using the Bankruptcy Code as it was never intended.

I ask my colleagues to support this amendment. Most of them did once and they should do so again.

I reserve the remainder of my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. 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. SCHUMER. Mr. President, my colleague from Alabama is in the Chamber. I was going to ask that the time be equally divided as we were in the quorum call and not charged to myself, but if my colleague from Alabama is taking the time, then that is moot.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. I thank the Senator from New York. As someone who has worked hard on this bankruptcy legislation for the 8 years I have been in the Senate, I have learned a political lesson that no matter how much bipartisan support a bill has, how much momentum it has, how needed it is, things can go awry.

In the last passage of this bill, Senator SCHUMER offered, and aggressively argued, for the amendment that we are debating today. The leadership on this side of the aisle said, OK, we will accept it. I realized that it was problematic for a number of reasons. I opposed the amendment, but it passed, and without a whole lot of objection, I suppose, from this side. The truth is it then became the single factor in the House's rejection of the bankruptcy bill, a bill that passed this body by a vote of 83 to 15. It was really a remarkable sort of event.

Let me just say a few things about the bankruptcy procedure. It has long been a fundamental principle of bankruptcy that while a bankrupt individual may bankrupt against their lawful debts, wipe them all out, and pay none of those debts, it has always been the law that a bankrupt may not discharge, may not wipe out, erase the debts that they incur as a result of intentional or willful misconduct.

If a debtor lists debts that arise from an intentional wrong against someone, the trustee in bankruptcy or a creditor or any of the creditors can object to that discharge, and they would note that it should not be wiped out, it should not be discharged, because it is a debt that arises from a willful, wrongful act.

The court then considers that and determines whether or not the debt should be wiped out and whether or not it was a debt that arose from a nondischargeable reason like willfulness.

Senator SCHUMER's amendment says that willful violators of abortion clinic protest prohibitions, and really a lot of other protestors, it appears to me—maybe unions, civil rights, environmental, I think he has said that they are covered here—he says that if willful violators of abortion clinics and these others included in his bill are sued and a judgment is rendered against this protestor under Federal law, then automatically those judgments are not subject to discharge; the court does not review it; they remain a debt of the protestor for their life, and they can be pursued by collection attempts for as long as that debt exists, and it can be for some time.

What we do know is this: Abortion clinic protestors have been sued for misbehavior at abortion clinics under the FACE Act. Some of these people have been relentless in their actions and have acted repeatedly in violation of law, and they have been sued. Judgments have been rendered against them. Most of them do not violate the law. As the Senator has said, the archbishop prays the rosary and conducts lawful acts, demonstrating his concern over the taking of what I consider to be life by the abortion act, and this is a free country and they are allowed to do that. But there are certain things that one cannot do in that protest, and a number of people in the past, a lot more than is currently happening, frankly, violated those prohibitions of the FACE Act. They have been sued and judgments have been rendered against them.

We also know that some of those protestors who had judgments rendered against them went to bankruptcy court and sought to wipe out their debts and not pay these debts for their protests, to discharge them from bankruptcy.

Finally, we know that under the current law, and under the law that is in the bankruptcy bill that is moving forward today, it has not changed on this point. That law prohibits the discharge of debts arising from willful acts. In every single case that the courts have considered petitions for discharge, in these abortion FACE Act violation cases, the bankruptcy court has refused to discharge the debt. They say, no, it was a willful act and you cannot discharge it; you still owe it. And the abortion clinic plaintiff or doctors or whoever is victimized can continue to pursue collection wherever they go. They can file garnishments against people's wages, file judgments against their property and pursue them aggressively and steadfastly to collect that debt. That is what the law has said every single time, and there is not much dispute about that. I do not think the Senator from New York would dispute that.

By his amendment, the Senator from New York, because of his concern over these very few cases, frankly, but he is concerned about it and has raised the issue a number of times, has managed, as a result of his successful passing of that amendment on this Senate floor 2 years ago, to cause the bankruptcy bill and all of its important parts to actually die and not become law because the House refused to accept it. Because of his concern, I know he has offered this again.

What he would want to say, and what his amendment says, I think fairly stated, is that a protestor and not just abortion clinics but any number of protestors who are sued under Federal law, and a judgment is rendered against them, Senator SCHUMER would want to make that judgment automatically not dischargeable, automatically without review by the court or any examination of the facts of the situation, to say it should not be discharged and will remain a permanent debt of the protestor.

I know the Senator said we all voted for this and there was some sort of agreement. I really do not think there was an agreement about this. As I recall, it came up in the Judiciary Committee. Chairman HATCH was trying to move the bill forward, as he frequently does, and allowed it to become accepted by a voice vote without any big to-do. It came up to the floor and was debated again, and a decision was made that we would just allow it to pass. It was not that big a deal as people saw it at the time.

I opposed it. I did not feel good about targeting these kinds of cases. I thought that the current law was acceptable and we should not go in this direction, but it passed and I voted for final passage of the overall bankruptcy bill. So I think that is why the Senator says I and others voted for it. A lot of people voted for the bill on final passage that may not have voted for the amendment on the floor.

Regardless of that, the question is, now what should we do? I would just note that there are a number of reasons why I think this should not be a part of the bill. First, as I have noted, these protestors have lost every single case in which they have sought to discharge debts arising from judgments under the FACE Act. The current bankruptcy law and this bill will say flatly that such debts are not dischargeable if the injury is the result of a willful, malicious act, as these violations for the most part are.

So, first, it is not necessary, and I would again note that the bill covers more than just abortion protestors. There could be any number of protestors. I think about the situation where maybe somebody from Alabama goes up to the southern district of New York and gets sued up there and a big judgment is rendered against them for taking a position unpopular in New York or maybe, as has happened in the past, people from New York have come down to Alabama and have been involved in protests and could have judgments rendered against them in local courts. So the Senator would say that under no circumstances, when that judgment were to appear on a discharge petition in bankruptcy court, would the court have any authority to look behind it. This Federal bankruptcy judge would have no authority to look behind this judgment to see if it was willful or intentional as the current law and the law has always been in bankruptcy, to my recollection, pretty much from the history of bankruptcy law. He would not look behind it and he would decide automatically it is a judgment not dischargeable. I am not sure that is good policy. I am not sure we want to do that. As a matter of fact, I do not think it is. I think the current law works. We should not do this. The Schumer amendment is bad policy. I disagree with it. I do not think it is the biggest deal in the entire world, but I think under the legal system and the principles of this bill, we would be better off allowing the bankruptcy court to consider these debts and examine them to make sure they meet the standards of discharge.

There is a big practical reason. This bill has passed the Senate four times by an overwhelming vote. One time I think it was 97 to 1. It has been marked up in the Senate Judiciary Committee four times, and it has not been lightly considered on the floor of the Senate. It has been the subject of hours and hours and days of debate. We are already into the second week on this bill. After all the debate and all the hoopla we have had, and so many other issues, we continue to pound away at this legislation for reasons that I am unable to fathom. But we are moving forward. I believe we will pass it again.

What is the practical reason? The House of Representatives rejected this bill the last time for the sole reason of the Schumer amendment. It is unbelievable. As much as we had in this bill, all the pages of this legislation, one little amendment killed this legislation, an amendment that I believe is bad policy, certainly not necessary, and I submit could result in killing this legislation again if we move it forward.

So let's not do it. Let's not do this. Let's not go beyond the bill that we have now, that came out of the Judiciary Committee with a bipartisan vote, an overwhelming vote out of the Judiciary Committee to come to the floor without the Schumer amendment in it. Let's not add this amendment and jeopardize the passage of the bill.

Let's not add this amendment and perhaps take a step, I submit with all seriousness, that could curtail protests and freedom of expression in America. Sure the protesters have lost every time. I believe they should have lost every time under the law. But there may be some times, under some of these provisions of Federal law, that could result in judgments that legitimate protesters were simply standing up under hostile circumstances in a hostile jurisdiction for what they truly believe in, and then the bankruptcy judge has no ability whatsoever to prohibit this judgment from sticking against them perhaps for the rest of their lives.

I don't know.

I don't think the law is failing in this regard, and I do not think the law is being abused in this regard. I think it is being handled well. We do not need this amendment for the reasons I stated, and for other reasons, frankly, that I will not state at this time.

I urge the rejection of the Schumer amendment and note with pleasure that Senator HATCH, the former chairman of the Judiciary Committee, now a senior Republican member of it who has worked on this legislation since the beginning, is on the Senate floor. I am pleased to yield to him.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate the remarks of my colleague. As usual, he has done a very good job in outlining what is involved in this bankruptcy bill, and I believe he deserves a lot of credit for the hard work he has done on the floor.

Mr. President, comes now the Schumer amendment or, should I say, comes again the Schumer amendment. I rise to speak in opposition to this amendment. Been there. Done that. In fact, I have been there and done that a few times.

I have been around here long enough to know a poison pill when I see one. And make no mistake about it, this has become a classic poison pill amendment.

I have worked in good faith for several years to attempt to neutralize the

counterproductive effects of this amendment. But no matter how we try to adjust the language, we cannot overcome the basic flaw in the amendment: The Schumer amendment is a solution in search of a problem.

I oppose this amendment. It is no secret that I am genuinely fond of the senior Senator from New York. While I frequently disagree with him on issues, I respect enormously his political skills.

Even when from my perspective he is wrong—such as the leadership role he has played in organizing the first permanent filibusters of majority-supported judicial nominations—I know that he always tries to act in a heartfelt manner that advances his political agenda.

We have been able to achieve compromises on many issues over the years. Senator SCHUMER and I have worked together on many crime issues. For example, we have worked on language pertaining to the designation of high-intensity drug trafficking areas.

Over a period of years we have tried to work together on the subject matter of the pending amendment to the bankruptcy bill. I have always been willing to work with him and others in the interest of passing the bankruptcy reform bill.

From the beginning of this debate, many others and I have long contended that his amendment is unnecessary on its own merits. The amendment which we consider today appears to seek to guarantee the collection of civil and criminal penalties arising from criminal violations of the 1994 Freedom of Access to Clinic Entrances Act. The purpose of the Schumer amendment is to make clear that those who are fined due to attacks on abortion clinics are prevented from being able to discharge these fines and civil judgments resulting from such attacks through bankruptcy proceedings.

My friend from New York has pushed a hot button. He must know that. Injecting the polarizing politics of abortion into the bankruptcy bill, most would have to agree, does not appear to be calculated to help the passage of the bankruptcy bill. Quite the opposite, the Schumer amendment has become a wedge issue that has stopped the bill in the past and, today, can threaten the passage of this important bipartisan bill that enjoys broad bicameral support.

I urge my colleagues to vote against the Schumer amendment. Let me first explain my substantive objections and then I will describe my procedural, pragmatic, and political concerns with the Schumer amendment.

At the outset, it should be understood that in its best light the Schumer amendment is a belts-and-suspender proposition that attempts to solve a problem which, as far as I can tell, has never actually occurred.

We have been debating this bill for 8 years, and I am still unaware of any actual case in which a person who has been fined for harming a person or property in connection with any unlawful protests against, or attacks on, abortion clinics, has had any subsequent fines or financial penalties discharged through bankruptcy. At our markup of this legislation in February of 2001—more than 4 years ago, Senator Schumer said in justification of the amendment:

> . . . this is a vital amendment. I am not going into all the details . . . I will not catalogue them except to tell you that when Maria Vullo testified and anyone else did, they said without the Schumer Amendment we would go back to the days before 1994 when the clinics were closed by some who had felt . . . that they were more moral than the rest of us. . . .

Certainly that prophesy has not come to pass in the 4 years subsequent to the time that Senator SCHUMER made that statement back in 2001.

I am unaware of a systemic shutdown of the network of abortion clinics in this country over the past four years. Nor am I aware of any evidence of the use of the bankruptcy code as a mechanism of escaping financial responsibility for acts of violence against abortion clinics or their personnel, or for that matter, any other criminal enterprise.

The reason for this outcome is simple: Current law prevents such an outcome. Section 523(a)(6) of the bankruptcy code already prohibits the discharge of debts through willful or malicious injury to a person or property, and section 523(a)(12) makes restitution orders resulting from a criminal conviction nondischargeable through bankruptcy.

Nothing in this bill changes these provisions in the law. Moreover, a growing body of case law confirms the adequacy of these provisions when it comes to enforcing judgments arising from FACE Act violations.

In Behn v. Buffalo GYN Womenservices, a 1999 decision in Federal bankruptcy court in Senator SCHUMER's home State, the court rejected an attempt to discharge a civil award debt resulting from an abortion protest.

So it was rejected.

In Bray v. Planned Parenthood of Columbia/Willamette, decided in 2000, a bankruptcy court in Maryland rejected the attempt to discharge debts resulting from an Oregon case in which a Web site produced by anti-abortion extremists threatened the lives of those working in these clinics. The 2001 Treshman decision in a Maryland bankruptcy court confirmed that such actions will not be tolerated by permitting discharge of restitution or judgment through bankruptcy.

Randall Terry, the founder of Operation Rescue, is living proof of the adequacy of these laws. His Web site now solicits contributions after he was completely bankrupted as a result of actions found to be violative of the FACE Act.

From a purely legal perspective, it seems fair to say that what we have here is a solution in search of a problem. This is actually confirmed by the most recent testimony of my colleague from New York's star witness on this subject, Maria Vullo.

Way back when this amendment was first suggested back in 1998 or 1999, several cases were still pending. But now these cases have been resolved. And in every instance, the courts have refused a discharge of these debts.

In answer to a question of Chairman SPECTER in connection with the Judiciary Committee's last hearing on bankruptcy reform, held only 3 weeks ago, Ms. Maria Vullo acknowledged that she was ultimately successful under current law in all six bankruptcy courts where she acted to help prevent such improper bankruptcy discharges of abortion clinic-related fines.

There you have it. The primary litigator in these cases testified that she has won in all of her cases under existing law. This should help lead us to the conclusion that there is no compelling legal reason to change the law. There is an old saying: If it ain't broke, don't fix it.

We are not talking just belts and suspenders, we are talking belts, suspenders, *and* an elastic waist band. Discharges related to FACE Act violations have not been permitted under current law.

Our laws are clear. We discourage, prevent, and punish abusive filings, including those related to those offenses that occur in connection with abortion clinics. Again, to my knowledge, there is a complete absence of cases demonstrating the problem that this amendment seeks to address. This is not surprising.

Our bankruptcy laws already act to prevent, have prevented, and will act in the future to prevent precisely the problem that Senator SCHUMER is worried about, but cannot, it appears, document. The truth of the matter is that, on the merits, this is just an unnecessary amendment. Yet this amendment has already scuttled bankruptcy reform on two occasions.

In 2000 essentially the same bankruptcy bill passed this body with 83 votes and then 70 votes. It was vetoed by President Clinton in the waning days of his second term for failing to include this amendment. Then in the 107th Congress, the House of Representatives rejected even a twice-amended—and moderated—Schumer amendment.

Now that it is clear that the courts will not discharge these debts, the proponents of this amendment have slightly but subtly changed their tune. Now the alleged issue of concern is that some will nevertheless continue to attempt to discharge such fines and penalties—that is, sometime, some place, someone will try to use the bankruptcy code to shield illicit acts involving attacks on abortion clinics.

Some argue the amendment is justified on the supposed need to codify the general prohibition of section 523(a)(6) against discharging debts accrued in

connection with willful or malicious injury to a person or property with a special provision of law geared solely toward abortion clinic-related violence. The fact is, however, current bankruptcy law, along with the ever growing body of precedents on this subject, make it clear that attorneys will not be inclined to make these frivolous and abusive filings in the future.

Rule 9011 of the Federal Rules of Bankruptcy Procedure already allows sanctions against attorneys who participate in submissions to delay proceedings and needlessly increase the cost of litigation. It says a frivolous action without evidentiary support can be punished. I guess it is true that particular bankruptcy courts may sometime in the future eventually be faced with a filing by someone asking for improper discharge of debts, but that is just the nature of litigation within the bankruptcy system and the American system of justice.

Having the right to bring a claim in our system is very different from winning that claim. For each case that goes to trial, there is a winner and a loser. Trying to get around the bankruptcy code and case law precedents in the manner feared by supporters of the Schumer amendment is a losing case under current law.

Courts decide cases on the basis of the law and the particular facts in front of them. That bankruptcy courts will have to undertake their normal and traditional role of reviewing all relevant aspects of individual filings that may, or may not, include these improper and unsustainable claims related to abortion clinic damages is hardly a grave injustice.

And for what it is worth, the success of the FACE Act and the decisions of bankruptcy courts that hold those debtors to account appears to have resulted in an ever dwindling number of judgments that must be litigated.

This is an issue that is being overhyped.

The current statutes are clear.

The case law is clear.

The paucity of evidence of such claims for abortion clinic-related violence and injuries being routinely, or even infrequently, made in bankruptcy proceedings, reflects the fact that the word is out that the statutes and case law already prevent the problem that the Schumer amendment allegedly solves.

Moreover, I would like to add that section 319 of this bill expresses the sense of the Senate that all signed and unsigned documents submitted to a bankruptcy court must be preceded by a reasonable inquiry to verify that this information is well grounded in fact and warranted by existing law or based on a good faith argument for an extension, modification, or reversal of existing law.

I am hopeful that this sense-of-the-Senate provision will help spread the word even further.

When the Schumer amendment burst upon the floor in 2000, I worked in good faith to make this questionably meritorious issue more palatable to Members on my side of the aisle.

In particular, I wanted to help alleviate the concerns of those who, as I, hold strong pro-life views. We are sensitive to the fact that the original Schumer amendment could reasonably be interpreted as affecting first amendment rights to protest against what we believe is the unjustifiable practice of abortion.

It is my recollection that the original Schumer language back in 2000 also addressed attempted or alleged harassment, interference, and obstruction. Many believed that this language was way too broad and could have potentially implicated the actions of peaceful anti-abortion protestors who were simply exercising their freedom of speech.

Nevertheless, for a variety of reasons, mostly political rather than legal or policy, the Schumer amendment was accepted. One of the key factors was that it appeared to some at the time that the amendment was offered in part to give then-Vice President Gore an opportunity to possibly cast a tie breaking abortion vote during the Presidential election year of 2000.

I cannot say for certain that this was the case. But if it was, it probably would not have been the first time that Presidential politics played out on the floor of the Senate.

Before the February 2, 2000, vote on the Schumer amendment, I said the following on the Senate floor:

> Although I believe this amendment to be tremendously flawed, the majority leader, Senator Grassley, and I recommend that Members on both sides vote for this amendment. We will, in good faith, in conference correct the amendment and resolve these problems at that time. With this amendment accepted, nobody will be able to demagogue this issue politically in the context of true bankruptcy reform. We pledge to work with our friends on both sides of the aisle who are interested in this issue during conference to make sure the law is clear, that the due respect for the first amendment, and debts arising from violent acts cannot be discharged in bankruptcy.

This is hardly a ringing endorsement and certainly nothing near an absolute commitment to retain this language at any cost or contingency.

Nevertheless, in the 106th Congress the bankruptcy bill, with this flawed language, passed the Senate with 83 votes.

Eventually during the House-Senate conference committee the Schumer abortion clinic-specific amendment was not contained in the conference report. The bankruptcy legislation, without the Schumer language still passed the Senate with a strong bipartisan 70 votes.

Unfortunately, President Clinton then pocket vetoed the bill passed by both the House and Senate.

Early in the 107th Congress, I worked with Senator SCHUMER on compromise language that moved away from the incendiary abortion clinics-specific language to a more general and neutrally-phrased provision related to ''lawful good and services.'' This provision was adopted by a unanimous voice vote of the Judiciary Committee on February 28, 2001.

I would note for the record that despite this compromise, Senator SCHUMER voted against the bill on final approval in the Judiciary Committee.

On July 17 , 2001, this bill passed the Senate by a vote of 82–16.

The House-passed version of the bankruptcy bill in the 107th Congress once again did not contain comparable language. I might add that the House passed its bill by a strong bipartisan vote of 306–108 on February 26, 2001.

At this point Senator SCHUMER and I worked with Representatives HENRY HYDE and JOHN CONYERS and others to fashion an acceptable compromise.

This compromise was rejected.

Frankly, at the time, I would have preferred that the compromise be accepted and this already overdue bill be signed into law.

However, I can well understand the frustration of many of my colleagues in the House being asked to adopt a watered-down version of an amendment without meaningful legal effect derived from the inflammatory original version of the Schumer amendment that addresses a problem that apparently does not exist in the first place.

Rather than go down this fruitless road again, I ask my colleagues to vote down the Schumer amendment for once and all.

Not only is it unlikely that the House will accept it, the Senate should not accept it either.

One important difference from the situation of 3 and 4 years ago is that we now have, as I discussed earlier, a more definitive picture of how the courts will interpret the application of section 523(a)(6) in the context of abortion-clinic related claims.

In short, the courts have not and will not allow fines or judgments stemming from the willful or malicious injury to a person or property to be discharged in bankruptcy whether they arise out of illicit actions against abortion clinics that violate the FACE Act, or, for that matter, any other of the literally dozens of other injuries that can be conjured up relating to willful or malicious injury to a person or property.

No one would, or should, take seriously any amendment that purported to state explicitly that fines or judgments incurred from yelling fire in a crowded theater could not be discharged through bankruptcy.

Nor should we support the Schumer amendment when we know it is both unnecessary and divisive.

You do not have to be pro-life to be against the Schumer amendment. You just have to conclude that 8 years is enough time to have worked on one bill that has repeatedly engendered broad bipartisan support.

And to hold up this legislation once again over an incendiary, extraneous,

redundant poison pill amendment is just not right.

I always try to seek a compromise or accommodation with my colleagues whenever it is productive to do so and consistent with my principles.

In this case it is simply not possible to do so in a productive manner absent any sign from the House that its Members are receptive to such a compromise.

Having worked on this issue for several years, I have reached the conclusion that the inherent volatility of the subject matter of the original Schumer amendment has made it nearly impossible to arrive at a neutral language resolution to this undocumented problem at this time.

Moreover, the well-known by now impasse over the acceptability of compromise language is compounded by the simple fact that there is, to my knowledge, no compelling evidence that there is a problem requiring a legislative fix.

To a certain extent, this is an exercise that demonstrates why it can be harder to fix a hypothetical problem than a real problem.

Frankly, that we would even be considering an amendment based on the 2001 Judiciary Committee markup language, rather than the revised 2001 conference report language, hardly seems like a step in the right direction. To use an expression that my friend from New York sometimes uses himself, reverting to the earlier language may seem to some a bit like a poke in the eye.

I suspect that this is unintentional on the part of my friend from New York. I wish we could have worked this out, and I thought we did work it out.

But as I look at all the facts and circumstances, including the developments in the actual cases brought and decided over the last few years, I can only conclude that there is even stronger evidence today than there was in 2000 and 2001 that this amendment is simply unnecessary.

While I attempted in good faith to resolve this problem 4 years ago, time seems to have proven that those I who looked askance at this compromise in the first place were correct in their assessment of the lack of necessity for this amendment.

I ask my colleagues to oppose the amendment of my distinguished friend from New York for these reasons. It is important that we get this bankruptcy bill finished. It is extremely important that we get it done. If this amendment is added, it isn't going to get done again, and we will be in the ninth year next year, frankly, probably 2 years from now because we will never get what really has to be done in the best interests of bankruptcy reform.

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

Mr. SCHUMER. Mr. President, I would like to ask my colleague a question, but, first, I will make a couple of points.

First of all, nothing has changed since we all supported the Schumer-Reid-Hatch amendment of a few years ago. The basic purpose then was not to make sure that cases in bankruptcy court did not come out on the side of those who were victims of violence. It was just impossible to pursue the claims of bankruptcy.

My good friend from Utah cites Maria Vullo. She is a successful lawyer in New York who donated her own time which she estimated at one of our hearings to be worth over $1 million. She believed passionately that those who used violence should be stopped. Not every clinic has it. And, of course, if you go through the bankruptcy proceedings, you will win. Clinics don't have the ability to do that; first, to fight in court on the issue of violence and then to go back to the bankruptcy court.

I say in all due respect to my good friend from Utah, he knew that then, and he knows it now. It is the same issue. The very issue that he says we don't need this law was brought up in 2000 and 2001. My good colleague was then good enough to admit we did need the law even though we couldn't find cases, and even though there were no cases in bankruptcy court where the Randall Terrys of the world prevailed. You would never have the successful suit.

That is why these fanatical groups are insisting that bankruptcy be used.

I make another point to my colleague. If the amendment is unnecessary now, why wasn't it unnecessary then?

I make this point to my colleagues: The merits have not changed. Exactly the situation that prevailed in 2000 and 2001 prevails in 2005.

What has happened is people have done a 180-degree about-face because of a small group in the House who do not represent the mainstream views of the House or of even the Republican Party in the House but who have insisted on not going forward with a bill with this worthy amendment in it. An amendment that was praised, a compromise that was hailed a few years ago is every bit as valid today as it was then.

I know it is difficult and awkward for people to say, well, never mind, but we cannot let this issue just die. The rule of law is too important. Fairness is too important. What is good and beautiful about America is too important.

We will ask our colleagues to stick with their convictions that they have had over the last few years and not do an about-face simply because a small group of industry leaders says we must have this bill no matter what.

Senator HATCH spoke for a long period of time. I wanted to rebut him. He did not want to do it on his time.

The PRESIDING OFFICER. The Senator from New York does control time. The Senator can yield time to the Senator from California, but in doing so the Senator will lose his right to the floor.

Mr. SCHUMER. I yield 10 minutes to my friend and colleague from California, and cosponsor of this legislation, Senator FEINSTEIN.

Mrs. FEINSTEIN. Mr. President, I thank the distinguished Senator from New York.

We are both members of the Judiciary Committee. We had an opportunity to discuss and debate this amendment in the Judiciary Committee.

Senator SCHUMER's amendment is a critical amendment. Essentially, when this body in 1994 passed the Freedom of Access to Clinic Entrances Act, we said that individuals should be able to go into clinics without being obstructed. The law was very clear.

The law also has led to successful criminal and civil judgments against groups that use intimidation and outright violence to prevent people from obtaining or providing reproductive health services.

This law would be seriously damaged if we do not close this loophole that has allowed some antiabortion extremists to use bankruptcy to shield their assets. The Senator from New York mentioned the founder of Operation Rescue, Randall Terry, who said in 1998 after filing for bankruptcy:

> I have filed a chapter 7 petition to discharge my debts to those who would use my money to promote the killing of the unborn.

In my home State of California there was a similar incident involving a man by the name of John Stoos and several other people in 1989 who were sued by the operators of a Sacramento abortion clinic for allegedly blocking the clinic's entrance and harassing patients. A judge ordered Stoos and others to pay nearly $100,000 in attorney's fees incurred by the clinic. As a result, Stoos filed for personal bankruptcy, listing that debt among many he could not pay. These actions are clear evidence of abuse of the bankruptcy system. This bankruptcy bill should stop them.

I hope the Schumer amendment would be accepted by this Senate.

Let me use this time to speak a bit more generally about this bill. I voted for this bill when it left committee. I have decided to vote against this bill in the Senate. I want to say why. In committee, we were asked to withhold all amendments to the floor. We knew the bill was not a perfect bill. We have seen it improved over the years. We knew it was better than the House bill. And with all complicated, difficult bills, the tradition of the Senate has always been the floor debate and discussion. In a majority of times as a product of floor debate and discussion, problems in the bill can be remedied.

We knew there were problems in the bill. For example, I have an amendment which I have withdrawn which says that the credit card companies should, in fact, notify a minimum payer how long it would take that payer of a credit card, if he only paid the minimum amount of interest, to pay off the debt. Senator AKAKA had a similar amendment. It was summarily

defeated. I had an amendment; I had two Republican cosponsors. I learned it would also be summarily defeated. Thanks to Senator SHELBY and Senator SARBANES, the Banking Committee has taken an interest in this and in the future and will take a look at it.

Nonetheless, the fact of the matter is this bill is all for the credit card companies. I know there is credit card fraud. I know that has to be met. I felt the bill was important to pass. However, I also felt the bill should be balanced and that we should see that the consumer is also protected in this process, protected with notice of what a minimum payment means, and also, frankly, protected against high interest rates.

Senator DAYTON moved an amendment which would limit interest rates on credit cards to 30 percent. The amendment was summarily defeated. The fact is with penalties, with other charges, with high interest rates—and many companies have interest rates, believe it or not, well in excess of 30 percent—a minimum payer cannot ever pay the full debt because the interest on the debt, if combined with certain penalties and/or fixed payments, becomes such that it overwhelms the principal. Many people do not know that.

The fact is 40 percent of credit card holders pay off their debt every month; 40 percent make only the minimum payment; and 20 percent are kind of 50/50 in that category. For those 60 percent who are generally people who are not as informed, not as able to pay back their bill, who may have one, two, three, four, five, six different credit cards, because this is a credit economy, credit card companies have been able, with very little interest to the payer of the debt, to solicit huge fees, penalties, and interest rates. This is plain wrong.

If we are unable to correct it, which I had hoped would be corrected by these amendments that have been presented, I cannot vote for this bill as long as these gross injustices remain.

Let's for a moment look at the 30-percent interest rate. It is very high. Inflation is about 2 percent. The interest rate on 3-month Treasury bills is 2.75 percent. The national average lending rate on a 30-year mortgage is 5.59 percent. Yet an amendment to limit interest rates on credit cards to 30 percent went down dramatically.

I mention there are companies that are charging high annual interest rates. Some charge 384 percent, 535 percent. Amazingly, one Delaware-based company has charged 1,095 percent, according to the Minnesota chapter of the National Association of Consumer Bankruptcy Attorneys.

The Washington Post, the Los Angeles Times, other major newspapers have pointed out where fees, rates, and charges have buried debtors. They have pointed out a multitude of cases. A special education teacher from my home State worked a second job to keep up with $2,000 in monthly payments. She collectively went to five banks to try to pay $25,000 in credit card debt. Even though she did not use her cards to buy anything else, her debt doubled to $49,574 by the time she filed for bankruptcy last June. Effectively, interest payments are half of the debt. She will never be able to pay that off.

To push people like this from chapter 7 into chapter 13, when what is the problem is interest rates and penalty fees that truly do victimize an unsuspecting individual—how could this Senate do that, if someone is going to charge a 100-percent interest rate?

One of my own staff members found that simply getting a credit card cash advance resulted in an immediate 3 percent fee which was simply added to the interest rate.

The result is even the most careful credit card users find themselves often swamped, particularly those who can only afford to make a minimum payment, and the fees, charges, and interests pile up, making it virtually impossible to ever pay off the debt.

This amendment would have been a meaningful addition to the bill. It certainly would have added fairness. It certainly would have sent a signal to credit card companies that the sky is not the limit. Yet it was defeated.

Senator SCHUMER's asset protection trust, of which I was a cosponsor, was another indication of where wealthy people could shelter assets and not have to pay back in chapter 13. These are some of the inequities.

In recent years a number of financial and bankruptcy planners have taken advantage of the law of a few States to create what is called an ''asset protection trust.'' These trusts are basically mechanisms for rich people to keep money despite declaring bankruptcy.

They are unfair, and violate the basic principle of this underlying legislation—that bankruptcy should be used judiciously to deal with the economic reality that sometimes people cannot pay their debts, but to prevent abuse of the system.

This loophole is an example of where the law, if not changed, permits, or even encourages, such abuse.

The amendment was simple. It set an upper limit on the amount of money that could be shielded in these asset protection trusts, capping the amount at $125,000.

The bottom line: Without this amendment, wealthy people will be able to preserve significant sums of money in an asset protection trust, effectively retaining their assets while wiping away their debts.

The proposed cap amount, $125,000, is not a small sum. It is more than enough to ensure that the debtor is not left destitute. I believe it is a reasonable amount—it is deliberately based on the now-accepted $125,000 limit for the homestead exemption, which will also remain available to a debtor.

I would also like to say a few words about my concerns about what appears to be a new policy in the Senate.

It appears that the Republican leadership has decided that rather than honoring the 200 plus year tradition of the Senate as a deliberative body, the Senate should be run like the House of Representatives. There appears to be a new process being implemented in which the Senate should no longer seriously consider amendments on the floor to improve bills.

We are now in the middle of the second major piece of legislation where the majority has decided that amendments by the minority will be rejected wholesale regardless of the merits.

It appears that even when serious problems in the underlying legislation are raised and even when the Republican leadership agrees that the problem exists, amendments offered by the minority will be rejected.

In fact, when the Judiciary Committee was marking up the bill, Senators were asked not to offer amendments and instead offer them on the floor. Statements were made by the Acting-Chairman like, ''I know we are going to go through this on the floor and I don't see any reason to keep us here all day and all night''; and, ''[You will] have every opportunity to present these amendments on the floor.''

Yet, upon reaching the floor, Senators have found that their amendments are not being considered on the merits.

It is the Senate's job to carefully debate, carefully consider, and pass the very best laws we can. But now the Senate is being asked to simply pass legislation as drafted, regardless of its content.

This lack consideration and care does a disservice to the Senate and to the Senators who work hard to reach compromises and find common ground. But more importantly, it does a disservice to the American people.

We are here to develop the best policy we can, not to simply play political games and jam through legislation for the sake of expediency.

As I began, I want to be clear. I support bankruptcy reform legislation, and I support many of the provisions in the underlying bill. However, throughout this process many important issues have been raised that identify serious problems that must be addressed. The Senate has been and should remain a deliberative body that seeks to draft the best legislation we can. Unfortunately, that is not what we are doing.

And unfortunately, based on these concerns, I regret that I am no longer able to support the bankruptcy legislation. I do not believe the bill before us is balanced. There remain many serious problems that must be addressed before I am ready to support the legislation. I have decided because of the summary disposition of amendments by the other side, this Democrat Member is going to vote ''no'' in the Senate.

Thank you, Mr. President, and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I ask the time be charged equally on both sides during the quorum call.

The PRESIDING OFFICER. Without objection, the time during the quorum call will be charged evenly to both sides.

The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I yield myself as much time as I may consume from the Republican side of the agenda.

I thank my colleagues for this good debate on an important issue that does not belong on this bill. There are several key reasons, clear reasons why this amendment of the Senator from New York should be rejected. This is an important piece of legislation, the bankruptcy legislation. This amendment brings the most difficult social issue we have of our day into this debate. It does not belong here. It is not the right place to do this. We have plenty of pro-life issues to come before this Senate, and not to tie the bankruptcy bill up would be an important thing to do.

The membership opposes this amendment because, as we learned in previous Congresses, it is a poison pill.

The amendment is meant to kill the overall bankruptcy reform bill. I would hope that is not what the author's intent is. But that is the effect of this amendment. It kills the bill.

If the author of this amendment wants bankruptcy reform to move forward, it is something that needs to move forward. I have voted against bankruptcy reform in the past because I didn't think it was proper. I thought particularly we have problems on homestead provisions that we have been able to get worked out over the years we have been considering this legislation. Now we have that worked out as many other pieces have been refined over the 6 years this has been considered.

Now is not the time to add this most contentious issue into the debate. It is not the proper place, and it is time that we move the bill forward, move it to the House and to the President for signature.

Bankruptcy reform is an important matter. It would be my desire for my colleague not to offer the amendment so that we can focus on the particular critical issue facing our Nation in the form of the need for fundamental bankruptcy reform.

Aside from the abortion issue, I am deeply concerned about what I believe to be a lack of fairness and justice embodied in this amendment. There is a fundamental fairness issue involved with this amendment. No one in this Chamber condones violent crime. I am certain that everyone believes violent crime should be prosecuted to the fullest extent of the law. While the pending amendment is presented as a way to address violent crime, it would primarily and inappropriately intimidate and harm peaceful protesters. In fact, were the Schumer amendment to become law, no crime would even be necessary to trigger its sanctions. Merely violating a Federal or State civil statute, such as a minor trespass, would be enough to place a violator in financial jeopardy.

Historically this legislative body has fashioned criminal and bankruptcy penalties in a manner proportional to the gravity of the offense and the degree of injury and culpability. If enacted, this amendment would be a radical break with this tradition of prudence and fairness. For example, under current law, there are only a few extreme cases where a debtor is prevented from seeking discharge of his or her debts through bankruptcy protection. For example, instances in which discharge of debt is prohibited include intentional financial wrongdoing, such as fraud and embezzlement, or cases where the debtor has created a grave unjustifiable risk to human life, such as injury caused by drunk driving. Those are appropriate.

The Schumer amendment would put a peaceful pro-life protester who, in the course of exercising his or her first amendment rights, simply steps in the wrong place—trespassing—on a par with embezzlers or drunk drivers. Should the price of constitutional freedom be the risk of financial ruin? Amazingly, this amendment says yes. The amendment says that people who protest and who do no physical harm, have no malicious intent should be singled out for harsh treatment.

While I make no excuse for violations of the law, I have to ask again: Should not the gravity of the punishment correspond with the offense? I don't think that is at all the case in this particular amendment.

A literal reading of the Schumer amendment would strip a peaceful protester of bankruptcy protection should he or she simply step in the wrong place while leafleting or even praying the rosary. Whether the fine involved is $10 or $1 million, we are talking about a peaceful individual and families with young children who should not be forced to risk paying this price simply for doing what the Constitution permits.

Fairness and the great tradition of our first amendment freedoms counsel against the adoption of this amendment.

I urge my colleagues to vote against it. It kills the bankruptcy bill. It is against fundamental fairness and freedom for people to exercise their right of free speech.

I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SCHUMER. 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. LAUTENBERG. Mr. President, I rise to support the Schumer amendment to the bankruptcy legislation presently before the Senate.

The amendment provides that debts or judgments arising from acts of violence and threats of violence cannot be discharged in bankruptcy proceedings. While this provision was drafted in previous Congresses to specifically apply to reproductive health service providers and abortion clinics, it has been expanded this year with the help of some of our Republican colleagues.

The amendment now addresses violence and intimidation aimed at blocking access to any type of lawful good or service. The Schumer amendment now applies to anyone who threatens, intimidates, or harms another person in the course of a lawful practice in places like houses of worship, the workplace and restaurants.

Supporters of the bankruptcy bill argue that this amendment should be defeated because any amendment to so-called compromise bankruptcy legislation would upset the apple cart, causing the House of Representatives to reject it.

I cannot understand how this Senate could could fail to pass an amendment that would simply prevent perpetrators of violence from hiding behind our bankruptcy laws. Where is the justice in permitting such a practice?

For the past week, supporters of the bankruptcy legislation have consistently talked about personal responsibility and the need to prevent people from abusing the bankruptcy process.

In fact, the centerpiece of this legislation is a means test that presumes chapter 7 filers are abusing the bankruptcy laws because their monthly income increases by as little as $100.

The Schumer amendment is intended to prevent extremists and fanatics from abusing our bankruptcy laws to shield themselves from paying fines and fees imposed by a court of law after they have endangered someone's livelihood.

These attacks are more common that one might imagine. Since 1977, there have been 7 murders, 17 attempted murders, 41 bombings, 171 arsons, 100 butyric acid attacks, and 655 threats targeting abortion providers alone.

In total, there have been more than 4,000 cases of stalking, burglaries, kidnappings, assaults, anthrax threats, invasions, attempting bombing and acts of vandalism, perpetrated against people who were performing or offering a legal procedure. And in case after case, after the perpetrators of these acts of intimidation and violence are

brought to justice, they hide behind the bankruptcy code to shield themselves from assuming responsibility for their actions.

As Senator SCHUMER has said, this issue is neither pro-choice nor pro-life; it is ''pro-rule-of-law and anti-violence.''

While we have a right to disagree with the law in this country, and a right to try to change the law, no person has the right to take the law into his own hands.

I have followed this issue for a long time. The first blockade of an abortion clinic occurred in Cherry Hill, NJ, in 1987.

The first murder of an abortion provider occurred 12 years ago, on March 10, 1993, when Dr. David Gunn was slain during an antiabortion protest at a Pensacola, FL clinic. Since then, there have been six more murders.

In 1994, responding to a rash of violence against abortion providers around the country, I asked the United States attorney to convene a task force to ensure that all appropriate measures were being taken to protect women and doctors and to prosecute those who threatened them with violence.

Later that year, Congress enacted the Freedom of Access to Clinic Entrances, FACE, Act, which established Federal criminal and financial penalties for those who employ violence and intimidation to prevent persons from obtaining or providing reproductive health services.

Unfortunately, the perpetrators of violence have used our bankruptcy laws to evade responsibility and escape the financial penalties that were part of the FACE Act. For example, former Operation Rescue president Randall Terry has filed for bankruptcy to avoid paying more than $1.6 million in fines and fees that he owes as a result of his illegal actions.

We must not allow those who would take the law into their own hands and commit acts of violence against their fellow citizens to hide behind our laws when it suits their purposes. We must not allow our bankruptcy laws to be abused as a shield for violence.

I encourage my colleagues to support the Schumer amendment.

Mr. SCHUMER. Mr. President, we have 11 minutes on our side. How much time remains left on the other side?

The PRESIDING OFFICER (Mr. BURR). There is 10 minutes remaining on the minority side and 15 minutes on the majority side.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the last 5 minutes be reserved for me and the previous 5 minutes to whoever wants to speak for the other side.

The PRESIDING OFFICER. Without objection, 5 minutes will be reserved on each side to be allocated from that side's time remaining.

Mr. SCHUMER. 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. 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, it is my understanding there is 6½ minutes on the Democratic side.

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. I will use a minute and a half of that now.

Mr. President, I am happy today to rise as a cosponsor of the Schumer amendment. This amendment would ensure that debts arising from unlawful acts of violence cannot be discharged from bankruptcy.

America is a nation of laws. One might not always agree with the law or how it is interpreted, but that does not entitle you to willfully violate the law. The right to express disagreement is to seek change through peaceful means. It is never appropriate to resort to violence or intimidation in violation of the law. Here in the Senate we express policy differences through civil discourse and resolve them through the political process, not through violence. We debate in this body passionately but in a manner of respect and civility in an attempt to persuade others of the merits of our position, and that is the purpose of the debate. Those who resort to violence are violating not only our laws but our American principles and values. They are violating what we call the rule of law on which this country was founded.

Unfortunately, some who break the law are using a loophole in the Bankruptcy Code to avoid paying the fines and penalties assessed against them as a result of their illegal activities. This amendment will ensure that individuals who engage in such acts of violence, intimidation, or threats, cannot hide in bankruptcy from the penalties imposed on them from violating the law.

I emphasize that this amendment is not about the right to abortion, nor does it single out anti-abortion protestors. This amendment applies to anyone who violates a law related to the provision of lawful goods and services. It applies to any extremist who will turn to violence to protest lawful activities.

For example, this amendment would apply to animal rights activists who engage in illegal tactics to shut down a lawful animal research center. There are many people who think that using animals for medical research is immoral and wrong, but this does not entitle those people to come in and trash one of those facilities, as has been happening. It would apply to an ecoterrorist who engages in illegal tactics to intimidate car dealerships or timber companies from doing business with people they think they should not do business with. It would apply to an arsonist who starts a fire at a church to deprive worshippers of the right to practice their religion. All of these extremists must be held accountable for their actions, and none should be permitted to discharge their debts in bankruptcy.

It is true that some of the worst abuses of this kind have been anti-abortion extremists who have terrorized reproductive health care workers. They have directed thousands of acts of violence against abortion providers, including bombings, arson, death threats, kidnappings, assaults, and murders. When a man by the name of Barnett Slepian, who was a father of four, a husband, was a victim, I was the first person to come to the Senate floor and say that is wrong. When violence occurred at a Planned Parenthood clinic—I believe that is where it was—someplace in the South, I came to the floor immediately to say that one cannot violate the law because they disagree with what a lawful business is doing.

Dr. Slepian was an obstetrician/gynecologist. He provided health care to women and delivered babies and, on occasion, he performed abortions. He was at a downtown clinic, and he worked there specifically because he believed it was important he give his expert advice to people who were poor. Because of this, one night he was in his living room, and someone with a high-powered rifle shot and killed him while he was there with his family.

I did not know this doctor, but I learned after his death that he was an uncle of a woman who worked for me. The woman was from Reno. She was a good employee. Of course, she was heartbroken over the fact that her uncle had been murdered. The person who did this was not only a murderer but should be seen as a terrorist.

What is going on in Iraq today? We have these extremists, these terrorists, who do not like what is going on there, and so they are committing these criminal acts. They are taking the law into their own hands.

The man responsible for killing Dr. Slepian was extradited from France a few years ago where he had fled. His name was James Kopp. Kopp was part of an organized network of violent extremists, including a group that called itself the Army of God. The group and others similar to it have engaged in a long campaign of violence.

In 1994, we passed the Freedom of Access to Clinic Entrances, called FACE, which established Federal criminal and financial penalties for those who employed violence to prevent persons from obtaining or providing reproductive health services. The FACE Act is essential to protecting the lives of women and health care providers.

Unfortunately, some of the people charged under this act are filing for bankruptcy to avoid accountability for their illegal acts of terrorism. As an example, defendants in the so-called Nuremburg files case have tried to nullify years of court proceedings by filing a chapter 7 proceedings.

What are the Nuremburg files? Listen to this one: They posted on a Web site the names, addresses, and license plate numbers of people who worked in these health care facilities. They even posted pictures of their target's families, all members, and they would list them—father, son, mother, brother, whatever it might be—and places where their children waited for the school bus. Doctors who still worked appeared in plain text on the Web site, a person who had been wounded was grayed out; and those who had been murdered, including Dr. Slepian, had a line through their names.

It is intolerable that the groups which incite these heinous acts of violence can discharge their civil penalties in bankruptcy, but that is exactly what happened. If we want to prevent future acts of violence, including clinic violence, it seems to me that we need to have a specific provision in the bankruptcy law to prevent discharge of violence-related debts. That is what this amendment is all about.

I do not support abortion, but this amendment is not about abortion. It is about holding responsible those who commit illegal acts and believe that they are above the law. This amendment is about preserving the rule of law.

I cannot imagine how this amendment is causing a concern or a problem. Are we now to believe that there are people who are telling members of the majority, do not do this, we want to go and commit acts of violence, we want to commit crimes, and do not vote against us because you will prevent us from filing bankruptcy? That is what this is all about. Should not we as a body say that if one goes out and does these terrible acts, where they kill people, they maim people—one of their latest tricks is they figured out this acid which is some kind of a chemical compound, and they walk into these facilities and they throw it all over. It cannot be washed out. It cannot be steamed out. The only thing one can do is tear the facility down. Should they not be held responsible?

I cannot believe we are going to have a bill as important as this bankruptcy bill jeopardized because of the terrorists who are out there waiting to file bankruptcy. That is what this is all about. People are out there wanting to commit crimes, waiting to commit crimes, saying, do not pass this because if you pass it I will not be able to file bankruptcy. I just think it is beyond my ability to comprehend that people who know they are violating the law, they are killing people, they have this Web site that they are soliciting murder.

And we are going to condone this activity under the guise that this is a choice, this is a pro-life/pro-choice issue and we cannot get involved. This is not about abortion. It is about maintaining the law.

I am so disappointed that the majority is going to go along with the ability of people to commit crimes and terror and discharge them in bankruptcy.

The PRESIDING OFFICER. Who yields time? The Senator from New York.

Mr. SCHUMER. Mr. President, what is the status of the time on both sides?

The PRESIDING OFFICER. The majority has 11 minutes remaining. The Senator from New York has the last 5 minutes.

Mr. GRASSLEY. Mr. President, I rise in strong opposition to the Schumer amendment which would make debts incurred in connection with violations of the Freedom of Access to Clinic Entrances Act nondischargeable in bankruptcy. This amendment has been a poison pill to enactment of the bankruptcy bill and must be defeated.

On two previous occasions, CRS performed research for us and told us that FACE debts had never been discharged in bankruptcy. Just recently, I asked CRS to perform an updated search on reported decisions considering the dischargeability of liability incurred in connection with violence at reproductive health clinics by abortion protesters. CRS confirmed that this amendment is not necessary. The CRS memo identified only one reported case, which found the debt to be nondischargeable under the bankruptcy law's discharge exception for willful and malicious injury. So this amendment is not necessary. Even Senator SCHUMER's own witness at the Senate Judiciary Committee hearing on the bankruptcy bill testified that in all the cases that she had litigated, the court had always found that the debts incurred under the FACE Act were nondischargeable in bankruptcy.

My colleagues make a big deal out of the fact that some of us on this side have supported amendments similar to this one before. The truth is, when the Schumer abortion amendment was offered in 1999 to the comprehensive bankruptcy bill, Vice President Gore was campaigning for the Democrat nomination. His opponent, Senator Bradley, was alleging that Vice President Gore was not sufficiently prochoice. Vice President Gore's allies in the Senate were maneuvering to create a tie vote on the Schumer amendment so Gore could ''break the tie'' to improve his political standing.

To avoid this, most Republicans voted in favor for the Schumer amendment. Thus, that vote in the 106th Congress was not a vote on the merits of the Schumer amendment.

The Schumer amendment was included in the 107th Congress bankruptcy bill. But the fact is that in the 107th Congress, the Schumer amendment killed the bankruptcy conference report because the House would not take it. Thus, the Schumer amendment is a poison pill and must be defeated.

Let me reiterate that in two previous memos, CRS concluded that the Schumer amendment is unnecessary because abortion protester debts are already not dischargeable in bankruptcy. We have just updated this research and CRS has confirmed that FACE Act violations are not dischargeable in bankruptcy. The proponent's own witness testified before the Judiciary Committee that none of these debts have ever been discharged in bankruptcy. The reality is that the Schumer amendment is just a political ploy designed to generate opposition to the bankruptcy bill. The Schumer amendment is a poison pill which will kill the bankruptcy bill. This amendment must be defeated, and I urge my colleagues to oppose it.

The PRESIDING OFFICER. Does the Senator from Iowa ask unanimous consent to yield back the remaining time?

Mr. GRASSLEY. Yes.

The PRESIDING OFFICER. The Senator from New York is recognized for his final 5 minutes.

Mr. SCHUMER. Mr. President, in conclusion, I would like to rebut some of the comments of my colleague from Utah who said this amendment was not necessary, and he talked about Maria Vullo, the lawyer who represented the clinic in the Nuremberg files case.

Here is the major point. She did not collect any money in that case. Despite spending $1 million of her own money, pro bono, despite relitigating in six bankruptcy courts, she was unable to collect any dollars. This is the point we are making. Perhaps at the end of the day you will get a nominal victory if you go all around the country chasing these fanatics in bankruptcy court, but you cannot collect. That is why the American Coalition of Life Activists, a violent fringe anti-choice group, actually requires its leaders to be judgment proof.

Here is the bottom line: This amendment, which was supported by so many on the other side, is being dropped, not because it is wrong but for expediency, so there will not have to be a bloody battle in the House between those who are on the Republican side, between those who are more probusiness and those who are vehemently opposed to this amendment. I will not denigrate the pro-life movement by labeling them that way because the pro-life movement cannot be for these violent groups.

This amendment is for the rule of law. This amendment says you cannot use violence against any group to achieve a political end and then, when you are sued civilly, use the bankruptcy courts for protection. That has never been what the bankruptcy courts were intended to be. It is neutral on terms of what issue. Yes, it might be extremists who are against abortion. It also might be extremists on the left side, on the environmental side who burn buildings or houses or cars. Are we going to, as a society, condone that type of activity?

I will tell you, if we defeat this amendment, that is what we are doing. Make no mistake about it, make no mistake about any of the subterfuges. To me, this amendment and the rule of

law and the American way of life that this amendment stands for are more important than the rest of the bankruptcy bill.

The bankruptcy bill, whether you are for it or not, twists the dials a little bit with regard to the balance between creditors and debtors. I assure you that was not on the Founding Fathers' minds when they wrote the Constitution and created the Republic.

What this amendment does goes right to the heart of what America is all about. It says those who use violence to achieve their political goals cannot get a benefit, in this case bankruptcy. It, in my judgment, as I said, is more important than the rest of the bill.

So I ask my colleagues on the other side to rise to the occasion. Do not let arguments of expediency persuade you. That is the slow road to oblivion. That is the tortured path to undoing step by step, bit by bit, as the river creates a canyon, the way of life that we love. No matter how strongly one feels about something, their job is to persuade others to their viewpoint, not to take the law into their own hands and use violence. And if they do, they should not be allowed to use the Bankruptcy Code or anything else to prevent just civil or criminal action against them.

I ask my colleagues to look into their hearts, to examine what this amendment does, and to have the same courage—courage of conviction and courage of a fair compromise—that we showed a few years ago. I urge support of this amendment.

I yield the floor.

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 on agreeing to amendment No. 47 offered by the Senator from New York. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

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

The result was announced—yeas 46, nays 53, as follows:

[Rollcall Vote No. 28 Leg.]

YEAS—46

| | | |
|---|---|---|
| Akaka | Feingold | Murray |
| Baucus | Feinstein | Nelson (FL) |
| Bayh | Harkin | Obama |
| Biden | Inouye | Pryor |
| Bingaman | Jeffords | Reed |
| Boxer | Johnson | Reid |
| Cantwell | Kennedy | Rockefeller |
| Carper | Kerry | Salazar |
| Chafee | Kohl | Sarbanes |
| Clinton | Landrieu | Schumer |
| Collins | Lautenberg | Snowe |
| Conrad | Leahy | Specter |
| Dayton | Levin | Stabenow |
| Dodd | Lieberman | Wyden |
| Dorgan | Lincoln | |
| Durbin | Mikulski | |

NAYS—53

| | | |
|---|---|---|
| Alexander | DeWine | McCain |
| Allard | Dole | McConnell |
| Allen | Domenici | Murkowski |
| Bennett | Ensign | Nelson (NE) |
| Bond | Enzi | Roberts |
| Brownback | Frist | Santorum |
| Bunning | Graham | Sessions |
| Burns | Grassley | Shelby |
| Burr | Gregg | Smith |
| Byrd | Hagel | Stevens |
| Chambliss | Hatch | Sununu |
| Coburn | Hutchison | Talent |
| Cochran | Inhofe | Thomas |
| Coleman | Isakson | Thune |
| Cornyn | Kyl | Vitter |
| Craig | Lott | Voinovich |
| Crapo | Lugar | Warner |
| DeMint | Martinez | |

NOT VOTING—1

Corzine

The amendment (No. 47) was rejected.

Mr. MCCONNELL. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, in a few hours we will be voting on cloture for this bill. I would just like to take a minute or two and remind everyone why it is time to end the debate on this bill.

It has been 8 long years of consideration on this legislation. We have all compromised a great deal. Not everyone got their preferred language or amendments. Not everyone is happy with the current legislation.

But I think everyone would have to agree that we have given thoughtful consideration and fair opportunity to all suggestions on the bill throughout the years of debate.

Over the years, we modified the homestead exemption.

We modified the means test.

We provided for sanctioning attorneys who file abusive claims.

And we hindered creditors who would try to collect through predatory lending practices.

All of these changes, among scores of others, came from my Democratic colleagues.

After all this, just 2 weeks ago, we took 5 more Democratic amendments in the Judiciary Committee markup.

And yet almost everyone of the pending amendments today touches upon the areas where we have previously compromised.

At a certain point, the time comes to move forward with what we have. Given how far we have come on this bill already over the last 8 years, and considering all the compromises that have been made, we may get no bankruptcy bill at all if we try to take more amendments.

The lopsided votes in favor of this bill in the past—with 70, 83, and even 97 votes in this Chamber—reveal that we are left with only a small minority of opposition. The fact is that a large majority of this body recognizes that we are not doing anything radical in this bill.

We simply ask that higher-income filers who can pay their bills, should pay their bills. It is as simple as that. There is no reason to ask the vast majority of bill-paying consumers to pick-up the tab when those with means do not repay their obligations.

After 8 long years, we have compromised every which way we can. The remaining amendments being proposed are just further adjustments of adjustments to adjustments that were already made during this process.

There is simply no reason to continue to holdup this bill through the amendment process. The longer we delay, the greater the chances for mischief. The more we stall this measure, the more likely we open it to political, message amendments that can only act to stall work on this bill.

A time comes when you just have to say enough is enough. Eight years should be long enough to pass one bill.

I urge my colleagues to join me in voting for cloture.

Mr. BAUCUS. Mr. President, I want to explain my decision to oppose closure on the Bankruptcy bill. I have offered an amendment to this bill modeled on legislation I have introduced to set up a permanent health care trust fund for current and former Libby residents, and former workers at the W.R. Grace vermiculite mine in Libby, MT. The trust fund will help pay for medical costs associated with treating asbestos-related disease or illness caused by exposure to deadly tremolite asbestos and other fibers released by Grace's mining operations.

I offered this amendment to this bill because it presented an opportunity to make whole the people of Libby, who have suffered, while preventing a company like W.R. Grace, which has filed for bankruptcy, from emerging from that bankruptcy without setting up a health-care trust fund for its victims.

I have worked very hard to make sure the people of Libby, MT, are protected in any asbestos legislation to come before Congress; to include special provisions in an asbestos bill for Libby residents that take into account the unique kind of health impacts associated with exposure to the deadly asbestos fibers from the W.R. Grace vermiculite mine.

For years, I have been committed to securing a common sense solution for the residents of Libby. I strongly believe that too many people have suffered, and they deserve fair compensation. I will do everything in my power to help Libby make their community whole again and to make sure their long-term health care needs are met. Passing bankruptcy legislation, with consideration of my asbestos amendment is essential. I will fight to get additional protections for Libby residents and then work to pass the bill.

Unfortunately, we have not had an opportunity to vote on this amendment, and it has been judged to be nongermane. The bankruptcy bill is all about responsibility and accountability. This amendment tries to hold W.R. Grace accountable for its actions.

Because we were not able to vote on this amendment, I can not support limiting debate on this bill.

## 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 12:44 p.m., recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

## BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005—Continued

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 p.m. having arrived, the Senate will proceed to a vote on a motion to invoke cloture on S. 256. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 14, S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

Bill Frist, Arlen Specter, Chuck Grassley, Judd Gregg, Thad Cochran, R.F. Bennett, Wayne Allard, Lindsey Graham, Jeff Sessions, Trent Lott, Rick Santorum, John Warner, John Thune, Orrin Hatch, Lisa Murkowski, Mel Martinez, Sam Brownback.

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

The question is, Is it the sense of the Senate that debate on S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant journal clerk called the roll.

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

The yeas and nays resulted—yeas 69, nays 31, as follows:

[Rollcall Vote No. 29 Leg.]

YEAS—69

| | | |
|---|---|---|
| Alexander | Conrad | Isakson |
| Allard | Cornyn | Johnson |
| Allen | Craig | Kohl |
| Bennett | Crapo | Kyl |
| Biden | DeMint | Landrieu |
| Bond | DeWine | Lieberman |
| Brownback | Dole | Lincoln |
| Bunning | Domenici | Lott |
| Burns | Ensign | Lugar |
| Burr | Enzi | Martinez |
| Byrd | Frist | McCain |
| Carper | Graham | McConnell |
| Chafee | Grassley | Murkowski |
| Chambliss | Gregg | Nelson (FL) |
| Coburn | Hagel | Nelson (NE) |
| Cochran | Hatch | Pryor |
| Coleman | Hutchison | Roberts |
| Collins | Inhofe | Salazar |
| Santorum | Specter | Thomas |
| Sessions | Stabenow | Thune |
| Shelby | Stevens | Vitter |
| Smith | Sununu | Voinovich |
| Snowe | Talent | Warner |

NAYS—31

| | | |
|---|---|---|
| Akaka | Durbin | Mikulski |
| Baucus | Feingold | Murray |
| Bayh | Feinstein | Obama |
| Bingaman | Harkin | Reed |
| Boxer | Inouye | Reid |
| Cantwell | Jeffords | Rockefeller |
| Clinton | Kennedy | Sarbanes |
| Corzine | Kerry | Schumer |
| Dayton | Lautenberg | Wyden |
| Dodd | Leahy | |
| Dorgan | Levin | |

The PRESIDING OFFICER. On this vote, the yeas are 69, the nays are 31. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. MCCONNELL. I ask unanimous consent that Senator DOLE be recognized for up to 15 minutes as in morning business, after which Senator JACK REED of Rhode Island be recognized for up to 10 minutes as in morning business.

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

(The remarks of Mrs. DOLE and Mr. REED are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Illinois.

AMENDMENT NO. 40 WITHDRAWN

Mr. DURBIN. Mr. President, on behalf of Senator PRYOR, I ask unanimous consent amendment No. 40 be withdrawn.

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

Mr. DURBIN. Mr. President, now that we are postcloture, the number of amendments is limited, and the type of amendments will be limited. I have three pending amendments before the Senate relative to the bankruptcy bill.

For those of you who have not followed the debate on this bill, this bill will change the bankruptcy law in America. Today, many people go into bankruptcy court because they have no place to turn. They have more debt than they can possibly pay.

One of the major reasons people reach this point in life, the No. 1 reason people go to bankruptcy court is medical bills. Three-fourths of the people in bankruptcy court with medical bill problems had health insurance when they were diagnosed with their illness. If you think, I don't have to worry about bankruptcy court because I have health insurance, so do these people. What happened? They got sick. The bills started piling up. Maybe they lost their job and their health insurance and couldn't afford to pay the COBRA premium, which people have to pay once they have lost a job and health insurance. They gave up on their health insurance, and the bills started stacking up. It reached the point for these folks where they had nowhere to turn. They faced $50,000, $100,000, or $200,000 in medical bills they could never pay off for the rest of their lives. In desperation, and with some embarrassment, people then went to bankruptcy court and said: I have no place to turn. I just can't do it.

A court says: What do you owe? Give us all our assets. What do you have in checking and savings? How much is your home and your car worth? Furniture, everything—what is it all worth? Where are your debts? We will let you walk out of bankruptcy court with very little left, but your debts will be gone.

That happens to people. More often than not, medical bills drive them there.

There are other reasons. You lose your job. How many people have you met in their fifties in America—I have met many in Illinois—who had a great career and a great job and lost it, then went out looking for a comparable job only to learn they were ''too old for the market''? There they sat, taking a job that paid less, trying to maintain a family and household that was basically financed with a higher salary not that long ago. In desperation, they try to keep things together, and it starts to fall apart. The debts they incurred when they had a good job they cannot handle anymore.

What else happens to people? Some people live on the margins already. Some single mothers trying to raise kids are in a situation where finally something happens to them—a medical bill, an unforeseen circumstance—and they are stuck in bankruptcy court.

The credit industry comes in and says: We have to do something about these payments. We have to make it more difficult for them to walk out of that bankruptcy court having given up their assets with their debts basically behind them. So the law is changed here in this 500-page bill written by the credit card industry, written by the financial industry, to make it more difficult for a person to walk out of court with their debts behind them. They make sure in this bill that it is more likely for many that they will walk out of court still paying, on and on. As little as $165 a month is enough to say that you will never be forgiven in bankruptcy. You will just keep paying and paying. The creditors will keep calling and calling. That is what the credit industry wanted. They worked hard for 9 years. They are going to win this battle.

We came to the Senate floor and said, at least let us carve out some people who really should be treated differently. I am sorry that the marines who were here earlier didn't stick around. I wish they could have, I wish they could have heard the debate on the floor of the Senate when I offered an amendment and said: If you activate a guardsman or a reservist for a year or a year and a half and they go over to serve their country as they promised, leaving behind a restaurant or a small business which falls into bankruptcy while they are gone—and it has happened—shouldn't we give them a break in bankruptcy court? For goodness'

sakes, these people aren't morally deficient; they are our best, and they are serving our country. They are protecting you, me, and everyone else.

I put in an amendment that said, at least for the men and women in the military who face this kind of bankruptcy—and it happens—let us give them a break in this bill. Let us not put them through the harshest parts of this bill. I lost the amendment 58 to 38. Many of the Senators who go back home and cheer the troops and how much we love them and how much we want to stand behind them couldn't wait to vote with Visa and MasterCard and against the Army, Navy, Marine Corps, Air Force, and Coast Guard. That is what it came to. We lost that amendment.

Senator KENNEDY came to the Senate floor and said: If you get swamped with a medical crisis in your family and go into bankruptcy court trying to get out from under something you will never pay off, shouldn't you, when it is all over, at least be able to go home? Shouldn't you have a roof over your head when it is all over if it is medical bills that put you in bankruptcy court? He offered an amendment and said: Let us at least protect $150,000 in equity in your home that you can go back to after bankruptcy.

Think about that. What will $150,000 buy you? In Springfield, IL, it buys you a nice little house. What does it buy you in Washington, Boston, New York, and California? Not much. But when we offered that amendment, only 40 Senators voted for it and 58 or 59 voted against it.

The argument behind this bill originally was that too many people went to bankruptcy court because of their moral failure. They didn't understand that they can't game the system, they can't use it in a way that is fundamentally unjust and immoral by going to bankruptcy court when you shouldn't go. But in the two examples I have given you, does that argument apply? Is there something fundamentally wrong with the values of men and women in uniform serving our country who can't keep that business afloat back home? Of course not. Is there something fundamentally wrong with a person who feels as if he is on top of the world, goes in for a diagnosis at the doctor, and ends up with a life-threatening disease which costs hundreds of thousands of dollars where his health insurance fails him? Is that a moral failure? It is a failing of Congress. It is a failing of your Government to deal with the realities of the challenges of life, whether it is health care or service in the military.

We went in and argued: What if you were the victim of an identity theft? And it happens; it happened to me. What if someone steals your identity and runs up bills in your name? It can happen to anyone listening to this debate. Senator BILL NELSON of Florida said, in that situation; if all the bills that have swamped you are not even bills of your creation, shouldn't we give you a break under this tough new bankruptcy bill? Overwhelmingly, on a partisan rollcall, the answer was, no. No. Ultimately you shouldn't be discharged from bankruptcy even if those weren't your debts.

We said: What if the people lending the money to you break the law while they are lending it to you? What if they take—and you know this story; it happens in every community. What if they take advantage of an elderly widow or widower living in that little home they have always had? They knock on the door: Boy, you sure could use a new roof, Ma'am. Luckily, I have a company out here that will do it if you just sign a few papers.

The next thing you know, you have one of these phony, predatory lenders coming in with a subprime mortgage with a balloon clause, and grandma's little house disappears. He looked so trustworthy. He seemed like such a nice man. He told me this was a standard contract. Yes, I signed it. I should have called you, but I just signed it.

What about those people? Should they be able to take away her home; go to bankruptcy court and stand in line with all the other creditors and say, Treat me like another legal creditor? I didn't think so.

So I offered an amendment saying those people should not have the advantage of going to court if they have broken the law in the way they make the loan. I didn't have a chance on that amendment. Those who are supporting this bill did not want to talk about that. One Republican Senator supported me. Just one.

Time and again, whether we are talking about victims of bankruptcy who deserve a little help, or whether we are talking about those gaming the system from the creditor's side, we found this stone wall that separates this Chamber. The Republican side does not want to consider any changes to this bill. The credit card industry has written it, and they are sticking with it.

The only perfect laws ever written were written by God and Moses, as far as I am concerned. All of the rest are amendable. All the rest can be improved. Here we assume that if it was generated by the largest credit card companies in America, we cannot argue with them.

One of the best arguments that has been made is, this bill does not apply to people who make less than the median income. That has been a point made over and over and over again during the course of this debate. Why is it important? Because this new law imposes a brandnew set of requirements in bankruptcy court for those who are above the median income. At least that is the argument.

Let me show this listing of all the documents that now have to be filed in bankruptcy court. It is pretty long. I used to practice law. I know it takes time to fill these out. You sit down with your client. You say: Get your income tax returns. Get all the checks you can find. Let's sit down. This will take some time. This is the current requirement under the law. So it is not as if you walk into bankruptcy court, sign your name, and wave and leave out the other door. It is a long process.

During the course of the process, your creditors and the trustee in bankruptcy decide whether you are telling the truth. If you aren't, they will throw you out of court on your ear. That is the way it ought to be.

Now comes this bill which says these papers are not enough. Here we have the new means test. This is an example of what you have to do in addition to all the current requirements to file bankruptcy. This is the means test in this bill. It not only adds to the complexity of this process, it adds to the cost. So here you are without enough money to pay your bills, trying to figure out how to come up with a filing fee of $200, how to pay that lawyer who is going to represent you in bankruptcy, and along comes this bill which says let me give you some more paperwork to fill out before you can qualify for bankruptcy.

The argument has been made over and over again in the Senate that people below the median income do not have to go through this. My amendment will clarify that, amendment No. 110. We want to make it clear that if you have below the median income, you do not have to go through the means test. In other words, on the first line up here, ''current monthly income,'' if you have proof your current monthly income is in the lower income categories, supposedly protected from this bill, that ought to be the end of the story.

It is not now. I want to clarify that. I want to make sure that Members of the Senate who have come to the Senate and said people below a median income could not have to worry about this bill, really mean what they say. I emphasize and underscore my amendment does not in any way relieve those filing for bankruptcy from meeting all the other requisite steps. They still need to complete a lot of forms and schedules outlining assets and liability. We add language that makes it abundantly clear that a court may not dismiss a case based on any formal means testing if the current monthly income of the debtor falls at or below the median family income of the applicable State. The language I offered merely reinforces what Members of the Senate on both sides of the aisle, particularly on the Republican side of the aisle, have said over and over and over again from the beginning of the debate.

Let's look at the statement of my friend and colleague, Senator ORRIN HATCH. Here is what Senator HATCH said in the Senate:

> It is possible that during this debate some may falsely suggest that this bill unfairly treats low-income persons. Let me tell you at the outset that the poor are not affected by the means test. The legislation provides a

safe harbor for those who fall below the median income, so they are not subjected to the means test at all.

But they are. Under the current language of this bill, it is not clear that they are exempt from the means test, as Senator HATCH has argued.

Now, let's take a statement from Senator FRIST, the Republican leader of the Senate. Senator FRIST, on March 1, last week, said:

It [the Bankruptcy Reform Act] establishes a means test that is based on fair principle, a simple principle, and that is this, that those who have a means should repay their debts. A simple principle: Those who have the means should repay their debts. It specifically exempts anyone who earns less than the median income in their State.

That is what my amendment says. If you earn less than the median income, finish the forms that are already provided in bankruptcy court, the new law does not affect you. But if you earn over the median income, you have to fill out more forms. So it means the lower income people, just as Senator HATCH and Senator FRIST have said, will not have to go through the extra expense and the extra time of going through mountains of paperwork.

Let me also take a quote from Senator SESSIONS from Alabama who has been on the Senate floor in support of this bill. Here is what he said:

Chairman Sensenbrenner pointed out that the means-based test only applies to people with incomes above the median state average. Anyone below the state median income does not qualify on the means-based test and their bankruptcy petition cannot be tossed out of chapter 7 and put into chapter 13 where some debts are paid back.

That is as clear as can be. Senator SESSIONS told us that. Now we have another statement from Senator SESSIONS:

I remind all of my colleagues that people who are economically distressed and if the income is below the median income already will be exempt from the means test.

So my challenge to all those who made those statements is, prove it. Prove it by voting for this amendment. Prove it that if you establish that you have an income below the median income in your area, that you do not have to go through this means test. They have all said it. Now they will have a chance to vote on it.

Let me speak to one of my other amendments. I tried earlier in my first amendment to protect the soldiers activated and fighting overseas who lost their businesses. I failed, 58 to 38. I was surprised by that rollcall, but I watched what happens. Virtually every amendment has failed. As I said, some view this as holy writ. I just view it as a product of the credit industry, their best hope of something they want to pass in the Senate.

So I will offer amendment No. 111 to exempt certain veterans and current members of the Armed Forces from the onerous administrative burdens resulting from the means test. We say in this amendment it applies to members and spouses of members of the Armed Forces on active duty performing a homeland defense activity under title 32, veterans or their spouses whose indebtedness occurred primarily during a 6-month or longer period of active duty or performance of a homeland defense, reservists of the Armed Forces or their spouses, same situation, surviving spouses of those who died while serving as a member of the Armed Forces.

We take a category of Americans to whom we all owe such a great debt of gratitude and say if their debts overwhelm them because they are serving our country, we are going to give them a break, a chance to avoid this lengthy, expensive means test in this bill. I hope my colleagues will reconsider their earlier vote against this amendment. This is a much more compact, succinct, and limited break for those who are serving.

The last amendment I will offer, amendment No. 112, is if I fail on the previous amendment. Let me tell you what it says. It provides an exemption from the means test only for disabled veterans who incurred their indebtedness primarily during a period of service. It covers service on active duty or during a National Guard homeland security operation. Certainly we can give something of a break to these Americans who have given so much to us.

I go out to Walter Reed Hospital. Many of the men and women who have been injured are amputees. I remember one in particular. I said: How are you?

He said: My rehab is coming along just fine. I think I will be great. I have my new leg. I am learning how to walk on it. I would like to go back to my unit, but I am going to go back home. I am a little bit concerned. I had a job back home. I was an automobile mechanic. I don't know if I will be able to return to that job.

That situation for that man and for so many others reflects this change in their life. Yes, they will receive disability payments, but some of them, because of the serious injuries they have faced—head injuries, the loss of both hands, the loss of both legs—will not be able to return to the life they had before. Some of them may find they can't keep up with the debts that have been incurred while they have served our country. Is it possible the Members of the Senate, for disabled veterans, would give them a break if they are forced into bankruptcy because of debts incurred while they served our country? That is my last amendment.

I hope it doesn't reach that point. I hope all of us who come to the floor to give important speeches in tribute to the men and women in uniform will cast important votes on behalf of those men and women.

The credit card industry is important to America. I think they can do a better job in the business in which they are involved. They ought to take care, with the flood of credit cards that they send to everybody under the sun—the 3-and-a-half-year-old little boy of an attorney on my staff, a 9-month-old daughter of a friend of mine, all receiving credit card applications. They are throwing them at America. Many Americans, without thinking twice, are signing up, going more deeply in debt than they should.

The monthly statement from the credit card company—I am telling you this as a lawyer—flip that over and try to read the fine print. Senator AKAKA of Hawaii said: Shouldn't they tell you at least if you make a minimum monthly payment how much it is going to cost you over the period of time it will take to pay it off? Simple enough. The credit card industry opposed it. It was defeated on the floor. The idea of giving Americans more information so they can make the right credit decisions was defeated on the floor.

You have to believe the industry that opposed providing that information is an industry that doesn't care if you go head over heels in debt. They think they are going to win. They are certainly going to win if this bill passes because that credit card debt is going to hang on for a lifetime. You won't be able to shake it. When we hear the stories of people who are going to be victimized, I hope we will think twice about the wisdom of this legislation.

The trustees in bankruptcy were asked to take a look at what percentage of people filing for bankruptcy were fraudulent, had no business in court. They came up with the number 3 percent, 3 out of 100 are fraudulent and should not be in court. Most of them are discovered. The credit card industry said, no, it is much larger. It is 10 percent, 1 out of 10. This bill doesn't apply to the 10 percent of fraudulent filers. This bill applies to every filer in bankruptcy. That is why many of us think it is fundamentally unfair.

I can read the votes. I have been around Congress to know this is going to pass. I certainly hope with these three amendments that my colleagues will take some time and consider whether they want to live up to what they have said. If they want to exempt lower income families from the means test, my amendment lets them do it. If they do believe we owe something to the men and women in uniform, my amendment gives them a chance to vote that way. And if for no other reason they want to show some sympathy and concern for disabled veterans who have given so much to our country, they will have a chance with amendment No. 112.

I hope the solid wall of opposition to every single amendment will break down. I hope my colleagues will take the time to read and consider these amendments. It will be a lot easier to face the people back home if we at least give some flexibility to this bill when it comes to these important exceptions.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. 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. SESSIONS. Mr. President, I am proud of the bipartisan bankruptcy bill moving forward. We were excited over the strong vote for cloture to bring this debate to an end, 66 or more votes for cloture. That was a tremendous bipartisan show of support. I know my friend, the Senator from Illinois, opposes the bill. He has offered a lot of amendments. Fundamentally he doesn't like the bankruptcy bill. At one point he did. At one point he was a sponsor of it. For whatever reason he is now not supporting the bill. That is all right.

Our goal with regard to the bankruptcy bill was to continue the historic privilege that Americans can wipe out debts and have a fresh start. However, since the new bankruptcy bill was passed in 1978—that is the new one we are now under, a big bankruptcy reform—then we had about 200,000 filers in bankruptcy. Now there are 1.6 million filers in bankruptcy. A lot of people are using bankruptcy as a way to avoid paying their just debts. We wrestled with that. There was a lot of concern that something is out of sync, that the classic American moral value that you ought to pay your debts if you can ought to be honored.

At the same time we ought to create a circumstance in which people can start over. As many Americans have learned, if they fall behind in payment of debts, creditors call. You can have lawsuits filed against you. Families get embarrassed. Court orders get issued. Those kinds of things can be upsetting to a family. Sometimes you get so far behind there is no way you can get out of it. That is what bankruptcy is for. So we looked at it and tried to figure how we could reach the right balance.

How do we crack down on those who want to get off scot-free, not pay their debts, when they have the money to pay them, and do we protect those who need a fresh start? First, let me tell you the power of bankruptcy. A person making $200,000 a year, who owes maybe $150,000 in various debts, can go into bankruptcy court and file bankruptcy today and get all those debts discharged, when he or she could easily have paid back most of them. That is the way the system works. You read one of those ads and call one of those guys or ladies who advertises in the free newspaper at the checkout counter, and they tell you to call your bankruptcy lawyer and wipe out your debts. People do it—sometimes only after talking to that lawyer who only gets paid, frankly, if the client retains him to file a bankruptcy. They may have other alternatives to get out of that financial difficulty and they may not understand that.

What I want to emphasize is that we decided to create a bright line, a rule that would apply easily across the country in bankruptcy court, and that is what we are doing—amending the law of bankruptcy court, which is a Federal court, under Federal law. All bankruptcies are done in Federal bankruptcy court, so it is our responsibility to deal with the problems in that court. So we created a bright line rule.

If you make below median income and you owe debts, you can wipe them out, as you always have. You don't have to pay your doctor, your hospital, the automobile mechanic down the street who fixed your car, your brother-in-law back for his loan, the credit card company, or anybody else you owe—the bank, the credit union, wipe them out. So if you make below median income, the law is basically still the same for the debtor; he wipes it out. We had expert testimony in the Judiciary Committee, of which I am a member, that said 80 percent of the people who file bankruptcy make below median income, only 20 percent above. We said what about people who make above median income, but they might have special circumstances? Maybe they have a child who has a high monthly expense. Maybe the debtor himself is disabled, with extraordinary medical expenses, or things of that nature. We said we would make an exception for those people who have extraordinary expenses, and the estimates show that would add another 7 to 10 percent who would be able to automatically file under the median income and, therefore, would not have to pay any of their debts back under this other provision of bankruptcy law, chapter 13. So we agreed on that.

That is the bill that passed. That means test philosophy passed this Senate, one time, 97 to 1. It passed three times in this body. The last time we voted on it, it was 83 to 15 to pass the bankruptcy bill. We had the Schumer amendment on it—which we voted down recently—at that time, and the House of Representatives refused to take the bill and pass it. It died because of the Schumer amendment, which was a maddening thing for those of us who had been working on it for 4 years. I thought it was unbelievable that such a small but poison pill could kill the legislation. I have heard a lot of times about how a poison pill can kill a piece of legislation. Since I have been in the Senate, I have never seen a more perfect example of a poison pill. It came back up. Senator SCHUMER offered it and we voted it down earlier today.

This bill will not have the poison pill in it. We sent it over there with bipartisan support every time and, for one reason or another, it didn't become law. The House supports it. I am confident if we pass this legislation, without the Schumer amendment, it will pass the House of Representatives and go to the President for signature. I emphasize all this to say there is nothing wrong with the means test. People who make high incomes—lawyers, doctors and accountants are examples—and file bankruptcy, wiping out all their debts, who don't care who got hurt by their failure to pay and they care only about themselves, this will crack down on those people who are abusing this system. I don't think there is anything wrong with it. I believe it is the right thing to do.

As a matter of fact, I hear even those who oppose the bill say they don't oppose the bill, but they have spent all the time trying to confuse this, suggesting that poor people are going to have to pay something back. The chances are, if they are poor and are making below median income in America, they won't have to pay back anything. What if they make above median income? Perhaps they will have to pay back a portion of their debts. The bankruptcy judge, under certain circumstances, may order that they pay back a certain percentage. They can be made to pay a certain percentage of those debts back through the court, and it is distributed on a fair basis to the creditors who have claims against the debtor for a period not to exceed 5 years. That is what is commonly and legally known as chapter 13.

A lot of people all over America choose chapter 13 and agree to pay back their debts because they think it is the right thing to do, and it has some personal advantages. A lot of people find it hard to believe, but in my home State of Alabama, about one-half of the filers in bankruptcy court choose to file under chapter 13. What happens when you go into chapter 13? All the phone calls have to stop. You cannot be sued. If a lawyer tries to execute a judgment against your property after you filed in bankruptcy under either chapter 7 or 13, they are in contempt of court immediately. The family gets to calm down. The court helps set up a repayment schedule for a part of the debts the debtor owes, and their paycheck may go to the bankruptcy court and they parcel it out to the various creditors, and the debtor gets to keep a certain amount to live on, whatever he or she needs. That is the way chapter 13 works. It is not oppression to go into chapter 13. Almost half of the people in my State who file bankruptcy choose to file under chapter 13.

Well, Senator DURBIN quoted me. I was impressed that out of all those out here, he quoted me. I suppose he quoted me correctly, but maybe he was a little bit incorrect in interpreting what I had to say, or perhaps I spoke in a way he did not understand. I thought I was clear. I said in my remarks that if you make below median income, you are not subject to the means test. I guess that technically may be a misspeaking. What I meant was you are not required to pay anything back under chapter 13. He said, well, why fill out the forms? Well, you fill out the forms to see whether your income falls below the median income in America; that is why

you fill out the forms. Surely, people would expect you, if you want to ask a U.S. bankruptcy court in whatever State in America you are in and you want to ask them to discharge your debts, and you want them to order that you do not owe anybody you have been owing for the last 10 years, and your debts are built up and you don't want to pay any of them a dime, surely it is not too much to ask somebody to show what their income is, to bring in a payroll stub to see what your paycheck is, and bring in an income tax return to see what you have been showing on your income tax. What is wrong with that? They say, oh, we have all these documents. I am telling you, I don't think we ought to be shocked that before a court wipes out maybe hundreds of thousands or tens of thousands of dollars in debt, they at least find out how much income the guy has and how much property. What if they own 500 acres of land out in the country? Should they not have to declare their assets?

Why should they keep property, stocks, bonds, or anything else of value and not pay the people they solemnly committed to pay? If they have assets, let's find out what they are. That is all we are talking about.

How are you going to tell whether a person qualifies for a means test if you do not have them produce some information about their income? I do not think that is oppression, and I do not think people are being oppressed if a credit card company lets them have $5,000 and they do not pay a dime of it back. I do not think a person is being oppressed. This is not some sort of anti-capitalist body. People get money all the time. They borrow money. They promise to pay it back. If nobody pays back their debts, everybody who uses a credit card will find their costs going up. Every bank loan will go up; every housing loan will go up. We have to have integrity, but we are going to give people—1.6 million of them a year last I heard—the ability to wipe out their debts. For probably 90 percent of them, they can wipe out all of them if they choose, and for the remaining 10 percent, they may have to pay some back. Some of those people absolutely ought to be paying back some of their debts.

We are all just victims here. It is so discouraging to me to hear skilled Members of this body talk about the American people as if they are just victims and pawns. I have seen the polls. Overwhelmingly, the American people believe you ought to pay your credit card debt back rather than pay other things because they know their interest rates are higher there. Frankly, I think everybody ought to reduce their credit card debt. They ought to chop them up and throw them away.

I was glad that my children—my two daughters and son—when they were off at college had a credit card. I told them not to use it unless they had to, but if they were out on the road and the car broke down, or something happened, I trusted them to use that credit card. What a wonderful thing. Anywhere in America—actually anywhere in the world—you can stick that card in a machine and out pops money. And if you pay it on time, you hardly pay any interest.

I am not here to condemn the credit card companies, and I reject and am offended by the repeated suggestion that this bill is supposed to do nothing but protect credit card companies. That is false. It demeans the integrity of the Members of this Senate, in my view, who have worked hard on a bipartisan basis, 85 to 15, the last time we passed this legislation. I guess that is all they have to say when they complain about the bill.

We talked about the military, and I am concerned about our military. I offered—and I was pleased that the President made part of his supplemental appropriations bill—an amendment to increase the death benefits of our soldiers, raising the basic death benefit from $12,000 to $100,000 and increasing the SGLI, Servicemen's Group Life Insurance, to $400,000 from $250,000, retroactive to the beginning of the war on terrorism. It will help all those families.

I, like other Senators, visited soldiers in the hospital at Walter Reed. I visited them in Germany. I have been in Iraq three times. I have talked with all the families from Alabama who have lost soldiers in the war. I served in the Army Reserve for 10 years, missing by several years being activated in the first Gulf War. Some of my best friends are still in the Army Reserve. I understand what they are going through. I talked with them in Iraq in January of this year. Some have suffered financial difficulties as a result. We know that.

I offered the amendment that would make clear and explicit that a service man or service woman who has been activated and is not able to pay their debts would, in fact, be a special circumstance that could keep them from having to pay back their debts under chapter 13, and they would be able to wipe out all their debts. No matter what their debts are, if their income is below median income, they get to wipe them out anyway. It is just in that top 20 percent, they may need special circumstances.

I defined it, and we passed—at the same time, Senator DURBIN's amendment was voted down—to give them that special protection. I think that was the right way to do it. Senator DURBIN had an automatic guaranteed set-aside for them in a way that I think was not as appropriate as the route the Senate chose to take. But he got a vote on his amendment and I got a vote on my amendment.

I also recall, for those who are listening, that we do have a powerful Soldiers and Sailors Relief Act that has been updated. That is the new title. The old, classical Soldiers and Sailors Relief Act says if you are off on active duty serving your country, you cannot be sued, they cannot take a judgment against you, they cannot foreclose on your home, and there are a host of other protections for them.

They have those protections. Plus, when you come back, you can bankrupt against any of the debts you may have. If you make above median income, the judge can consider and should consider military service as a special circumstance. I think that is the right way to do it. I believe we did the right thing on that issue.

It really hurts me to hear people suggest, because they are unhappy with this bill and they filed an amendment that was not adopted exactly like they wanted it, that we who adopted the amendment to deal with this issue are insensitive to military men and women serving America.

Those are some of my thoughts, Mr. President. I think the bill does a lot of good. There are some things about which we have not talked. We had the critics dominate the debate and point out everything they think is wrong and offer amendments. Senator FEINGOLD has 15 amendments. Remember now, this is the fourth time this bill has been on this floor. The last time, we debated over 2 weeks on the legislation with amendment after amendment. This time we are going to be 2 weeks on it. I think we debated 2 weeks the other two times. There has been extensive debate. We have had debate and amendments offered in the Judiciary Committee likewise on these issues where Senator FEINGOLD, Senator DURBIN, and others serve.

We have tried to be fair and open. Everybody has had a chance to raise their concerns, but it is time to vote and get this bill in the barn and move on to other issues.

I want to mention a couple points that are so important for people in America who are having a hard time. Women and children who are victims of divorce and separation, deadbeat dads—what about that issue?

In the course of our deliberations, we made a bipartisan commitment to raise the top debts that arise from alimony or child support to the highest level of a bankruptcy court. In other words, when there is a limited amount of money, the bankruptcy judge decides who gets paid first. In the past, they have always paid the lawyers and the court fees, and then they had some other things, and then women and children came along. We raised women and children to the top of the list. Of course, that is one reason they are unhappy with the bill—trust me. We also put some other provisions in it to reduce some of the litigation that goes on in bankruptcy court.

We raised women and children to the top of the list. The National Child Support Group and the National District Attorneys Association that handles child support issues said it is absolutely a fact that women and children have a substantial benefit under this

act. One person said it is a veritable wish list for helping women and children who are owed child support and alimony to collect those debts. And they get paid even above so many other people.

Also, I note that secured creditors are next, and the unsecured creditors, such as the credit card people, and those with personal notes and bills, such as your local gas station. Those debts come in as unsecured debts, and they are further down the list.

We do not raise credit cards above people. We actually raised women and children up to the highest group. So I think there are a lot of good things in it, including a requirement that people who want to pay their debts, cannot handle their money and manage it well, must attend a financial management course before being discharged from bankruptcy. We want to see people manage their money well, get rid of those credit cards, contain their spending and manage their money wisely. That is what we would like to see them do. That is what the bill requires.

It also says a person at least ought to talk with a credit counselor. These exist all over America. Many times they can help people manage their money. They get the whole family around the table, they talk honestly about what their financial situation is, what their debts are, and how they would have to be paid back. They have the ability to call the bank, the credit card company, or the mortgage company and say: We believe this client could file bankruptcy, but if you will allow them to reduce their payment to you for the next year and pay down some of these critical debts they owe, we will get back to you in full speed. We will help them achieve that. We will work out a budget with them.

Many creditors agree to extend—some even forgive a part of their debts in order to help debtors so they do not have to file bankruptcy, and they learn something in the process. They do not have to go into credit counseling. They can go straight to the lawyers and file bankruptcy in the traditional way. I think some may decide that maybe this is the better alternative for them.

If they go in response to one of those late night ads on television, or one of those newspaper ads to the bankruptcy mill, they are not going to get that information in most instances, although some lawyers, I am sure, do give them advice.

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

Mr. SESSIONS. Yes.

Mr. DURBIN. We are having an exchange, and maybe since we are both in the Chamber we can at least come to an agreement on our disagreement. And I will yield some of my own time if it reaches the point where the Senator thinks it is taking advantage of his time.

Mr. SESSIONS. I was about to yield the floor, but, please, go ahead.

Mr. DURBIN. If the Senator would stay for a few moments, I would like to see if we can get to an agreement on our disagreement.

Right now, under current law, when I go into chapter 7 filing for bankruptcy, I am bound by the requirements of the Bankruptcy Code under section 521 to file a list of my creditors, unless the court orders otherwise, a schedule of assets, liability, current income, current expenditures, and statement of debtor's financial affairs and more when it comes to consumer debt currently. That is what happens when one goes into bankruptcy court—and that is this sheath of paper—they have to fill these things out. These are the documents that get one into court.

Mr. SESSIONS. I would just add, one has to list those debts, and if they do not list them they are not discharged and they can still be liable for them. So the debtor has to list his or her debts.

Mr. DURBIN. So one has to be careful. They better put all of their debts down if they want to have them discharged.

Mr. SESSIONS. Right.

Mr. DURBIN. In comes the new law, and the new law says if one is below median income, that is the end of the story. They continue as currently required under chapter 7. They do not have to go through and prepare and file this means test which is required here because they are not required to.

Page 18 of the bill, no one can challenge a person if in the case of a debtor in a household of one person, the median family income of the applicable State is applicable. So this is the point that has been made over and over, again that having filed the basic documents in bankruptcy, if it is then established that one is below the median income, end of the story. This bill does not apply. That is the way I understood it.

My amendment is trying to clarify it to make sure that is the way the Senator understands it. In other words, if I have done all of the basic filing and I disclose my monthly income and I am below median income, then I do not have to fill out the forms for the means test; it does not apply to me.

I quoted the Senator earlier, Senator FRIST, and Senator HATCH, who have all said that on the Senate floor. My amendment clarifies that and says that unequivocally, after someone has filed their basic documents, if they demonstrate their monthly income is below the median income, they do not have to fill out the forms for the means test as to what they can pay over the next 10 years. They are not covered by that.

Is that the Senator's understanding of what this law says?

Mr. SESSIONS. I think that is my understanding of it.

Mr. DURBIN. Well, my amendment is only trying to clarify that. That is all it is doing. What I just described to the Senator is to say unequivocally, if someone files the initial documents currently required under chapter 7 and demonstrates to the court that their monthly income is below a median income, they do not have to fill out all of the additional paperwork required in the means test, which is substantial and expensive. If the Senator feels as I do, that that is what the law says or should say, I hope the Senator will look at my amendment. It is not a trick amendment. It is just trying to clarify that point.

Mr. SESSIONS. I would be glad to review the amendment. It would appear clear to me that one does need to meet certain basic filing requirements.

Mr. DURBIN. Absolutely.

Mr. SESSIONS. So the income can be determined, and we did step that requirement up to require more in connection with income tax return filings and things of that nature.

I know the Senator is a member of the Judiciary Committee and has worked hard on this bill, so I respect his concern over this issue. I am not one who believes we have a problem, but I will be willing to look at it.

Mr. DURBIN. If the Senator would be kind enough to review my amendment, I would appreciate it very much.

I yield to the Senator.

Mr. SESSIONS. I yield the floor.

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

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

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 89

Mr. FEINGOLD. Mr. President, I call up amendment No. 89 and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the amendment is once again pending.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that Senator KERRY, who is the ranking member of the Small Business Committee, be added as a cosponsor to the amendment.

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

Mr. FEINGOLD. Mr. President, we have spent a great deal of time debating and trying to improve provisions of this bill that affect consumer bankruptcies. Most of my colleagues may not even be aware that this bill actually contains provisions that make significant changes to portions of the Bankruptcy Code that relate to small businesses. They may not realize it, but it does. Subtitle B of title IV of the bill is entitled ''Small Business Bankruptcy Provisions,'' and I doubt more than a handful of people in this body have any idea what is in the subtitle.

The subtitle includes a number of new restrictions and requirements for small businesses that want to reorganize under chapter 11. That is right, these are requirements and restrictions for small businesses that do not apply

to large companies. I was shocked when this came to my attention, but there it is in black and white, subtitle B, ''Small Business Bankruptcy Provisions.''

These are not provisions to help small businesses, as one might expect from a bill that is going through the Senate. No, these provisions penalize small businesses. They make it harder for small businesses to reorganize in order to survive.

Here is an example. Section 434 would require regular reports on the small business's profitability. They will have to report all kinds of things: profitability, cash receipts and disbursement, requirements to be in compliance with postpetition requirements, timely filing of tax returns, and ''such other matters as are in the best interests of the debtor and creditors.''

This is a mountain of information. Mom-and-pop operations will have to spend a great deal of time pulling these reports together, and the reports probably will not even be useful. Creditors and judges examining a debtor's profitability rely on cash disbursements and receipts, not self-reporting, because they are more informative and less subject to manipulation. It seems to me these reports will not be of much use to anyone, but they will be quite burdensome for a small business to produce on a regular basis.

What is the penalty for failure to jump through this bureaucratic hoop? Dismissal. Again, not for large corporations, mind you, which have armies of accountants to handle paperwork like this, but for the small entrepreneurs who could be spending that time keeping their businesses afloat instead of producing these piles of paper for some government file which basically no one will ever use.

I do not want to have to go back to Wisconsin and have to explain to a grocery store owner who is already working late into the night, trying to pull her business through a financial crisis, that the Federal Government has decided to keep her even longer to put together a report that nobody even plans to read. I am very concerned, almost ashamed of this Chamber to think I would have to tell her that if she were a big corporation, if she were the big chain of huge grocery stores, then the law would not require this of her. It would not treat her this way.

Professor Elizabeth Warren wrote, when the same language was proposed during the 107th Congress:

> A decision by Congress in 2001 that small businesses should bear greater costs, face shorter deadlines, file more papers and lose any flexibility that a supervising judge might provide is a decision to shut down small businesses simply because they are small.

That is what Professor Warren wrote.

I can see no justification for imposing burdens on small business in the bankruptcy code that will not be imposed on large corporations. It has always been our responsibility as legislators to protect small businesses. My amendment calls on us to fulfill that responsibility in a very significant way. It would simply strike a number of the provisions in title IV, subtitle B of the bill.

Small businesses are the backbone of the American economy. According to the Small Business Administration, small firms represent 99.7 percent of all employers and pay 44 percent of the total U.S. private payroll. Small businesses have generated from 60 to 80 percent of the net new jobs created annually over the last decade. I can't figure out why, for the life of me, we are trying to make life harder for small businesses.

What is particularly puzzling is that I have heard a number of my colleagues complain about the burdens that they believe federal regulations impose on small businesses. The head of the Small Business Administration recently testified before the Small Business Committee that ''[s]ome of the heaviest burdens borne by small business in America are the result of unnecessary federal regulation and red-tape.'' If my colleagues share that belief—and even if they don't—why would we want to impose further Federal regulations and red tape on small business chapter 11 bankruptcies?

The worst thing about this attack on small business is that it is utterly unprovoked. Another provision of this bill would impose harsh deadlines on small businesses seeking to reorganize under chapter 11, but these deadlines are apparently designed to solve a problem that doesn't exist. The bill's drafters perhaps believed, back in 1998, that chapter 11 offers a shelter for failing small businesses, allowing them to delay the inevitable and die a lingering death to the detriment of their creditors. But this is just not the case.

The bill would impose an arbitrary 300-day hard deadline for a small business to file its reorganization plan. But a recent study of small business bankruptcy cases by Professor Douglas Baird of the University of Chicago Law School and Professor Edward Morrison of Columbia Law School shows that this deadline is completely counterproductive. According to this study, more than half of small business chapter 11 cases that fail—in other words, those that are dismissed, or converted to chapter 7 liquidations—are terminated within 4 months of filing. Over 70 percent are terminated within 6 months. By 300 days more than 90 percent have already left the system. In other words, the 300-day deadline imposed by this bill will affect a very small percentage of small business plans that are actually bound for failure. It constrains the discretion of bankruptcy judges, without any apparent justification for doing so, since reorganization cases without merit are already being terminated in a timely manner.

Instead of protecting the system against abuse by small businesses doomed to eventual failure, this bill will punish primarily small businesses that would otherwise succeed. Professors Baird and Morrison found that of the small businesses that successfully reorganize under chapter 11, nearly 40 percent need more than 300 days to do so. In other words, the facts show that by 300 days, most failing small businesses have already failed but many viable small businesses are still struggling. We should be helping them, not terminating them. Forcing small businesses capable of successfully reorganizing into chapter 7 liquidation proceedings is bad for their creditors, and tragic for the entrepreneurs who will see their livelihoods and their hard work over years or even generations needlessly destroyed.

Compare the hard deadline in the bill to what happens in the bankruptcies of large corporations. United Airlines filed for chapter 11 protection in December 2002. That is over 2 years ago. And the court has continually allowed the effort to come up with a reorganization plan that the creditors can accept to continue rather than force the airline to liquidate. We still don't know what will happen in that case, but clearly it is worth trying to save that company, with all its employees and devoted customers. Why don't we want to allow the courts to exercise the same flexibility for small businesses? Are they just not as important as the big corporations like United? Is that the message the Senate is trying to send with this bill? I can hardly believe that my colleagues want to send that message. But this could have a big impact on the ability of small businesses across the country to survive, so I urge my colleagues to take a close look at this amendment.

These new burdens on small businesses are simply wrong. Congress simply should not be in the business of forcing viable small businesses into liquidation. And why are large corporations seeking to reorganize not similarly burdened? Do the bill's drafters think that large businesses are more important than small businesses, so we should give them extra time to reorganize?

There is an additional irony here when you compare the requirements we put on large and small businesses in bankruptcy that my colleagues should consider. Large companies are often subject to a variety of reporting requirements by the federal securities laws that are not applicable to small businesses. But the SEC often exempts companies in chapter 11 from those requirements. At the same time that large companies are often excused from onerous reporting because of their bankruptcy, this bill puts additional reporting requirements on small businesses. Where is the fairness in that?

If there is a crisis with small business bankruptcies, I am not aware of it. Professor Warren, one of the country's leading bankruptcy experts, was one of the authors of a 1999 Small Business Administration study. That study

found that one-third of bankrupt businesses had less than $100,000 in debts and almost four out of five had less than half a million dollars in debts. What is more, almost half—45 percent—of the small businesses had one or no employees when they filed for bankruptcy. These numbers don't give me any reason to think that small business bankruptcies are such a serious problem that we need to enact special provisions targeting them.

Bankruptcy experts tell me that these small business provisions are just crazy. But they have been in the bill forever, and most of the focus is on the consumer provisions when we debate this bill. Someone needs to stand up and say, ''Wait a second. Why are we discriminating against small businesses in the bankruptcy laws?'' I can't think of a single bill in my entire time in the Congress—over 12 years—where a single law on the books treats small businesses worse than big corporations. That is the opposite of what we usually do in this body. We always protect small businesses. Why is this bill any different?

When I offered this amendment in the Judiciary Committee, I heard two arguments against it. The first was that the provisions were recommended by the National Bankruptcy Commission. This is a very odd argument, coming from the same people who completely ignored the commission's work on consumer bankruptcy issues and drafted a bill largely in response to the credit industry's recommendations. But more importantly, I have been told that the commission provisions were created by certain commissioners who wanted to reform chapter 11 for all companies, large and small. The big companies came in and said: ''No, don't do that to us. Those deadlines are too restrictive.'' Here is what happened. The recommendation was amended to apply only to small businesses. There was no showing that there are more abuses in small business bankruptcies than in chapter 11 filings for large companies. Small businesses apparently just didn't have the right lobbyists watching the process. So they got stung by these wrongheaded provisions that live on year after year in this bill without anyone coming forward to explain why they are necessary or useful.

The second argument that came up in the committee was that small businesses support this bill. That is true, at least for some small businesses. But they don't necessarily support the particular provisions that I am talking about. They may not even know about these provisions. Small businesses, like large businesses, support the bill because it makes it harder for consumers to file for bankruptcy. But I doubt very much that they want the law changed to make it harder for struggling small businesses to reorganize under chapter 11.

This is an important example of how this bill fails to reflect lessons we have learned in the years since it was first proposed. Given the recent history of large-scale corporate bankruptcies and scandals, the way this bill cracks down on small businesses is not only misguided, it is shocking. We should be focusing our energies on the real problem, not penalizing small businesses.

I urge adoption of this amendment, and I hope that small businesses all across this country will be watching this debate. Those people who think the Senate is devoted to the interests of small businesses may be in for a rude awakening if this amendment is not agreed to.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DEWINE. Mr. President, I ask unanimous consent to proceed in morning business and I also ask unanimous consent that the time be counted as postcloture time.

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

(The remarks of Mr. DEWINE and Mr. DODD are printed in today's RECORD under ''Morning Business.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 67

Mr. DODD. Mr. President, I call up amendment No. 67.

The PRESIDING OFFICER. That amendment is pending.

Mr. DODD. Mr. President, this amendment—we have checked with the Parliamentarian—is a germane amendment to the bill. It was filed prior to the appropriate time, at the hour of 2:30 p.m. yesterday. Let me explain what this amendment does and why I am offering it this afternoon.

I am offering this amendment to enable parents to meet the needs of their children. We just heard our good friend and colleague from Ohio talk about Mothers Against Drunk Driving and the problems that occur with underage drinking. It is appropriate, after that discussion, that I offer this amendment because it is not unrelated, we know the difficulty of single parenthood, of how hard it is for single parents, the overwhelming majority of whom are women, to try to raise children on their own, all of the pressures of holding down jobs and managing a family. It will not come as any great surprise to my colleagues to know that a significant percentage of underage drinking and children who have problems with the juvenile justice system and other related issues come from broken homes, unfortunately. The tremendous pressures of a single head of household holding down a job and keeping their family together is not easy.

This amendment I am offering today on this bankruptcy bill relates to these familial circumstances, and it comes in several parts. I am going to take a few minutes and explain this amendment and why I believe it is important.

Very simply, during the financial crisis of living through a bankruptcy, children should be protected to the maximum extent possible. That is my strong belief. I believe it is the belief of all of us. Regardless of one's politics or ideology, I think we all understand that when a family is going through bankruptcy, we ought to do what we can to protect the innocent. Whatever one's feelings may have been about the parents, about their responsibility or irresponsibility, children should not be penalized because of the sins or the faults of their parents. This amendment is designed to at least attempt, under those trying circumstances of a family going through bankruptcy, to protect those who are innocent—the children—to the maximum extent possible.

About 39 percent of those filing bankruptcy in the United States are single women raising children, almost 40 percent. About 29 percent, almost 30 percent of those filing for bankruptcy are men, and 32 percent of households filing for bankruptcy are married couples. So we are talking about 70 percent of those who are filing fall into the area of single parents and their problems related to it. While there may be some people who are trying to scam the system—and there certainly are, and I do not argue with that point at all—I believe most people do not file bankruptcy lightly. It is a highly emotional time and one of financial crisis.

The most common reasons for 90 percent of women filing for bankruptcy include medical emergencies, job loss, and divorce. Women are especially vulnerable because they tend to have lower incomes and fewer assets and are more likely to be caring for children on their own.

If my colleagues truly cared, and I believe they do, about protecting mothers and the innocent children who are caught up in the tremendously disruptive time of bankruptcy, I think they will end up supporting this amendment. At least I hope they do. If our colleagues truly care about marriage and strengthening marriages, they also would support this amendment. I cannot think of many more things more stressful on a marriage than filing bankruptcy.

My amendment covers four main areas to protect children during this turbulent and emotional time. The amendment would modify the means test to provide greater flexibility and reasonableness when calculating a

debtor's ability to pay. Allowable expenses are broadened to ensure that parents, whether married or divorced, can still support their children as they live through a bankruptcy.

For example, the amendment would allow a single mother, recently deserted by her husband, raising children who has filed for bankruptcy to continue paying education expenses for her child. Let us say that the mother, being a religious person and from a family that had used parochial schools for generations, is struggling to keep her child in one of these parochial schools. In this case, her 10 year old son has gone to a parochial school since kindergarten. It is where his friends go. After being fairly shy and withdrawn, he has begun to thrive there, has developed close relationships with several of his teachers. The mother was able to obtain a hardship reduction in tuition from the archdiocese, reducing the tuition to $3,500 a year.

Under the means test in the pending legislation, under our bankruptcy bill, this mother could not file chapter 7 or chapter 13 if she continued to send her son to parochial school. The means test allows only $1,500 for tuition and any other education expenses—not enough for any religious school. We are not talking about some fancy prep school or boarding school; we are talking about a basic parochial school education, which in many areas of the country costs around $5,000 per year, sometimes even slightly more. One of my neighbors told me that the parochial high school his son attends costs roughly $8,000 a year.

The child did not file for bankruptcy. Why during this turbulent time should the child be ripped away from his circle of friends and moral mentors? This should be a time when the child needs his friends and trusted teachers the most, his circle of security, particularly during a time of separation by parents and a bankruptcy.

The amendment would allow expenses associated with employment, such as child care, and it would allow alimony and child support to be used as intended to cover the needs of children in the household. Particularly with children, there are emergency expenses that arise, and any means test ought to reflect that reality.

Second, this amendment would ensure that support payments and other funds, such as refunds from the earned income tax credit or child tax credit, intended for the current needs of children do not become the property of the bankruptcy estate with the corollary potential of being distributed to creditors. Money intended to support children and their needs should go to children who need it, not creditors, in my view. Why should the earned income tax credit or the refundable child credit be yanked away from supporting children so that the depth of poverty in which they may live becomes even greater?

Thirdly, the amendment enables debtors going through bankruptcy to keep personal property normally found in or around the home, excluding automobiles. This would ensure that in bankruptcy situations, families with children are able to keep, without fear of repossession, household goods that typically have no resale value.

Fourth, the amendment would ensure that debtors are not forced into bankruptcy court to seek to prove that some of these items have any value for resale and would necessarily have to be added, forced into bankruptcy court to prove these items were not luxury goods.

This amendment, which I had hoped the managers of the bill would agree to, it is more technical than anything else. I am sorry it is not being accepted, because it goes to the very heart of what many of us have talked about and tried to accomplish over the years since bankruptcy laws were first modernized and adopted over a century ago in 1903. This amendment deals with families and spouses, with child support issues and where they come into context of priorities when it comes to discharging responsibilities under the Bankruptcy Act.

In 2003, as much as $95 billion in child support payments remained uncollected in the United States. It is a staggering sum of money and makes a huge difference to children growing up under adverse circumstances. It is estimated that one out of every other child living in poverty could be taken out of poverty if we were able to collect child support. Forget about appropriations or tax provisions we may adopt. if we could just collect the $95 billion in unpaid child support, we could virtually eliminate poverty in one out of every two children growing up under those circumstances in the United States.

The bankruptcy bill before us is going to make it more difficult in many ways for those families out trying to find those spouses who owe this child support to make it available. Thus, I believe we are going to exacerbate the problem of children who rely on child support and families who rely on alimony being able to get those resources to minimize the effects that a divorce and separation can cause.

When one excludes the ability to receive the financial support necessary to make ends meet, the problem becomes, obviously, even more pronounced, and children bear the price. Again, I repeat, whatever one may feel about the parents and their irresponsibility, putting themselves and their families in jeopardy, we ought to be highly sensitive to what happens to children. It is not their fault that their parents are filing bankruptcy. I do not believe necessarily it is the parents' fault either in many instances, with medical expenses, with divorce and job loss being the reason a large percentage of bankruptcies occur.

Putting aside that for a moment, whether one agrees with those numbers, I do not know of a single person in this Chamber who would disagree with what I am about to say. Children should not have to pay the price of their parents' mistakes, and yet that is what we are going to do with this bill if we do not take some steps to try to correct the situation.

Since 1903, our Nation's bankruptcy laws have been guided by the firm principle that women and children must be first in the distribution line of available assets during a bankruptcy proceeding. For over a century, debt owed to children and families has been nondischargeable. Thus, if a head of a household fails financially, whatever remaining assets he has could be used to spare his spouse or ex-spouse and his children from impoverishment. We do this because those who are most vulnerable in our society deserve the most protection.

Today's bill, the Bankruptcy Abuse Prevention and Consumer Protection Act, would fundamentally alter this delicate balance achieved after a century of jurisprudence. We are altering the bankruptcy landscape for the benefit of credit card industry without understanding or recognizing what the consequences for families will be. Women and children will be disproportionately affected by this legislation unless it is amended, which is what I am trying to do with the amendment now before us.

Whether as debtors filing for bankruptcy themselves or as creditors, three-quarters of a million women will be affected this year by the bankruptcy system, and it is estimated that as many as 1 million women will be affected in the coming year. I agree with those of my colleagues who think the bankruptcy law needs to be reformed and tightened. I do not disagree at all with that. But in my view it is possible to enact legislation that tightens the laws without depriving debtors and their families of reasonably necessary living expenses to care for their children.

As this legislation is currently drafted, however, the credit card industry is protected, more protected than they have ever been. Unfortunately, families are not, in my view. This bill could turn the lives of children and families literally upside-down.

I think it is enough of an emotional roller coaster for a parent to file bankruptcy, but I think to elevate the needs of the credit card companies over the needs of children is simply wrong. I am greatly concerned about the means test, which requires the trustee in bankruptcy to review all chapter 7 cases for ability to pay debts under a rigid IRS formula devised originally for delinquent taxpayers, now to be applied to bankruptcies. These standards neither take into consideration differences in the cost of living from region to region, nor do they ascribe rational expenses for the use of individual families. In my view, these rigid standards will deprive children and families of reasonably necessary living expenses.

While moving child support to a first priority among unsecured creditors in chapter 7 sounds good, it is virtually meaningless, however.

Listen to this. Fewer than 4 percent of chapter 7 debtors have anything to distribute to unsecured creditors. Listen to that again. Fewer than 4 percent of chapter 7 debtors have anything to distribute to unsecured creditors. That is to say 96 percent of these debtors have nothing to give out. So saying under chapter 7, ''you are first in line,'' means absolutely nothing except to 4 percent of those debtors. First in line when there is nothing means nothing. This is not a protection for women and families. It sounds good, but it is totally hollow when it comes to seeing to these children and these families whom, for 100 years, we have done a better job of protecting.

Additionally, because the means test increases the potential for dismissing chapter 7 cases, this bill channels many debtors into the 5-year, chapter 13 repayment plans, even though we know for a fact that two-thirds of such plans fail today. What will families live on during this time? What are proponents of this legislation going to do, go back to the time of Charles Dickens or debtors prisons?

Under chapter 13, the bill would require that larger payments be made to credit card companies. As a result, payments of past-due child support would be made in smaller amounts and over a longer period of time, thus increasing the risk that children will not receive the support they need and the full debt would never be paid.

Mothers and children would be in direct competition with credit card companies employing well-financed collection departments. How do you think mothers and children will fare when it comes down to competing? It is hard enough under the present system for these people to collect the $95 billion they are owed in one single year in child support, when they now are going to also have to compete, under chapter 13, with credit card companies who are well heeled and in a far better position financially, with teams of lawyers, to go after these debtors. I do not believe anybody could rationally conclude that a mother raising two or three children on her own, with limited resources, is going to be able to hire the lawyers to compete with the credit card companies going after the debtor husbands in these cases.

Those are the practical realities. So for children and families, this bill makes life a lot worse because of exactly what I have explained: we are moving people out of chapter 7, where there was nothing much to give anyway, into chapter 13, where it becomes far easier for larger amounts of these resources, larger payments, to be made to the credit card companies.

I am very concerned about the provisions of the legislation that make certain credit card debt nondischargeable. While the family support provisions added to this legislation are positive improvements, they have not cured the problems caused by the other provisions of the bill. In fact, they are negated by them, in my view. These are provisions that give far greater collection rights to the credit card lenders and fewer, in my view, to families and children.

This bill elevates credit card debt to a presumed nondischargeable status. If a debtor purchases items or services on credit from a single creditor within 90 days of bankruptcy, and such items exceed $500 in value, these items would be presumed luxuries.

Listen to that again. Within 90 days, if you make purchases from a single creditor exceeding $500, they are presumed luxuries—in 90 days—3 months.

Again, if you are a single parent with two or three kids, over 90 days $500 is not a huge amount when you are talking about groceries or other essentials. Over a 3-month period—stretch it out and do the math—$500 over 90 days is really, in 21st century dollars, even if you go to the best discount stores, not going to be enough to make it. Current law allows up to $1,225 to be discharged within 60 days of bankruptcy. The bill as reported would limit it to $500 within 90 days, as I have said. The amendment I will offer when the time comes to vote on it will allow not $500 but less than $1,200 to $1,000 within 70 days. So it is less than 90, a bit more than 60. It is less than $1,200 under current law but certainly more than $500 to get you to $1,000.

Again, I don't think this is any great luxury. You are trying to meet the needs of your family. To declare them to be luxuries—it doesn't seem a lot to me. Over a 90-day period it is not that hard to spend $501 at Wal-Mart to meet kids' needs. Most would agree such purchases are not luxuries. In 90 days alone, a family with children could exceed $500 on other expenses that arise with children.

My amendment requires creditors to prove at a hearing that such items were not reasonably necessary for the maintenance and support of the debtor and her dependents, shifting the burden to creditors rather than the parents. If the creditor wants to make the case, let them do it, but don't lay the burden for $501 on a single mother with young kids to hire lawyers to go in and make the case these are not luxury items. I shift the burden over to the creditors. If they want to make the case, they can do so.

I don't know what the proponents of this legislation are intending here, other than to protect the credit card companies at the expense of children. If you have $501 of food, medicine, and clothing expenses, and it is incurred within the last 90 days, then you have to go to court and spend money to prove these are not luxuries—food, medicine, and clothing. This point is one I find stunning in its potential implications. By the very fact that you are in bankruptcy court, how are you going to hire a lawyer to go in and prove that $501 was for necessities and not luxuries? We need to be far more practical than that, it seems. To go to Wal-Mart and buy food and clothes for your children, necessities they may need, that is considered a luxury if it is more than $500.

If you are a single woman as a creditor, then you must wait until your ex-husband tries, or does not try, to defend a similar purchase. If he is unsuccessful, there will be less money for him to pay child support.

So on either side of the equation, if you are the woman raising children on your own, either as a debtor or a creditor, this places tremendous burdens on your family. If this section is sustained in the bill, then I urge the President to veto it, which I am told he would not do, but I hope he would. This legislation, regardless of what else is here, I think putting credit card debt ahead of kids is just wrong.

I think all my colleagues are probably familiar with the popular TV ad where a father takes his son to a baseball game, they rack up maybe $100 in costs—tickets, parking, hot dogs, sodas, maybe a popcorn to share and a small souvenir. The tag line in the commercial says: ''Cost of the memory—priceless.''

What the commercial doesn't tell you about is the memory may be priceless, but if the next day that dad is unlucky enough to lose his job, have a heart attack, incur enormous hospital expenses without health insurance, and can't make his minimum payments on time, the credit card companies are only too happy to turn priceless into pricey. Unfortunately, pricey for the family with finance charges, overcharges, penalty fees, and other means, can turn a dream into a nightmare.

This bill allows families to take a backseat to lenders, if lenders say their claims are secured by the debtors' property. For the first time in over 100 years, we have allowed these heretofore unsecured creditors to get into the bankruptcy courthouse. Currently, child and family support, taxes, and student loans are not dischargeable debts. For the first time in a century, the proposed legislation before us would bring into this unique category these other creditors—i.e., credit card companies—which will make the competition for scarce assets that much more fierce. These creditors have historically been unsecured because they have received the benefit of high interest and finance charges. Now they are becoming effectively secured creditors.

With all of these concerns in mind, the amendment I am offering this afternoon seeks to address some of these problems. I hope these efforts will win broad bipartisan support. I have been terribly disappointed that there has been no willingness to even talk about some of these amendments. I don't know why we can't do this. This is not the end of the session. We are only in the month of March.

This is an important bill. I understand that. But it is going to have huge implications for years to come if we don't sit down and listen to each other carefully to try to work out some of these matters so we can put a bill together. Yes, it may require a conference; it may require some negotiation. But isn't that a wiser course to follow than to rubberstamp a proposal because the other body doesn't want to sit down in conference on the bankruptcy bill, particularly when we are talking again about the most vulnerable in our society; that is, our children?

Again, I emphasize what I said at the outset. We are talking about the innocents here. I don't want them to fall prey to the claim that people taking bankruptcy are guilty of something somehow.

Again, if you accept the notion that most people who file bankruptcy are not doing so lightly, I don't know of anyone who likes to admit they are so messed up in every way possible that they put themselves in that situation. Are there people who take advantage? Yes. I know that is true. As we try to cure that problem, let us not create more problems for those who through no fault of their own find themselves in that situation; and, even worse yet, those who are completely innocent who find themselves so disadvantaged that the ability of parents—particularly single women raising children—to find it harder and harder to collect those child support payments they desperately need to lift these children out of poverty, to make ends meet in the 21st century, with companies going bankrupt every day. We must see to it that those families who are already going through an awful lot don't find themselves going through even more.

This amendment is a modest attempt to readjust this section of the bill, to inject some practicalities, to say that as we consider the rights of credit card companies we are not going to forget the rights of children, so we will put some reasonable ceiling in here to make it possible for everyone to be a winner, so people can go to bankruptcy court to get themselves out of debt, get on their feet again, see to it that creditors are going to have an opportunity to collect the obligations that are owed them, and not penalize those who ought not be a part of this debate in any consideration.

I urge my colleagues to think about these amendments. I know it means changing the bill. I know it may mean going to a conference for a day or two. But I urge my colleagues to at least look at these proposals. If they make some sense, as some of them do, can't we sit down and try to resolve some before we go ahead and pass a bill that I think many may regret down the road when we consider the implications for those who are going to be adversely affected by this legislation?

I also would like to add as part of the RECORD a couple of pieces of correspondence that speak to these particular issues. One is from the National Women's Law Center, a letter dated February 23, 2005. I will not read the whole letter. Let me read a couple of paragraphs, because they go to the heart of what I am talking about here.

The letter reads:

S. 256 would make it harder for women to access the bankruptcy system because the means test requires additional paperwork of even the poorest filers, harder for women to save their homes, cars and essential household items through the bankruptcy process and harder for women to meet their children's needs after bankruptcy because many more debts would survive. The bill also would put women owed child or spousal support who are bankruptcy creditors at a disadvantage by increasing the rights of many other creditors, including credit card companies, finance companies, auto lenders and others. The bill would set up an intense competition for scarce resources between mothers and children owed support and these commercial creditors during and after bankruptcy.

The letter goes on.

I ask unanimous consent that the letter from the National Women's Law Center be printed in the RECORD.

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

NATIONAL WOMEN'S LAW CENTER,
*Washington, DC, February 23, 2005.*

Re oppose S. 256, the Bankruptcy Act of 2005.

DEAR SENATOR: The National Women's Law Center is writing to urge you to oppose S. 256, a bankruptcy bill that is harsh on economically vulnerable women and their families, but that fails to address serious abuses of the bankruptcy system by perpetrators of violence against patients and health care professionals at women's health care clinics.

This bill would inflict additional hardship on over one million economically vulnerable women and families who are affected by the bankruptcy system each year: those forced into bankruptcy because of job loss, medical emergency, or family breakup—factors which account for nine out of ten filings—and women who are owed child or spousal support by men who file for bankruptcy. Contrary to the claims of some proponents of the bill, low- and moderate-income filers—who are disproportionately women—are not protected from most of its harsh provisions, and mothers owed child or spousal support are not protected from increased competition from credit card companies and other commercial creditors during and after bankruptcy that will make it harder for them to collect support.

The bill would make it more difficult for women facing financial crises to regain their economic stability through the bankruptcy process. S. 256 would make it harder for women to access the bankruptcy system, because the means test requires additional paperwork of even the poorest filers; harder for women to save their homes, cars, and essential household items through the bankruptcy process; and harder for women to meet their children's needs after bankruptcy because many more debts would survive.

The bill also would put women owed child or spousal support who are bankruptcy creditors at a disadvantage. By increasing the rights of many other creditors, including credit card companies, finance companies, auto lenders and others, the bill would set up an intensified competition for scarce resources between mothers and children owed support and these commercial creditors during and after bankruptcy. The domestic support provisions in the bill may have been intended to protect the interests of mothers and children; unfortunately, they fail to do so.

Moving child support to first priority among unsecured creditors in Chapter 7 sounds good, but is virtually meaningless; even today, with no means test limiting access to Chapter 7, fewer than four percent of Chapter 7 debtors have anything to distribute to unsecured creditors. In Chapter 13, the bill would require that larger payments be made to many commercial creditors; as a result, payments of past-due child support would have to be made in smaller amounts and over a longer period of time, increasing the risk that child support debts will not be paid in full. And, when the bankruptcy process is over, women and children owed support would face increased competition from commercial creditors. Under current law, child and spousal support are among the few debts that survive bankruptcy; under this bill, many additional debts would survive. But once the bankruptcy process is over, the priorities that apply during bankruptcy have no meaning or effect. Women and children owed support would be in direct competition with the sophisticated collection departments of commercial creditors whose surviving claims would be increased.

At the same time, the bill fails to address real abuses of the bankruptcy system. Perpetrators of violence against patients and health care professionals at women's health clinics have engaged in concerted efforts to use the bankruptcy system to evade responsibility for their illegal actions. This bill does nothing to curb this abuse.

The bill is profoundly unfair and unbalanced. Unless there are major changes to S. 256, we urge you to oppose it.

Very truly yours,

NANCY DUFF CAMPBELL,
*Co-President.*
MARCIA GREENBERGER,
*Co-President.*
JOAN ENTMACHER,
*Vice President and Diretor, Family Economic Security.*

Mr. DODD. Mr. President, I want to quote a letter from the Children's Defense Fund, again expressing their concern about these sections of the bill. I will read from this letter as well.

The Children's Defense Fund is writing to urge you to oppose S. 256, the bankruptcy bill, that would hurt many Americans facing financial problems through job loss, divorce, child rearing, lack of medical insurance, or predatory lending practices. This bill would inflict hardship on more than 1 million economically vulnerable women and families who are affected by the bankruptcy system each year. Medical emergency, job loss and family breakup are important factors which account for nine out of ten filing for bankruptcy. The bill would also hurt women who are owed child or spousal support by men who file bankruptcy. The bill would make it far more difficult for women to collect support because credit card companies and other commercial creditors will have greater claims to the debtor's resources during and after bankruptcy. Being first among unsecured creditors in chapter 7 bankruptcy is meaningless when over 95 percent of debtors have no resources to pay unsecured creditors.

In chapter 13, the bill would require larger payments to be made to many commercial creditors resulting in smaller payments to past-due child support over longer periods of time increasing the risk that child support debts will not be paid in full. And after the

bankruptcy is over, more and more debts owed to commercial creditors will survive, and mothers and children owed support are not a match for the collection departments of the commercial credit industry.

S. 256 contains a number of provisions which would have a severe impact on families trying to regain their economic stability through the bankruptcy process.

The letter goes on. Those are pertinent paragraphs when it comes to the amendment which I am offering here today.

I ask unanimous consent that this letter be printed in the RECORD.

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

CHILDREN'S DEFENSE FUND,
*March 3, 2005*

Re Oppose S. 256, The Bankruptcy Act of 2005.

DEAR SENATORS: The Children's Defense Fund is writing to urge you to oppose S. 256, a bankruptcy bill that would hurt many Americans facing financial problems due to job loss, divorce, child-rearing, lack of medical insurance, or predatory lending practices. This bill would inflict hardship on more than one million economically vulnerable women and families who are affected by the bankruptcy system each year. Medical emergency, job loss or family breakups are factors which account for nine out of ten filings.

The bill would also hurt women who are owed child or spousal support by men who file for bankruptcy. The bill would make it more difficult for mothers to collect support because credit card companies and other commercial creditors will have greater claims to the debtor's resources during and after bankruptcy. Being first among unsecured creditors in Chapter 7 bankruptcy is meaningless when over 95 percent of debtors have no resources to pay unsecured creditors. In Chapter 13, the bill would require larger payments to be made to many commercial creditors, resulting in smaller payments of past-due child support over a longer period of time, increasing the risk that child support debts will not be paid in full. And after the bankruptcy is over, more more debts owed to commercial creditors will survive—and mothers and children owed support are not a match for the collection departments of the commercial credit industry.

S. 256 contains a number of provisions which would have a severe impact on families trying to regain their economic stability through the bankruptcy process. S. 256 would make it harder for women to access the bankruptcy system. Low and moderate income families are not protected from many of the bill's harsh provisions. Parents who desperately need to preserve their homes from foreclosure or prevent their families from being evicted, or keep a car to get a work, would find it more difficult to do so. And, when the bankruptcy process was over, parents already facing economic disadvantage would find it harder to focus their income on reasonable and necessary support for dependent children because many more debts would survive.

Passage of the bankruptcy bill would make it harder for families struck by financial misfortune to get back on track. It would benefit the very profitable credit card industry at the expense of the modest-income families who represent the great majority of these who declare bankruptcy. Congress should not enact reform that puts women and children at greater risk. The bill is profoundly unfair and unbalanced. Unless there are major changes to S. 256, we urge you to oppose it.

Very truly yours,
DEBORAH CUTLER ORTIZ,
*Director of Family Income and Jobs.*

Mr. DODD. Mr. President, the Association for Children for Enforcement of Support is supporting this amendment and opposes the legislation. The American Association of University Women, American Medical Women's Association, the Business and Professional Women of the United States, the Center for Law and Social Policy, the Center for the Childcare Workforce, Child Welfare League of America, the National Council of Jewish Women, the National Organization for Women, the National Partnership for Women and Families, the YWCA of the United States—all are groups which support the amendment and oppose this legislation.

Again, I realize the hour is late. We are getting closer to passage of this bill. I don't think it is so late, however, not to try to make some modest changes in this legislation that I think would go a long way to providing some relief for families.

Again, this is one of the areas of law that is written into our Constitution. Article I, section 8 of the U.S. Constitution, drafted back in the 18th century, specifically provided and called upon the Congress of the United States to enact bankruptcy laws. To understand why they did so, go back and look at the Federalist Papers. They talked about doing it as an opportunity for people to get back on their feet again. That was the idea—to see to it that creditors could be compensated to the maximum extent possible, but that also those filing for bankruptcy would begin a new chapter in their lives, to get on their feet again.

It seems to me we ought to be trying to do that with this legislation, not only helping the creditors collect what is due them, but simultaneously making it possible for good people to get a fresh start.

If in the process of helping the creditors get paid we make it more difficult for people to get on their feet again, we are lacking the balance which I think we ought to be striking with this bill.

I urge my colleagues not to necessarily rely on what I have said here today, but to review these sections of the bill and ask yourself realistically whether in this day and age the kind of caps we are putting on, kind of forcing people into the chapter 13 category, if we are not exactly undoing what we have done for 100 years to modern bankruptcy laws.

The modern bankruptcy laws put not only families first but they also left them alone. If you were dealing with child support and alimony, once you paid those, or set up a payment schedule, whatever is left over, you dispensed to your creditors, you were not only the first in line, you were the only one in line. This changes that. You can be first in line under this bill, but you are not the only one in line, and other people in line have far more resources and strength to be able to compete for those debtors' funds to compensate these creditors. It puts families at a disadvantage.

There are a lot of other reasons to be concerned about this bill. I know my colleagues care about children. I know they care about families. They want to see these innocents have a chance for a decent life. This bankruptcy bill, if not amended, will make it far more difficult to achieve those goals.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Mr. President, I ask consent that at 5:45 today the Senate proceed to a vote on or in relation to the Feingold amendment No. 89, with the time equally divided in the usual form until the vote; provided further that no amendments be in order to the amendment prior to the vote.

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

Mr. MCCONNELL. I ask the action we just took be vitiated. I will wait until Senator DURBIN gets to the floor and I will reoffer the consent agreement.

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

Mr. MCCONNELL. Mr. President, I ask unanimous consent that at 5:45 today the Senate proceed to a vote on or in relation to Feingold amendment No. 89, with the time equally divided in the usual form until the vote; provided further that no amendments be in order to the amendment prior to the vote.

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

Mr. DURBIN. If the majority whip would yield for a question, I have three germane amendments pending. I think others are in the same position, including Senator FEINGOLD. It is my hope to move as quickly as possible to a quick, limited debate, for just very short periods of time, and then to vote on these amendments in an effort to keep the bill moving forward. I ask the Republican whip whether or not there are plans to call any other votes today or early tomorrow.

Mr. MCCONNELL. Mr. President, I might say to my friend from Illinois, we have been reviewing amendments. I am hopeful we can have some discussion between now and the vote about how we proceed from here.

Mr. DURBIN. I thank the Senator.

Mr. MCCONNELL. I yield the floor.

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

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

AMENDMENT NO. 89

Mr. CRAIG. 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 yeas and nays were ordered.

Mr. CRAIG. I ask unanimous consent that Senator FEINGOLD have 2 minutes.

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

Mr. FEINGOLD. I thank the Senator from Idaho.

Mr. President, we are about to vote on an amendment that will tell this Nation's small businesses whether we stand with them. This bill includes a number of new restrictions and requirements for small businesses that want to reorganize under chapter 11. These requirements and restrictions for small businesses don't apply to large companies. I was shocked when this came to my attention, but there it is in black and white: Subtitle B, Small Business Bankruptcy Provisions. And these are not provisions to help small businesses as one might expect from a bill that is going through the United States Senate. No, these provisions penalize small businesses. They make it harder to reorganize in order to survive.

These new provisions are entirely unnecessary. There is no crisis in small business bankruptcies. And a new study shows. that most failed attempts at chapter 11 reorganization are concluded within 300 days, which is the hard deadline in the bill. But 40 percent of reorganizations that succeed take longer than 300 days. That means that this bill is going to make some small businesses fail that don't have to. That is an absurd result. Remember the United Air Lines Chapter 11 reorganization is over two years old and it is still going on. Why shouldn't small businesses get that kind of leeway if there is a chance they can pull through?

These provisions haven't received nearly the attention in this body that the portions of the bill that deal with consumer bankruptcies have received. We need to take these provisions out. Doing so won't have any effect on the core provisions of this bill. But it will prevent a real injustice from being done to small businesses. Forcing a small business to liquidate rather than reorganize is bad for creditors, bad for consumers, and bad for small businesses. I urge the adoption of the amendment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, Chairman GRASSLEY would ask for a no vote, as would Senator HATCH.

The PRESIDING OFFICER. The question is on agreeing to the Feingold amendment No. 89.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 54, nays 59, as follows:

[Rollcall Vote No. 30 Leg.]

YEAS—41

| | | |
|---|---|---|
| Akaka | Feingold | Mikulski |
| Baucus | Feinstein | Murray |
| Bayh | Harkin | Nelson (FL) |
| Bingaman | Inouye | Obama |
| Boxer | Jeffords | Pryor |
| Byrd | Kennedy | Reed |
| Cantwell | Kerry | Reid |
| Clinton | Kohl | Rockefeller |
| Conrad | Landrieu | Salazar |
| Corzine | Lautenberg | Sarbanes |
| Dayton | Leahy | Schumer |
| Dodd | Levin | Stabenow |
| Dorgan | Lieberman | Wyden |
| Durbin | Lincoln | |

NAYS—59

| | | |
|---|---|---|
| Alexander | DeMint | McCain |
| Allard | DeWine | McConnell |
| Allen | Dole | Murkowski |
| Bennett | Domenici | Nelson (NE) |
| Biden | Ensign | Roberts |
| Bond | Enzi | Santorum |
| Brownback | Frist | Sessions |
| Bunning | Graham | Shelby |
| Burns | Grassley | Smith |
| Burr | Gregg | Snowe |
| Carper | Hagel | Specter |
| Chafee | Hatch | Stevens |
| Chambliss | Hutchison | Sununu |
| Coburn | Inhofe | Talent |
| Cochran | Isakson | Thomas |
| Coleman | Johnson | Thune |
| Collins | Kyl | Vitter |
| Cornyn | Lott | Voinovich |
| Craig | Lugar | Warner |
| Crapo | Martinez | |

The amendment (No. 89) was rejected.

Mr. FRIST. Mr. President, for the information of our colleagues, we are making great progress on the bill. We are in the cloture period. We will not have further rollcall votes tonight, although we will keep the clock running in the cloture period and we will continue debate over the course of tonight. So we are here. We do encourage people who do want to speak on the bill to come and speak.

Tomorrow morning we will, after discussion on both sides of the aisle with the managers, have a series of stacked rollcall votes in the morning in order to not have rollcall votes tonight. But we are on the bill. The clock will continue to run, and debate should continue. There will be no rollcall votes tonight, stacked votes tomorrow. We would expect to finish this bill in all likelihood sometime tomorrow, late tomorrow.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I ask unanimous consent that the pending amendments be set aside so I may call up amendment No. 62, and then I will ask it be laid aside.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS addressed the Chair.

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

Mr. SESSIONS. Mr. President, will the Senator restate her request?

The PRESIDING OFFICER. The Senator will suspend. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from California (Mrs. BOXER) proposes an amendment numbered 62.

Mr. SESSIONS. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Would the Senator propound her unanimous consent request again?

Mrs. BOXER. I think it has already been agreed to.

Mr. SESSIONS. I sought recognition.

The PRESIDING OFFICER. The Chair did not hear the Senator originally; however, precedent allows the Senator to reserve the right to object at this time.

Mr. SESSIONS. Will the Senator restate her unanimous consent? There was noise on the floor, and I just did not hear it.

The PRESIDING OFFICER. The Senator will suspend a moment.

Will the Senator from California restate her request.

Mrs. BOXER. I ask unanimous consent the pending amendment be set aside so I may call up amendment No. 62. It would then be my intent to ask it be laid aside. I believe we have an agreement that I be given 10 minutes in the morning, followed by a vote at a time both sides can agree to.

The PRESIDING OFFICER. Is there objection? The Senator from Alabama.

Mr. SESSIONS. I object at this time, but I would check with our colleagues, and if that is acceptable—I could check that, but I would object at this time.

Mrs. BOXER. Mr. President, I will suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 111 WITHDRAWN

Mr. DURBIN. Mr. President, I ask consent my pending amendment No. 111 be withdrawn.

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

AMENDMENT NO. 62

Mr. DURBIN. Mr. President, I ask unanimous consent the pending amendments be set aside so that Senator BOXER may call up amendment numbered 62.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER] proposes an amendment numbered 62.

Mrs. BOXER. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for the potential disallowance of certain claims)

On page 132, between lines 5 and 6, insert the following:

**SEC. 234. DISALLOWANCE OF CLAIM IF BASED ON EXTENSION OF CREDIT TO CERTAIN INDIVIDUALS UNDER 21 YEARS OF AGE.**

Title 11, United States Code, as amended by this Act, is further amended by inserting after section 112 the following:

**"§ 113. Disallowance of claim if based on extension of credit to certain individuals under 21 years of age**

''(a) IN GENERAL.—In making a determination of whether to disallow a claim under this title, the court shall consider if the claim is based upon an extension to an individual of unsecured credit and the factors listed in subsection (b) are present. The factors listed in subsection (b) may be the basis for a disallowance of a claim under this title.

''(b) FACTORS.—The factors under this subsection are the following: if the individual, at the time unsecured credit was extended—

''(1) was under 21 years of age;

''(2) did not have a co-obligor on such unsecured credit who was a parent or spouse of the individual;

''(3) had an income level that was below or at the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))); and

''(4) already had 6 or more unsecured credit cards.''.

Mrs. BOXER. I ask unanimous consent the amendment be set aside.

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

Mrs. BOXER. I thank my colleagues very much.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that when the Senate resumes the bankruptcy bill tomorrow morning, the Senate begin 10 minutes of debate equally divided on each of the following amendments in the order mentioned below; provided further that following that debate the Senate begin a series of votes on or in relation to the amendments in that same order; provided that no amendment be in order to the amendments prior to the ordered votes. I further ask that there be 2 minutes equally divided for debate between the votes after the first vote and, lastly, that all votes in this sequence after the first vote be limited to 10 minutes in length.

The amendments are Durbin, No. 110; Harkin, No. 66; Boxer, No. 62; Dodd, No. 67.

I further ask unanimous consent that notwithstanding the adjournment of the Senate, all time overnight until the Senate resumes consideration of the bill be counted under the provisions of rule XXII.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. No objection.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, my amendment, cosponsored by my friend and colleague, Senator CANTWELL, would greatly assist the many victims of domestic violence whose physical well-being or whose children's physical well-being would be threatened by summary eviction as a result of filing or bankruptcy. I ask unanimous consent that the text of our amendment be printed in the RECORD after my remarks.

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

(See exhibit 1.)

Mr. LEAHY. The connection between domestic violence, economic abuse, and housing is overwhelming. Women and children who are fleeing domestic violence make up a significant portion of the homeless population. According to the United States Conference of Mayors, 57 percent of cities surveyed identified domestic violence as a primary cause of homelessness.

These women and children are homeless because in their desperate attempt to leave their abusers they find themselves with few, if any, funds with which they can support themselves. Victims of domestic violence have a tough time finding room at emergency homeless or domestic violence shelters, and often fail to find adequate housing because affordable, long-term housing is not available in so many communities. If housing is available there are often long waiting lists. Victims face unique causes of their financial hardships due to the fact that batterers frequently harass their victims at work, and survivors are often fired or cannot maintain steady employment resulting in losing the ability to pay for housing. Faced with the lack of stable housing, finances and services, victims must choose between life with an abusive partner and life on the streets.

Our amendment would provide leniency for women and children who are affected by domestic violence and would, in fact, help victims to move forward and start new lives. Without the threat of losing their housing, women and children who are survivors of domestic violence will not be forced to a situation where they are homeless or returning to their abuser.

This amendment would modify the bankruptcy code to ensure better protection for victims of domestic violence by granting them relief from summary eviction from their rental housing. Relief may be granted only under the condition that the debtors certify under penalty of perjury that they are victims of domestic violence whose physical well-being or whose children's physical well-being would be threatened through eviction. our amendment would not allow families to take advantage of the system, but it will be a life-saver for those who would face danger if they lost their homes.

This amendment is supported by the National Coalition Against Domestic Violence, the National Network To End Domestic Violent and the Family Violence Prevention Fund. I ask unanimous consent to print in the RECORD letters from those groups voicing that support.

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

MARCH 7, 2005.

DEAR SENATOR: As national organizations working to address the varied needs of victims of domestic violence, we urge you to support Senator Leahy's proposed amendment to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, S. 256. This provision is essential for the many victims of domestic violence whose physical well-being or whose children's physical well-being would be threatened by summary eviction as a result of filing for bankruptcy.

Economic abuse is an integral part of domestic violence. Abusers often assert economic control by forbidding their victims from working, giving them little or no access to family finances, or destroying their credit. Many battered women have current or former partners who actively interfere with their efforts to work, harass them at work, threaten them and their children, withhold transportation or childcare, or beat them so severely that they cannot work. These victims are sometimes pushed into filing for bankruptcy as a result of this abuse.

Evicting these victims from their homes not only exacerbates an already difficult situation, but also puts many families in direct danger. On average, it takes six to ten months to secure housing. During this time, victims would be forced to stay at emergency homeless or domestic violence shelters. Unfortunately, those shelters are often full; in 2003, 32% of the requests for shelter by homeless families went unmet due to the lack of emergency shelter beds available. Even when space is available, most shelters limit the length of stay to 30 days.

Faced with this lack of housing and services, victims must choose between life with an abusive partner or life on the streets. Studies indicate that victims of domestic violence often return to their abusers because they cannot find long-term or transitional housing. At the other extreme, more than 50% of homeless women and children are homeless because they are fleeing domestic violence. Once homeless, women are at high risk for experiencing further violence. Many studies have found that 90–100% of homeless women have been physically or sexually assaulted.

The tremendously negative impact of such evictions becomes greater when victims with children are forced out of their homes. Children without a home are in fair or poor health twice as often as other children, and

have higher rates of asthma, ear infections, stomach problems, and speech problems. Homeless children are also more likely to experience mental health problems, such as anxiety, depression, and withdrawal. They are twice as likely to experience hunger, and four times as likely to have delayed development. School-age homeless children face barriers to enrolling and attending school, including transportation problems, residency requirements, inability to obtain previous school records, and lack of clothing and school supplies.

Individuals claiming relief under this provision would be required to testify, under penalty of perjury, that they were victims of domestic violence and that they or their children would be in physical jeopardy if they were evicted. Thus, this amendment will not allow families to take advantage of the system, but will be life-saving for those who would be in danger if they lost their homes.

We urge you to support Senator Leahy's amendment and provide this much needed assistance to domestic violence victims.

Sincerely,

ALLISON RANDALL,
*National Network to End Domestic Violence.*
JILL MORRIS,
*National Coalition Against Domestic Violence.*
KIERSTEN STEWART,
*Family Violence Prevention Fund.*

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NATIONAL COALITION AGAINST DOMESTIC VIOLENCE,
*February 28,2005*

Senator PATRICK LEAHY,
Russell Senate Office Building,
*Washington, DC.*

DEAR SENATOR LEAHY: It is with great support that I write to you on behalf of the National Coalition Against Domestic Violence and the more than 3,000 local shelter programs that we represent to thank you for your efforts to assist those individuals that are or have been impacted by the vast epidemic of domestic violence. '

Women fleeing domestic violence make up a significant portion of the homeless population. According to The United States Conference of Mayors (December, 1999) 57 percent of cities surveyed identified domestic violence as a primary cause of homelessness. Therefore, amending the bankruptcy code, as proposed in S. 256, with a provision that provides leniency on persons who are affected by domestic violence would, in fact, help victims to move forward and start new lives. Without the threat of losing their housing victims will not be forced to a situation where they are homeless or returning to their abuser.

Victims of domestic violence often cannot find adequate housing. One very important—reason is that affordable, long term housing is not available in their communities. If housing is available there are often long waiting lists or the abuser is able to quickly locate and begin abusing the survivor at her new residence. Secondly, due to the fact that batterers frequently harass their victims at work, survivors are often fired or cannot maintain steady employment resulting in loss ability to pay for housing. Lastly victims of domestic violence are forced to remain in abusive relationships because of financial dependency and the lack of stable housing. The amendment to S. 256 recognizes that victims of domestic violence are in a dangerous situation and should not be forced from housing due their financial difficulties.

We commend you on your efforts to ensure that those who are affected by domestic violence are taken into consideration when the Senate reviews this legislation.

Sincerely,

JILL MORRIS,
*Public Policy Director.*

Mr. LEAHY. Congress must recognize that victims of domestic violence face dangerous situations and should not be forced from housing due to their financial difficulties. We cannot force women and children who have endured domestic violence from safe spaces that provide the stability needed to make a new life.

EXHIBIT 1

(Purpose: To protect victims of domestic violence who file for bankruptcy from summary eviction if their physical well-being is threatened)

On page 156, line 18, insert '', unless the debtor certifies under penalty of perjury that the debtor is a victim of domestic violence whose physical well-being or whose children's physical well-being would be threatened if relief from the stay is granted'' before the semicolon.

REGULATING CREDIT CARDS

Mrs. FEINSTEIN. I appreciate the willingness of the chairman and ranking member of the Banking Committee to work with Senators KYL, BROWNBACK, and me on this important issue. And I understand that the Banking Committee has an interest in regulating credit cards.

I would like to state here, for the record, the key points of the agreement that we have arrived at:

Senators SHELBY and SARBANES have agreed to hold a hearing within 6 months on the substance of the amendment to the Bankruptcy Bill that Senator KYL, BROWNBACK, and I offered, on increasing notice to credit card holders who pay only their minimum monthly payments. I understand that this hearing will address a set of issues relating to credit cards and consumer rights. However, I also understand that Senators SHELBY and SARBANES will ensure that the substance of agreement, will be directly considered, and will be an area of focus, during that hearing, and that I will be afforded the opportunity to testify.

I understand that Senators SHELBY and SARBANES will work with me, with Senator KYL, and with members of the Banking Committee to ensure that this issue and my bill are carefully considered. My bill would give those consumers who make only the minimum required payments for 6 months detailed notice about the interest and length of time that it will take them to pay their own individual debt and interest.

Because the chairman and ranking member of the Banking Committee agree to take these actions, I will agree to withdraw my amendment. Do Senators SHELBY and SARBANES agree?

Mr. SHELBY. I absolutely agree with Senator FEINSTEIN and look forward to working with the Senator.

I say to Senator SARBANES, through the course of the debate on the bankruptcy bill it has become clear that there are many Senators who have concerns about numerous aspects of the credit card industry.

I want to indicate for the record that I share many of these concerns. Furthermore, I want to point out that I am aware of his particular concerns as well as those of Senators KYL and FEINSTEIN.

Mr. SARBANES. I thank Chairman SHELBY and Senator FEINSTEIN. I appreciate their interest in this matter and believe these are serious issues that merit further attention.

Mr. SHELBY. I fully agree and therefore I am willing to commit to holding a hearing in the Banking Committee to examine the practices within the credit card industry. I believe it is our responsibility to develop a complete record on these matters so that we can make informed judgments as to whether we need to take any specific actions.

I look forward to obtaining input from Senator SARBANES and from Senators KYL and FEINSTEIN in putting together this hearing.

Mr. SARBANES. I thank Chairman SHELBY for his leadership on this issue. I look forward to working with the Senator on developing a hearing at which the Banking Committee will receive testimony on credit care disclosures and other practices. A number of Senators have raised significant issues regarding the credit card industry and I appreciate the Senator's willingness to examine them and hear all interested Senators.

Mr. SHELBY. I agree.

Mr. SARBANES. I will support the Chairman's efforts.

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## MORNING BUSINESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

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## COMMEMORATING THE 60TH ANNIVERSARY OF THE BATTLE OF IWO JIMA

Mrs. DOLE. Mr. President; this month marks the 60th anniversary of the victory at Iwo Jima. That battle is remembered as one of the bloodiest in Marine Corps history. Approximately 70,000 American and 22,000 Japanese troops engaged in a month long battle for the Pacific Island that was critical to the air bombardment of mainland Japan. The heroic achievements of our nation's warriors throughout this treacherous battle attest to the courage and character not only of the brave men who fought there, but of our nation as a whole.

The island of Iwo Jima consists of coarse volcanic sand that impeded the movement of men and machines as they struggled up the beach. Unable to dig fighting holes, the Marines were

sitting ducks for the Japanese gunners hiding in a network of caves. Suribachi, the 550-foot volcanic mountain at the island's southern end, allowed Japanese gunners to zero in on every inch of the landing beach. Blockhouses and pillboxes flanked the landing areas, leading historians to describe the attack as ''throwing human flesh against reinforced concrete.'' The 36-day assault on Iwo Jima resulted in more than 23,200 Americans wounded, and another 6,800 who paid the ultimate price.

The battle, which involved the largest number of Marines committed to a single operation during World War II, featured superior service cooperation. The Navy-Marine Corps team functioned as a model of efficiency. To make victory possible, more than 450 ships massed in the surrounding waters. Among those ships was the aircraft carrier USS *Saratoga*, and on board that ship was my brother, John Hanford. Having graduated from Duke University and joined the Navy at 19, he became an aviation supply officer. John's battle station was a 20 millimeter gun battery, where he led a 15-man team. Tasked with laying an impenetrable curtain of anti-aircraft fire, the 20 millimeter batteries provided the ship's last line of defense from attacking Japanese Zeros and kamikazes.

The *Saratoga* was part of the legendary Task Force 58, commanded by the superb strategist, Vice Admiral Marc Mitscher, who executed a diversionary air bombardment of Japan on the initial days of the Iwo Jima assault. On February 21st, the *Saratoga* and three destroyers moved south, to provide direct air support for the Marines on Iwo Jima. Although the 20 millimeter batteries were effective out to a mile, the low cloud layer that day as the *Saratoga* came on station, forced my brother and the rest of the crew to mount a desperate, close-in defense of the ship.

In full view of Mt. Suribachi, the *Saratoga* was subjected to two waves of Japanese air attacks. During the first wave, her radar picked up a large threat, estimated at 20 to 25 planes. Despite the deadly anti-aircraft fire, within 3 minutes three bombs plunged into the *Saratoga*, immediately followed by four kamikaze hits.

Her crew fought fires blazing in the hangar deck, and her planes were directed to land on the nearby escort carriers. Roughly 2 hours later, five kamikazes targeted her again. Four were shot down but one dropped a bomb, which exploded over her flight deck before the plane itself bounced over the side. During the air attacks, the crew could see the USS *Bismarck* being struck by a kamikaze and minutes later sinking with a crew of 218 aboard. The *Saratoga*'s losses were 192 sailors and Marines wounded, 123 killed or missing. And, as a youngster growing up in Salisbury, NC, I well remember my revered big brother coming home on what was called ''survivor's leave.''

Though extremely costly, the ability to launch and recover aircraft on Iwo Jima was critical to the strategic bombing campaign and ultimately to the American victory in the Japanese theater. The island's capture served to increase the operating range, payload, and survival rate of the big bombers. While the monthly tonnage of high explosives dropped on Imperial Japan increased eleven-fold during March alone, the greatest value of Iwo Jima was to serve as an emergency landing field for crippled B–29s returning from bombing runs. By war's end, a total of 2,400 bombers carrying over 27,000 crewmen made forced landings on the island. Without control of Iwo Jima, many of these men would have been lost at sea. Noted one B–29 pilot, ''whenever I landed on the island, I thanked God for the men who fought for it.''

One of the many heroes of the fierce land battle was PFC Jack Lucas, born and raised in North Carolina. He is the Nation's youngest Medal of Honor recipient of the 20th century and the youngest Marine ever to receive that award. Anxious to fight for his country, this son of a tobacco farmer forged his mother's signature and enlisted in the Marine Corps at age 14. Frustrated with an assignment to a training command, he stowed away on a ship bound for Iwo Jima. Six days after his 17th birthday, he and three other men were attacked by grenades. The men jumped into a shallow hole; as a grenade landed next to them, Private Lucas threw his body over it. When another grenade landed close by, Private Lucas pulled it under him and absorbed the blasts of both grenades with his body, saving his fellow Marines from certain injury and possible death. Miraculously, he survived. Bob and I have had the privilege of several visits with Jack and his wonderful wife.

Private Lucas is a representative of what has been hailed as ''The Greatest Generation.'' As evidenced by America's triumphs in numerous conflicts since World War II, the traits, the spirit of the Greatest Generation have certainly been passed on. Today, approximately 14,000 Marines of the Second Marine Expeditionary Force, based in North Carolina, are in the process of deploying to Iraq to continue fighting for freedom. I am very proud to recognize 41 Marine lieutenants who are sitting in the gallery today. These young men and women are the newest bearers of the torch of freedom so proudly carried by the Iwo Jima veterans. This platoon of recently commissioned officers is about to finish training, and in a few short months many of them will find themselves in direct combat supporting the global war against terrorism.

I applaud their selfless act, volunteering to serve our Nation during this time of war; they represent our Nation's best. I have no doubt that these young officers will have the privilege of leading many men and women who possess the same qualities of tenacity and valor displayed by Private Lucas.

I could not agree more with Jack Lucas who recently said, ''I am so proud of the people who serve today, whether in peacetime or in war. You can't do anything better than serve America . . . I love our government and our military and I think it's the most honorable thing a man or woman can do''.

The battle of Iwo Jima resulted in 27 Medals of Honor being awarded to Marines and sailors, many posthumously, more than awarded for any other operation during World War II. Commander of the Pacific Fleet, ADM Chester Nimitz, immortalized the spirit of the battle noting that ''among the Americans who served on Iwo Island, uncommon valor was a common virtue.'' The Marines present here today, as well as all of our military members serving around the globe, are continuously making sacrifices to protect our freedoms. I am certain that they, too, possess the uncommon valor which has made our Nation so strong in the past, and will keep her strong well into the future.

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

Mrs. DOLE. Yes.

Mr. DURBIN. At the outset, I thank my colleague from North Carolina for coming to the floor and reminding us of this wonderful chapter in American history, where the men who were on Iwo Jima and all the men and women who fought in World War II demonstrated such uncommon valor that inspires us even to this day. The story the Senator has told us of Mr. Lucas is nothing short of incredible: This 14-year-old boy performed feats of courage which are almost unparalleled. In fact, as the Senator noted, he is the youngest recipient of the Congressional Medal of Honor, which I am sure is a great source of pride.

The first job I ever had as a college intern in the Senate was for Senator Paul Douglas of Illinois, who enlisted in the Marine Corps at the age of 50 and went through training at Parris Island, fought in Okinawa and was injured, as Senator Bob Dole was injured, with a serious injury to his left arm.

I have always had a special spot in my heart for the men and women who serve in the Marine Corps, and I just want to join the Senator from North Carolina in making certain that this is bipartisan and nonpartisan in our salute to the Marine Corps, all the men and women in uniform, and particularly the great veterans of World War II and Iowa Germany.

Mrs. DOLE. I thank the Senator for his comments.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I, too, want to commend Senator DOLE for her stirring comments about the valiant Marines on Iwo Jima. My brother was a Marine officer. I followed not in the Marine Corps but to West Point, so one of us was right.

SOCIAL SECURITY REFORM

Mr. REED. Mr. President, I rise today to express my deep concern about the direction that the President is taking the country in terms of our Nation's commitment to providing retirement security to the elderly and income security to the disabled, widows, and survivors. I am speaking, of course, about the President's plan for privatizing Social Security.

President Bush writes in his recently released Economic Report of the President, ''The greatest fiscal challenges we face arise from the aging of our society.'' Yet his annual Economic Report devotes little more than a page and a half to this important subject.

As his Economic Report reveals, the President has no real plan to address the fiscal challenges arising from the retirement of the baby boom generation, let alone a plan to fix Social Security. All the President has is an unaffordable plan to create private retirement accounts, with few specifics and many unanswered questions.

That is not stopping the President from barnstorming the country telling the American people that Social Security is a sinking ship and private accounts are the lifeboats into which we should jump. But the administration is manufacturing a crisis that does not exist in order to dismantle Social Security.

Despite the administration's claims, Social Security will remain solvent for nearly 50 more years. Even after that, Social Security would still be able to pay 70 to 80 percent of benefits. Modest changes to the system would enable Social Security to pay full benefits well beyond the next 50 years.

No other retirement system or Fortune 500 company in the United States can make that same claim. In fact, the weakness of traditional pensions makes Social Security look like the most secure part of our retirement system right now.

To put the problem into perspective, making the Bush administration's four enacted tax cuts permanent would cost three to five times more than the Social Security shortfall over the next 75 years.

For over 60 years, Social Security has provided a dependable and predictable stream of income to retired or disabled workers, their dependents and their survivors. Forty-eight million men, women, and children rely on Social Security benefits each month to help them live with dignity. The benefits are protected from inflation and one cannot outlive them.

Social Security is an insurance program, not an investment plan, and private accounts would destroy much of the insurance value of the program. More than one-quarter of Social Security benefits go to survivors and disabled workers and their families, and these benefits would be at risk under the President's proposal.

We all acknowledge the long-term fiscal imbalance of the Social Security trust fund. However, it is equally critical to recognize that the President's private accounts do absolutely nothing to address this imbalance, as a senior administration official recently acknowledged. In fact, diverting payroll tax revenues exacerbates insolvency and accelerates the date of trust fund imbalance.

For obvious reasons, the President has not mentioned this or other facts that are so critical to the Social Security trust fund. His privatization scheme requires cutting benefits by more than 40 percent, even for those who choose not to invest in privatized accounts.

Those choosing a private account could be hit with an additional ''privatization tax'' of 70 percent or more of the value of their account, which would be deducted from their Social Security benefits upon retirement.

President Bush has urged Congress to fix Social Security for younger workers and not pass on the problem to future generations. However, the President's plan for private accounts would place a huge burden on our children and grandchildren by increasing Federal debt by over $750 billion in just the next 10 years. This debt would rise to nearly $5 trillion over the first 20 years that the plan is in place.

The President's private accounts would cut Social Security's funding, weaken the program, and make its financial problems worse, not better. In short, private accounts pose a serious threat to the future economic security of all Americans, particularly the most vulnerable members of our society.

This is why last week I joined 41 of my fellow Democratic senators in calling on the President to publicly and unambiguously abandon his support for private accounts funded with Social Security dollars or cuts in guaranteed benefits.

At a time when our country is saving so little and fewer employers are offering traditional pension plans, Social Security's predictable, inflation-protected benefits that can't be outlived occupy a critical role in ensuring our retirement security.

Before we can roll up our sleeves and delve into the very serious question of shoring up Social Security for all, we must set aside ideology and acknowledge the demographic and fiscal challenges facing this bedrock retirement security program.

I want to work with President Bush to promote personal wealth and saving through investment, but not at the cost of Social Security. I urge the President to take private accounts off the table so that we might achieve bipartisan agreement to strengthen Social Security for the long-term and enhance the retirement security of all Americans.

I yield the floor.

''MADD AT GM'' CAMPAIGN

Mr. DEWINE. Mr. President, I come to the Senate this afternoon in disbelief and sadness and a little anger. I am angry, sad, at the blatant disregard for common sense in a new ad campaign being promoted by a prominent trade association.

The American Beverage Licensees, or ABL, has launched a campaign entitled ''MADD at GM''—MADD referencing Mothers Against Driving Drunk, with the aim of stopping the charitable donations General Motors gives to Mothers Against Drunk Driving.

ABL claims that MADD has a ''neoprohibitionist agenda.'' Yes, the neoprohibitionist agenda is what they claim.

They claim that MADD ''wants to criminalize social drinking by preventing designated drivers from drinking before they get behind the wheel.'' Apparently in their world, designated drivers ought to be able to have a few drinks before getting on the road. In most people's world, that defies all common sense.

In honor of MADD's 20th anniversary in 2000, General Motors made a commitment to contribute $2.5 million over 5 years to MADD to combat underage drinking, for underage drinking prevention, and drunk driving victim assistance, a very laudable goal. I applaud General Motors for doing this. But what has happened is, with General Motors' funding commitment now expired, ABL has seen this as the perfect opportunity to attack General Motors. They are attacking a noble cause, and their attack makes no sense.

ABL's smear campaign against General Motors and MADD has taken many forms—an Internet Web site, print advertisements, TV ads during NASCAR events, and through promotional materials distributed at bars, restaurants, and other ABL member locations throughout the country. I have brought two of these ads with me to the Senate floor this afternoon. Let me show the first ad.

This first advertisement plays off the well-known board game Monopoly. It explicitly states that by purchasing a General Motors car, any American is funding his or her own arrest. How absurd. It suggests that because General Motors supports MADD and MADD is against drinking and driving that somehow General Motors is to blame if you get arrested for being over the legal drinking limit. But last time I checked, in this country we arrest people who have broken the law. And in this case that is drinking too much before you get behind the wheel.

Let me show the second ad, just as outrageous. This advertisement, again from the MADD at GM campaign, contradicts common sense as much as the first one did. As you can see here, the man in the ad is posing for his mug shot. But instead of holding his arrest number, he is holding a sign stating that his arrest was sponsored by General Motors. That is what it says.

General Motors didn't get this man arrested. Drinking and driving did. The ad further states that General Motors

supports the arrest of social drinkers through its charitable donations to MADD. But that isn't the case at all. The simple fact is that if you drink too much and you get in a car and drive, you break the law. It doesn't matter if you label it as social drinking or not; what is wrong is wrong.

This ad says that ''MADD spends millions provided by GM to fund their roadblock promotion campaign. They're using your money to arrest you.''

That roadblock campaign is a program I strongly support and I know many Members of the Senate support as well. It is also a program that the Traffic Safety and Law Enforcement Campaign bill that Senator LAUTENBERG and I are introducing today would help fund.

Let me show a third ad. This ad, however, is from MADD. In it you can see a note from LT Carl McDonald about his daughter Carlie. It reads:

This is my precious little girl, Carlie. I always told her, ''I will love you as long as there are stars in the sky.'' She would always smile, look up at me and say, ''I love you more than there are stars in the universe.'' These words are now inscribed on her tombstone. At the tender age of five she was killed by a drunk driver—her mother. If you think it can't happen to you—think again. Please don't drink and drive.

This was an ad brought to us by MADD.

The ad has more teeth in it than the other two ads combined. We all know the truth; that is, drinking and driving is deadly. MADD is doing all it can do to help save lives and get drunk drivers off the road.

I think what is so alarming and irritating and makes us all so mad is this campaign that is targeted against MADD, Mothers Against Drunk Drivers, an organization that has done so much good in this country in all 50 States.

I first came in contact with MADD when I was a State senator back in the early 1980s. We had a little boy, a 7-year-old boy by the name of Justin Beason, who was tragically killed by a drunken driver in my home county. As a result, I introduced a bill in our State legislature, a tough drunk-driving bill. I can truthfully say it was through the support of MADD and MADD's members who went to the legislature, lobbied the legislature, testified in front of the State legislature, wrote letters—if it wasn't for MADD, that bill would not have become law.

It is an organization that reminds us every day of the horrible tragedies and about people like Carlie—little children who lose their lives on highways every week because of drivers who were drinking. This organization has been so viciously attacked by this trade organization. It is an organization made up of many parents who have lost children, and many times husbands who have lost wives, and wives who have lost husbands—all to drunk drivers. It is a good organization. It is an organization we should all support. It is an organization of which we should all be proud. Anyone who attacks it, I just don't understand.

Here are some statistics to think about: 69 percent of our youth died in alcohol-related fatalities in the year 2000 involved young drinking drivers. Of the 42,000 people killed in all of the traffic accidents in 2003, 40 percent—well over one-third—were due to alcohol. Further, since MADD's founding in 1980, drunk-driving deaths have dramatically decreased from 26,179 in 1982 to 17,013 in the year 2003. Clearly, MADD and other anti-drunk-driving campaigns are having an impact. We have begun to change the culture in this country. In part, we have corporations such as General Motors to thank having helped MADD in their cause. While deaths due to drunk driving have decreased in large part through the great work of MADD, the job is certainly not finished. As long as people are put into danger because someone got behind the wheel after drinking alcohol, we have work to do. General Motors and MADD are not criminalizing social drinkers, they are working together to simply save lives.

Today, I am introducing six transportation safety bills. I introduced them last year and am doing so again because I want to see them get passed and signed into law and see lives saved. They are commonsense bills that will, in fact, save lives. I think all of us care about keeping our roads safe. That is also why I again commend MADD and General Motors. I also commend the National Highway Traffic Safety Administration for its efforts to keep drunk drivers off the road and its prosafety agenda. They are all doing what is right and what needs to be done to protect our children and our families when they get into a car and get on the road.

Mr. President, I yield the floor.

Mr. DODD. Mr. President, before my colleague goes, I want to once again say to my good friend from Ohio how much I appreciate his leadership. I am a principal cosponsor with my colleague on this very important bill dealing with underage drinking. We have wonderful sponsors in the House as well, in a bipartisan way, to try to make a difference.

The Senator has laid out very categorically what the facts are, which is that this is a massive problem in this country, and a growing one, unfortunately, with the age of people who are becoming regular users of alcohol dropping all the time. While certainly parents have to do more at the local level, more efforts need to be made. We also think it is incumbent upon us at a national level to be supportive of those efforts, to help provide resources and guidance to try to reverse this trend.

I didn't want my friend to leave the floor without expressing to him my deep sense of gratitude—not only on this issue but on countless other issues affecting families and children. MIKE DEWINE of Ohio has been as good a champion as this body has seen in a long time on these issues. There are very few issues that have given me as much pleasure to work on as issues with children. On behalf of all of us in this country—he represents Ohio well, but in this regard he is making a difference all across the country. On their behalf, I thank him.

Mr. DEWINE. Mr. President, I thank my colleague for the very kind remarks. Senator DODD has been a real partner on so many issues affecting children. He and I have worked together. Whenever we want to find someone to advocate for children, CHRIS DODD is there. My colleague is always a great champion for children.

On the issue of drinking and driving, underage drinking and highway safety, Senator DODD has been a true champion. I thank my colleague for coming to the floor. Again, I look forward to continuing to work with him in the years ahead.

Mr. LAUTENBERG. Mr. President, I join my colleague from Ohio, Senator DEWINE, and call attention to an unseemly lobbying effort to discredit one of our Nation's most revered public safety organizations, the Mothers Against Drunk Driving, MADD, and one of our Nation's largest automakers, General Motors.

Each year, General Motors donates money to MADD to support its campaign against drunk driving. In response to this, the alcohol special interest lobby is spending $10 million to finance a lobbying campaign—or as some might call it, a smear campaign.

This campaign is aimed at scaring and intimidating corporate donors like GM so they will stop giving money to safety organizations like MADD. Apparently the alcohol lobby thinks it is bad for its business to crack down on drunk driving, which kills 17,000 Americans each year and injures over 500,000.

Ten million dollars is not an insignificant amount of money. After all, the Federal Government only spends $30 million each year on public law enforcement campaigns to educate people on drunk driving awareness and prevention.

What a shame. Imagine if the alcohol lobby would spend $10 million to educate people and prevent drunk driving, instead of bullying GM. Many of the customers they lose each year to drunk driving crashes could probably be saved, along with thousands of innocent Americans. That sounds like a much better investment than financing a smear campaign that will cost lives.

I am one of the most ardent opponents of drunk driving in the Senate, and I see the results of the good work we do here to help save the lives of our constituents from the scourge of drunk driving. Over the years, I have battled against the alcohol lobby to pass effective laws to reduce drunk driving.

In 1986 I authored legislation and worked with Senator ELIZABETH DOLE, who was Secretary of the Department of Transportation at the time, to raise the minimum drinking age from 18 to 21. President Reagan signed my bill

into law, and MADD officials were there with us. In 2000 Senator DEWINE and I teamed up to get a bill passed establishing .08 blood alcohol concentration level as the nationwide threshold for drunk driving.

These are the kind of smart, common-sense initiatives that MADD supports. And these are the kind of initiatives that save lives. Combined, these two measures are estimated to save some 1,500 lives a year.

Federal public awareness campaigns against drunk driving are also having a tangible impact. We need to step up these program, which is why Senator DEWINE and I will soon introduce a bill to increase funding for this effort. What we don't need is a $10 million misinformation program from the alcohol industry.

Drunk driving is no joke. It kills and maims thousands of people in American each year, and costs $9 billion in additional health care and other costs. MADD is trying to stanch the flow of blood on our highways, and they are doing a good job of it. GM, to its credit, supports MADD. They deserve our encouragement, and they deserve for us to stand up against this vicious smear campaign.

I intend to work with Senator DEWINE to let Americans know the truth about the alcohol lobby's smear campaign, to counter the alcohol lobby's lies with the truth, and to fight for legislation that reduces drunk driving and saves lives across our country.

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AMENDMENTS TO VARIOUS REGULATIONS OF THE COMMITTEE ON RULES AND ADMINISTRATION:

Mr. LOTT. Mr. President, I would like to give notice to Members and staff of the Senate that the Committee on Rules and Administration (''Committee'') has approved amendments to four Committee regulations. Pursuant to Title V of the Rules of Procedure for the Committee and having provided advance notice of our intention to approve the following amendments to regulations, we hereby approve said amendments effective February 1, 2005.

1. The following regulations are approved as amended:

A. Committee Regulations for Furniture, Accessories and Special Allowances Policy for Senate Office Buildings, as amended by adding, deleting and substituting as follows:

Delete the second sentence in item 5 which reads ''However, once modular is chosen for a suite, it shall remain a part of that suite regardless of which Senator occupies the space.''

Under Section A in item 5, delete ''A.'' and the words ''of funding for this program'' and substitute ''and the order in which the request is received.''

Delete Sections B and C in item 5.

Delete item 7.

At the end of second sentence in item 8 add the following: ''or through the Senate Furniture web system.''

Under Section A in item 8 delete the words ''to be transferred to the intended office'' at the end of the sentence and substitute ''by the Committee on Rules and Administration prior the transfer.''

At the end of first sentence in item 9 add the following: ''available for viewing through the Senate Furniture web system (http://senate.aoc.gov)''

Under Standard Furniture and Accessories, Senators' Suites—

1. Delete ''Chairs—Ergonomic (with or without arms)''
2. Delete ''Chairs—Folding Chairs''
3. After ''Chairs—Conference'' add ''(with or without arms)''
4. Delete ''Chairs—Reception'' and substitute ''Chairs—Desk (with or without arms)''
5. Delete ''Chairs—Reception (without arms)''
6. Delete ''Chairs—Secretary''
7. Delete ''Coats—Rack''
8. Add ''Credenza—(Conference room & Front office only)''
9. Delete ''Desk—Secretary'' and substitute ''Desk—L-Shape''
10. After ''Fireplace—Screens'' add ''(Russell SOB only)''
11. After ''Fireplace—Tools'' add ''(Russell SOB only)''
12. After ''Lighting—Ceiling (Chandelier)'' delete ''Fixtures (Reception and Conference Rooms in Russell SOB only, no more than 2 total)'' and add ''in Russell SOB only, (Reception Rooms, Conference Rooms and Senator's Personal Office, limited to 3 total)''
13. After ''Lighting—Floor Lamps'' add ''2 per office''
14. Delete ''Lighting—Reading Lamps''
15. Delete ''Magazine Rack''
16. Delete ''Microfilm Cabinets''
17. Delete ''Modular Furniture—Limited to Hart SOB for now)''
18. Delete ''Partitions—Textures (i.e. wood)''
19. After ''Refrigerator—Medium'' add ''Not to exceed 3 total''
20. Delete ''Stand—Smoke (Ashtray)''
21. Delete ''Tables—Folding''
22. Delete ''Window—Venetian Blinds (2 inch, Russell and Dirksen SOB's only)''
23. Delete ''Window—Mini Blinds (Hart SOB only)''

Under Senators' Personal Offices—

1. Delete ''(Bathroom)—(Vanity under sink)*''
2. Delete ''(Bathroom)—(Cabinet over/next to sink)*''
3. Delete ''Chairs—Reception'' and add ''Chairs—Side (with arms or without arms)''
4. Delete ''Chairs—Reception (without arms)''
5. After ''Chairs—Overstuffed'' add ''(Historic)''
6. Delete ''Lighting—Reading Light''
7. After ''Lighting—Ceiling (Chandelier)'' delete ''Fixture (Russell SOB only) and add ''in Russell SOB only, (Reception Rooms, Conference Rooms and Senator's Personal Office, limited to 3 total)''
8. Delete ''TV Cabinet'' and add ''TV/VRC Cabinet''
9. Delete ''VRC Cabinet''
10. Delete ''Upholstery Fabric''
11. Delete ''Wardrober''
12. Delete ''Window—Curtains or Draperies''
13. Delete ''Window—Venetian Blinds (wood or metal)''
14. Delete ''Window—Mini Blinds''
15. Delete ''* Standard part of building structure''

After heading ''For Loan (for Meetings and Related'' add ''Functions)''

A copy of the Committee Regulations governing Furniture, Accessories and Special Allowances Policy for Senate Office Buildings, as amended, is included as Attachment A.

B. Committee Regulations Governing Senate Travel and Travel Promotional Awards, as amended, by deleting paragraphs five and six in Section II(A)(3)(b) and related Appendix A and substituting as follows:

Travel promotional awards (e.g. free travel, travel discounts, upgrade certificates, coupons, frequent flyer miles, access to carrier club facilities, and other similar travel promotional items (''Travel Awards'')) obtained by a Member, officer or employee of the Senate while on official travel may be utilized for personal use at the discretion of the Member or officer pursuant to this section. Travel Awards may be retained and used at the sole discretion of the Member or officer only if the Travel Awards are obtained under the same terms and conditions as those offered to the general public and no favorable treatment is extended on the basis of the Member, officer or employee's position with the Federal Government. Members, officers and employees may only retain Travel Awards for personal use when such Travel Awards have been obtained at no additional cost to the Federal Government. It should be noted that any fees assessed in connection with the use of Travel Awards shall be considered a personal expense of the Member, officer or employee and under no circumstances shall be paid for or reimbursed from official funds. Although this paragraph permits Members, officers and employees of the Senate to use Travel Awards at the discretion of the Member or officer, the Committee encourages the use of such Travel Awards (whenever practicable) to offset the cost of future official travel.

A copy of the Committee Regulations governing Senate travel and Travel Promotional Awards, as amended, is included as Attachment B.

C. Committee Regulations for the Senate Health and Fitness Facility by the Office of the Architect of the Capitol, as amended, by deleting paragraph (d), Section 3 and substituting as follows:

The Facility and its equipment shall be available for use by all Members of the United States Senate upon the payment of fees as determined by the Chairman and the Ranking Member of the Committee on Rules and Administration. The Chairman and Ranking Member of the Committee on Rules and Administration shall notify the Secretary of the Senate of the amount of any fees to be charged hereunder and direct the Financial Clerk of the Senate to collect such fees from those Members desiring to use the Facility.

A copy of the Committee Regulations governing the Senate Health and Fitness Facility, as amended, is included as Attachment C.

D. Committee Regulations governing Public Transportation Subsidy, as amended by deleting and substituting as follows:

In the first sentence of Section 2, substitute ''(P.L. 105–178)'' for ''(P.L. 105–78)''.

In the first sentence of Section 2, substitute ''$105'' for ''$100''.

In item (a) of Section 4, substitute ''$105'' for ''$100''.

In the second sentence of third paragraph of Section 6, substitute ''employee'' for ''employer''.

In item (c) of Section 7, substitute ''$105'' for ''$100''.

A copy of the Committee Regulations governing Public Transportation Subsidy, as amended, is included as Attachment D.

ATTACHMENT A—FURNITURE, ACCESSORIES AND SPECIAL ALLOWANCES POLICY FOR SENATE OFFICE BUILDINGS

(Approved September 27, 1989)

(Amended June 29, 1994)

(Amended February 28, 2004)

1. Pursuant to 40 U.S.C. 174c, furnishings for offices in the Senate Office Buildings are supplied and maintained by the Architect of the Capitol through his representative, the Superintendent of the Senate Office Buildings. Matters of general policy are subject to the approval of the Senate Committee on Rules and Administration.

2. Effective on the date of adoption of this policy by the Senate Committee on Rules and Administration, the Superintendent of the Senate Office Buildings shall undertake to survey the physical quality of all furnishings presently assigned to offices. Thereafter, a survey will be conducted on an annual basis. Office heads, as defined in the Senate Equipment Regulations, should work with the Superintendent's Office to identify furnishings that do not meet an acceptable level of quality.

3. When the survey is completed, all items on the Standard Furniture and Accessories list that are in disrepair will be declared ''surplus'' and/or repaired. This does not preclude repairs as needed irrespective of survey timing. No furnishings will be delivered to an office unless they are functional and in quality condition.

4. The Superintendent's Office will maintain a full inventory of all furnishings assigned to designated suites, including documentation of furnishings provided from the Standard Furniture and Accessories list, and items purchased from the Senators' special furniture and accessory allowance.

5. Senators with suites in the Russell or Dirksen Buildings shall have the option of using traditional or modular furniture to create an effective office environment. [However, once modular is chosen for a suite, it shall remain a part of that suite regardless of which Senator occupies the space.] A Senator electing to use modular furniture in Russell or Dirksen shall use the modular system in the suite except for the Senator's personal office, reception room, and conference room.

[A.] Modular furniture will be offered to Senators in Russell and Dirksen based upon the availability *and the order in which the request is received*. [of funding for this program.]

[B. Modular furniture will be offered to Senators with suites in the Russell and Dirksen Buildings on a seniority basis until all Senators have had the opportunity to elect to use modular furniture.

[C. Senators not electing initially to use modular furniture in Russell or Dirksen must wait until all other Senators on the current list have been offered modular furniture and have elected to accept or have declined. The updated seniority list shall apply after Senate moves.]

6. Senators in the Hart Building shall utilize modular furniture as the basic system of furnishing. The actual system of furniture in place in a suite in the Hart Building shall remain in the same suite regardless of which Senator occupies the space.

In the Hart Building, traditional furniture may be chosen for the Senator's personal office, the Chief of Staff's office, the reception area and the conference room.

[7. Modular panels shall not be provided in any private offices.]

8. Only a Senator or the designated office head of each Senate office will have the authority to request furniture and furnishings in an office. Such requests may be made by submitting a ''Request for Service'', letter *or through the Senate Furniture web system*. Written confirmation of a telephone request to the Superintendent of the Senate Office Buildings also will be accepted. Office heads should be designated in writing and a file of these names will be maintained by the Superintendent's Office.

The transfer of furniture from one official office inventory to another may be authorized based upon the following:

A. All furniture items to be transferred from one Senate office or Committee to another Senate office or Committee must be authorized *by the Committee on Rules and Administration prior the transfer*. [to be transferred to the intended office.]

B. The Senator, Committee Chairman or designated office head must agree to the release of the furniture on a Request for Furniture form providing for the removal of those items from their office inventory. Additional furniture intended to replace the furniture proposed for transfer shall be requested simultaneously on a Request for Furniture form.

C. The Senator, Committee Chairman or designated office head receiving the transferred furniture must agree to its receipt on a Request for Furniture form so that the furniture can be incorporated into their office inventory.

The Superintendent shall adjust the official office inventories based upon completion of the issuance or return of furniture items.

9. The Architect of the Capitol will maintain in stock an inventory of the following items, referred to hereafter as the Standard Furniture and Accessories list, *available for viewing through the Senate Furniture web system (http:///senate.aoc.gov):*

STANDARD FURNITURE AND ACCESSORIES—SENATORS' SUITES

Bookcase—See Shelves; Chair Mats; [Chairs—Ergonomic (with or without arms); [Chairs—Folding Chairs]; Chairs—Conference *(with or without arms)*; Chairs—*Desk* [Reception] *(with or without arms)*; [Chairs—Reception—without arms]; Chairs—Executive; [Chairs—Secretary]; Coats—Tree; [Coats—Rack]; *Credenza—(Conference room & Front office only)*; Desk—Computer; Desk—Half size; Desk—Flat Top Executive; Desk—[Secretary] *L-Shape*.

Fans & Heaters; File Cabinets—Lateral 2-Drawer; File Cabinets—Lateral 5-Drawer; File Cabinets—2-Drawer; File Cabinets—5-Drawer; Fireplace—Screens *(Russell SOB only)*; Fireplace—Tools *(Russell SOB only)*; Footrests—Furniture or Computer; Lighting—Ceiling (Chandelier) [Fixtures (Reception and Conference Rooms in Russell SOB only, no more than 2 total)] *in Russell SOB only (Reception Rooms, Conference Rooms and Senator's Personal Office, limited to 3 total)*; Lighting—Floor Lamps *(2 per office)*; [Lighting—Reading Lamps]; Lighting—Desk/Table Lamps; [Magazine Rack]; [Microfilm Cabinets]; Mirrors—(One per suite standard); [Modular Furniture—(Limited to Hart SOB for now).

[Partitions—Textured (i.e. wood)]; Partitions—Acoustical; Racks—Pamphlets; Refrigerator—Medium *(Not to exceed 3 total)*; Shelves—Open Shelves (Book); Shelves—Desk Organizers; Shelves—Cabinets (with doors); Sofa—Love seat; Sofa—Couch; [Stand—Smoke (Ashtray)]; Stand—Telephone; Stand—Plant; Tables—Conference; Tables—Round; Tables—Computer; Tables—Coffee; Tables—End; [Tables—Folding]; Tables—Other (assorted sizes); TV Stand; [Window—Venetian Blinds (2-inch, Russell and Dirksen SOBs only); [Window—Mini Blinds (Hart SOB only)].

SENATORS' PERSONAL OFFICES

[(Bathroom)—(Vanity-under sink*); [(Bathroom)—(Cabinet-over/next to sink)*]; Cabinet—Telephone; Chairs—High Back (Desk); Chairs—*Side* [Reception]-(with arms *or without arms*); [Chairs—Reception-without arms]; Chairs—Wingback; Chairs—Overstuffed *(Historic)*; Credenza; Desk; Lighting—Table Lamp; Lighting—Floor Lamp; [Lighting—Reading Light]; Lighting—Ceiling (Chandelier) [Fixture (Russell SOB only)] *in Russell SOB only, (Reception Rooms, Conference Rooms and Senator's Personal Office, limited to 3 total)*; Lighting—Mantle Fixtures (Russell SOB only); Lighting—Wall (Sconce) Fixtures (Russell SOB only); Lighting—Rheostat.

Mirror; Refrigerator—Compact; Shelves—Bookcases; Shelves—Cabinet; Sofa—Love seat; Sofa—Couch; Table—Coffee; Table—End; TV/*VCR* Cabinet; [VCR Cabinet; [Upholstery Fabric; [Wardrober; [Window—Curtains or Draperies; [Window—Venetian Blinds (wood or metal); [Window—Mini Blinds.

[*Standard part of building structure]

For Loan (for Meetings and Related *Functions*)

Blackboards, Easels, Folding Tables, Piano (small charge for tuning), Podiums, Stacking Chairs.

10. A Special Furniture and Accessory Allowance will be authorized to the Architect of the Capitol for the purpose of furnishing a Senator's personal office, reception room and conference room when a Senator is elected/reelected for a term of office. This will be in addition to the furnishings requested from the Standard Furniture and Accessories list and only will be authorized during the first year of each Senator's new term of office. Such amount will be determined by the Senate Committee on Rules and Administration as a recommendation for appropriation to the Architect of the Capitol to become available for the Senator's term of office. Provisions will be made for Senators to purchase through this special allowance furniture and accessory items which are unique to their offices and/or home state. All acquisitions from this allowance will be made by the Architect of the Capitol in consultation with the office head.

11. A ''Request for Service'' or other written request for furnishings will be acknowledged within five working days reflecting appropriate disposition of the request. If requests are made for items critical to the function of the office which are not on the Standard Furniture and Accessory list or are out of stock, and delivery/restock is not anticipated for three months or greater, an office head may submit a request in writing to the Chairman of the Senate Committee on Rules and Administration. If requests are made for special items, as part of the Special Furniture and Accessory Allowance, appropriate information should be attached from a

commercial supplier or a catalogue from which the items are available. If favorably acted upon by the Rules Committee, an approval to purchase will be forwarded to the Architect's Office.

12. Certain furniture and accessory items may be built to published plans, including typewriter racks and table platforms for computer work stations, open shelves and sorting racks for desks and tables, and bookshelves, in accordance with a standard catalogue provided by the Superintendent. An office head may submit a written request for an item by identifying it from the Superintendent's catalogue of sketches.

13. Office heads may submit to the Senate Committee on Rules and Administration at any time a request to add items to the Standard Furniture and Accessory list. The Committee, in consultation with the Architect of the Capitol, will review the list annually to ensure that items continue to meet the needs of Senate offices acknowledging changing technology and staff environments.

14. Furnishings secured through the Architect of the Capitol from the Senators' Special Furniture and Accessory Allowance may be returned at the request of the office head to the Architect's inventory. They then may be purchased at a depreciated price with a Senator's personal funds or as a charge to the Special Furniture and Accessory Allowance. All returns will be made without credit to the original purchaser's Special Furniture and Accessory Allowance.

15. The Committee on Rules and Administration, in consultation with the Architect of the Capitol, will monitor requests for nonstandard items to preserve the architectural conformity of the Senate Office Buildings.

16. Furniture is not authorized by statute to be purchased through a Senator's Official Personnel and Office Expense Account. However, T.V. stands and V.C.R. stands are considered accessories to equipment and may be purchased in a manner consistent with the statutes and regulations governing the purchase of standard and non-standard equipment.

17. All furniture and accessories, whether chosen from the Standard list or purchased from the Senators' Special Furniture and Accessory Allowance, remain the property of the Architect of the Capitol. Senators will be responsible for any furniture stolen, lost, or otherwise unaccounted for, and reimbursement for all losses will be made in an amount equal to the fair market value of such furniture after applying an appropriate depreciation.

18. The implementation of this policy is subject to the availability of appropriated funds to the Architect of the Capitol.

Approved: Committee on Rules and Administration.

CHRISTOPHER J. DODD,
*Ranking Member.*
TRENT LOTT,
*Chairman.*

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Attachment B

II. TRANSPORTATION EXPENSES

(A) COMMON CARRIER TRANSPORTATION AND ACCOMMODATIONS

Transportation includes all necessary official travel on railroads, airlines, helicopters, steamboats, buses, streetcars, taxicabs, and other usual means of conveyance. Transportation may include fares and such expenses incidental to transportation such as baggage transfer; official telegraph, telephone, radio, and cable messages in connection with items classed as transportation; steamer chairs, steamer cushions, and steamer rugs at customary rates actually charged; staterooms on steamers.

1. TRAIN ACCOMMODATIONS

(a) Sleeping-car accommodations: The lowest first class sleeping accommodations available shall be allowed when night travel is involved. When practicable, through sleeping accommodations should be obtained in all cases where more economical to the Senate.

(b) Parlor-car and coach accommodations: One seat in a sleeping or parlor car will be allowed. Where adequate coach accommodations are available, coach accommodations should be used to the maximum extent possible, on the basis of advantage to the Senate, suitability and convenience to the traveler, and nature of the business involved.

2. STEAMER ACCOMMODATIONS

Staterooms: First-class accommodation will be allowed when stateroom is included in cost of passage or is a separate charge.

3. AIRPLANE ACCOMMODATIONS

(a) First-class and air-coach accommodations: It is the policy of the Senate that persons who use commercial air carriers for transportation on official business shall use less than first-class accommodations instead of those designated first-class with due regard to efficient conduct of Senate business and the travelers' convenience, safety, and comfort.

(b) Use of United States-flag air carriers: All official air travel shall be performed on United States-flag air carriers except where travel on other aircraft (1) is essential to the official business concerned, or (2) is necessary to avoid unreasonable delay, expense, or inconvenience.

When a traveler finds he/she will not use accommodations which have been reserved for him/her, he/she must release them within the time limits specified by the carriers. Likewise, where transportation service furnished is inferior to that called for by a ticket or where a journey is terminated short of the destination specified, the traveler must report such facts to the proper official. Failure of travelers to take such action may subject them to liability for any resulting losses. "No show" charges, if incurred by Members or staff personnel in connection with official Senate travel, shall not be considered payable or reimbursable from the contingent fund of the Senate. Senate travelers exercising proper prudence can make timely cancellations when necessary in order to avoid "no show" assessments. Service fees for preparation or mailing of passenger coupons shall not be reimbursable.

In the event that a Senate traveler is denied passage on a flight for which he/she held a reservation and this results in a payment of any rebate, this payment shall not be considered as a personal receipt by the traveler, but rather as a payment to the Senate, the agency for which and at whose expense the travel is being performed. Such payments shall be submitted to the appropriate individual for the proper disposition when the traveler submits his/her expense account. Through fares, special fares, commutation fares, excursion, and reduced-rate round trip fares should be used for official travel when it can be determined prior to the start of a trip that any such type of service is practical and economical to the Senate. Round-trip tickets should be secured only when, on the basis of the journey as planned, it is known or can be reasonably anticipated that such tickets will be utilized.

Each Chairman, Senator, or Officer of the Senate may, at his/her discretion, authorize in extenuating circumstances the reimbursement of penalty fees associated with the cancellation of through fares, special fares, commutation fares, excursion, and reduced-rate round trip fares.

[Discount coupons, frequent flyer mileage, or other evidence of reduced fares, obtained on official travel, shall be turned in to the office for which the travel was performed so that they may be utilized for future official travel. "Any travel award that accrues by reason of official travel of a Member, officer, or employee of the Senate shall be considered the property of the office for which the travel was performed and may not be converted to personal use (2 U.S.C. 1436(a), as amended)." However, this shall not apply to any travel awards relating to air transportation for a Member of the Senate, or their spouse, son, or daughter, between the Washington metropolitan area and the Home State of that Member. It should be noted that any fees assessed in connection with the use of travel awards for a spouse, son, or daughter of a Member, shall be considered a personal expense of the traveler and shall not be reimbursed from official funds.

[It is the traveler's responsibility to turn in to the appropriate individual all promotional materials which would provide free or reduced costs for future travel. These should be integrated into the office's plans for future official travel. Even in those instances when the coupons are non-transferable or carry an impending expiration date, and it appears that the office will not be able to use them, they are still Senate property and should not be converted to personal use, except in the case of separating Members, Officers and employees as provided in Appendix A. The administrator of each office shall account for all bonuses acquired for travel from official appropriated funds.]

*Travel promotional awards (e.g. free travel, travel discounts, upgrade certificates, coupons, frequent flyer miles, access to carrier club facilities, and other similar travel promotional items ("Travel Awards")) obtained by a Member, officer or employee of the Senate while on official travel may be utilized for personal use at the discretion of the Member or officer pursuant to this section. Travel Awards may be retained and used at the sole discretion of the Member or officer only if the Travel Awards are obtained under the same terms and conditions as those offered to the general public and no favorable treatment is extended on the basis of the Member, officer or employee's position with the Federal Government. Members, officers and employees may only retain Travel Awards for personal use when such Travel Awards have been obtained at no additional cost to the Federal Government. It should be noted that any fees assessed in connection with the use of Travel Awards shall be considered a personal expense of the Member, officer or employee and under no circumstances shall be paid for or reimbursed from official funds. Although this paragraph permits Members, officers and employees of the Senate to use Travel Awards at the discretion of the Member or officer, the Committee encourages the use of such Travel Awards (whenever practicable) to offset the cost of future official travel.*

In case a person, for his/her own convenience, travels by an indirect route or interrupts travel by direct route, the extra expense will be borne by the traveler. Reimbursement for expenses shall be allowed only on such charges as would have been incurred by the official direct route.

Transportation by bus, streetcar, subway, or taxicab, when used in connection with official travel, will be allowed as an official transportation expense.

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[APPENDIX A

[PURCHASE OF BONUS AIRLINE MILEAGE BY SEPARATING MEMBERS, OFFICERS AND EMPLOYEES OF THE SENATE

[In Opinion B–24607, the General Counsel of the General Accounting Office made the following determination:

["Frequent flyer points are usually nontransferable and of no value to the government after the departure of the Member or

staff person. Therefore, if the Senate determines as a matter of sound administration that its travel regulations should provide for disposing of frequent flyer mileage in exchange for payment of a reasonable sum of money from a departing Member or staff person, we see no objection to such a regulation.''

[Although Senate Travel Regulations prohibit the personal use of bonus mileage accrued at government expense, the Senate also recognizes that when Members, Officers, and employees separate from Senate service, any frequent flyer mileage remaining in their name is no longer of any value to the Senate. However, the Government would recoup at least some of the value of the lost bonus mileage if separating Members, Officers, and employees are permitted to purchase such mileage upon their separation from Senate service. Permitting such an exception to the general prohibition on use of frequent flyer mileage would make good administrative sense.

[Therefore, Members, Officers, and employees, upon their separation from Senate service, may obtain permission from the Committee on Rules and Administration to convert to personal use any remaining airline bonus mileage accrued in their name at Senate expense, provided that the separating Member, Officer, or employee reimburses the Senate a reasonable sum of money for all mileage they wish to use. For purposes of this provision, a ''reasonable sum of money'' shall be determined by the Committee based upon: (1) the number of tickets which may be obtained from the unused mileage; and (2) valuation of such tickets at the applicable government rate. The determination of the Committee regarding reasonable reimbursement shall be final. Any funds received under this policy shall be deposited in the United States Treasury—Miscellaneous receipts account.]

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Attachment C

REGULATIONS FOR THE SENATE HEALTH AND FITNESS FACILITY BY THE OFFICE OF THE ARCHITECT OF THE CAPITOL

(Approved April 28, 1992)

(Effective May 1, 1992)

**SEC. 1. SCOPE AND APPLICABILITY.**

These regulations, promulgated by the Committee on Rules and Administration under authority of Senate Resolution 286, agreed to April 9, 1992, establish the policy, procedures, and management authority and responsibility for the United States Senate Health and Fitness Facility under the direction of the Architect of the Capitol.

**SEC. 2. AUTHORIZED PARTICIPANTS.**

For purposes of these regulations, authorized participants shall include Members of the United States Senate who elect to use the Facility and who pay the fees in accordance with Section 4 of these regulations.

**SEC. 3. SENATE HEALTH AND FITNESS FACILITY.**

1. There is hereby established the Senate Health and Fitness Facility which shall be operated under the supervision and management of the Architect of the Capitol, subject to rules, regulations, and policies approved by the Committee on Rules and Administration. Equipment of such Facility shall be located in the Russell Senate Office Building and the Hart Senate Office Building and at any other location within the space allotted for the use of the United States Senate as the Architect may determine, subject to the approval of the Committee on Rules and Administration.

2. The Facility shall consist of the Senate gym located in the Russell Senate Office Building and the tennis courts located in the Hart Senate Office Building, and all the equipment, furnishings, and fixtures situated therein.

3. The Facility shall continue to provide all the services and equipment now provided at those existing locations and such additional services, facilities and equipment as the Architect may determine to provide, with the approval of the Committee on Rules and Administration.

[4. The Facility and its equipment shall be available to all Members of the United States Senate upon payment of an annual fee of $400.]

*The Facility and its equipment shall be available for use by all Members of the United States Senate upon the payment of fees as determined by the Chairman and the Ranking Member of the Committee on Rules and Administration. The Chairman and Ranking Member of the Committee on Rules and Administration shall notify the Secretary of the Senate of the amount of any fees to be charged hereunder and direct the Financial Clerk of the Senate to collect such fees from those Members desiring to use the Facility.*

**SEC. 4. AUTHORIZATION FOR FEES.**

The provisions of Title 40 United States Code 193d, to the extent they prohibit sales on Capitol grounds or in the Senate office buildings, shall not be applicable to any fees charged for membership or any service or activity of the Facility.

**SEC. 5. RESPONSIBILITIES OF THE SECRETARY OF THE SENATE.**

Members who choose to use the Facility shall notify the Secretary of the Senate in writing, and authorize the Secretary of the Senate to withhold the annual fee on a monthly basis from their pay, or make a direct payment of the annual fee to the Secretary of the Senate. The election of withholding shall become effective at the beginning of a pay period. The Secretary of the Senate shall notify the Architect of the names of those Members whose fees are withheld, or otherwise collected, and remit such payments to the United States Treasury as miscellaneous receipts, unless otherwise provided by law.

**SEC. 6. RESPONSIBILITIES OF THE ARCHITECT OF THE CAPITOL.**

Supervision and management of the Facility are the responsibility of the Architect of the Capitol, subject to rules, regulations, and policies approved by the Committee on Rules and Administration.

**SEC. 7. RULES.**

All rules heretofore adopted by the Committee on Rules and Administration pertaining to the Senate gym and to the Senate tennis courts shall continue in full force and effect as rules pertaining to the Facility, until amended or modified by that Committee.

**SEC. 8. EFFECTIVE DATE.**

These regulations shall take effect May 1, 1992.

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ATTACHMENT D

CHAPTER 2 (U.S. SENATE HANDBOOK); APPENDIX A—PUBLIC TRANSPORTATION SUBSIDY REGULATIONS

Committee on Rules and Administration, United States Senate, effective August 1, 1992

(Amended October 1, 2004)

**SEC. 1. POLICY.**

It is the policy of the Senate to encourage employees to use public mass transportation in commuting to and from Senate offices.

**SEC. 2. AUTHORITY.**

The Tax Reform Act of 1986, as amended by the Transportation Equity Act for the 21st Century [(P.L. 105–78)] *(P.L. 105–178)* allows employers to give employees as a tax free ''de minimis fringe benefit'' transit fare media of a value not exceeding [$100] *$105* per month. The Fiscal Year 1991 Treasury-Postal Appropriations Act (Pub. L. 101–509) allows Federal agencies to participate in state or local government transit programs that encourage employees to use public transportation.

**SEC. 3. DEFINITIONS.**

(a) Public Mass Transportation—A transportation system operated by a State or local government, e.g. bus or rail transit system.

(b) Fare Media—A ticket, pass, or other device, other than cash, used to pay for transportation on a public mass transit system.

(c) Office—Refers to a Senate employee's appointing authority, that is, the Senator, committee chairman, elected officer, or an official of the Senate who appointed the employee. For purposes of these regulations, an employee in the Office of the President pro tempore, Deputy President pro tempore, Majority Leader, Minority Leader, Majority Whip, Minority Whip, Secretary of the Conference of the Majority, or Secretary of the Conference of the Minority shall be considered to be an employee, whose appointing authority is the Senator holding such position.

(d) Qualified Employee—An individual employed in a Senate office whose salary is disbursed by the Secretary of the Senate, whose salary is within the limit set by his or her appointing authority for participation in a transit program under these regulations, and who is not a member of a car pool or the holder of any Senate parking privilege.

(e) Qualified program Refers to the program of a public mass transportation system that encourages employees to use public transportation in accordance with the requirements of Pub. L. 101–509 whose participation in the Senate program in accordance with these regulations has been approved by the Committee on Rules and Administration.

**SEC. 4. PROGRAM REQUIREMENTS.**

(a) Each office within the Senate is authorized to provide to qualified employees under its supervision a de minimis fringe employment benefit of transit fare media of a value not to exceed the amount authorized by statute currently not to exceed [$100] *$105* per month.

(b) Each appointing authority may establish a salary limit for participation in this program by his or her employees. If such salary limit is established, all staff paid at or below that limit, and who meet the other criteria established in these regulations, must be permitted to participate in this program.

(c) For purposes of these regulations, an individual employed for a partial month in an office shall be considered employed for the full month in that office.

(d) The fare media purchased by participating offices under this program shall only be used by qualified employees for travel to and from their official duty station.

(e) Any fare media purchased under this program may not be sold or exchanged although exchanges of Metro Card Media for transportation on the Virginia Railway Express (VRE) or the Maryland Transit Administration's MARC trains are permissible.

(f) In addition to any criminal liability, any person misusing, selling, exchanging or obtaining or using a fare media in violation of these regulations shall be required to reimburse the office for the full amount of the fare media involved and may be disqualified from further participation in this program.

**SEC. 5. OFFICE ADMINISTRATION OF PROGRAM.**

Each office electing to participate in this program shall be responsible for its administration in accordance with these regulations, shall designate an individual to manage its

program, and may adopt rules for its participation consistent with these regulations.

An employee who wishes to participate in this program shall make application with his or her office on a form which shall include a certification that such person is not a member of a motor pool, does not have any Senate parking privilege (or has relinquished same as a condition of participation), will use the fare media personally for traveling to and from his or her duty station, and will not exchange or sell the fare media provided under this program. The application shall include the following statement:

This certification concerns a matter within the jurisdiction of an agency of the United States and making a false, fictitious, or fraudulent certification may render the maker subject to criminal prosecution under 18 U.S.C. §1001.

Safekeeping and distribution of fare media purchased for an office is the responsibility of the program manager in that office. Participating offices may not refund or replace any damaged, misplaced, lost, or stolen fare media.

**SEC. 6. SENATE STATIONERY ROOM RESPONSIBILITIES.**

The only program currently available in the Washington, D.C. metropolitan area at this time is Metro Pool, a program established through Metro by the District of Columbia. Transit benefits will be provided through Metro Pool for participating offices in the Washington, D.C. area. The Committee on Rules and Administration shall enter into an agreement with Metro Pool for purchase of fare media by the Senate Stationery Room as required by participating offices on a monthly basis.

A participating office shall purchase the fare media with its authorized appropriated funds from the Senate Stationery Room through its stationery account pursuant to 2 U.S.C. §119.

Each office shall present to the Senate Stationery Room [two copies of] the certification referred to in section 7 of these regulations. A new certification shall be submitted when an [employer] *employee* is added to or deleted from the program. The Stationery Room shall make available to the Senate Rules Committee Audit Section a monthly summary of office participation in this program. In addition, the Stationery Room may not refund or replace any damaged, misplaced, lost, or stolen fare media that has been purchased through the office's stationery account.

**SEC. 7. CERTIFICATION.**

The certification required by section 6 shall be approved by the appointing authority and shall include the name, and social security number of each participating employee within that office, and the following statements:

(a) Each person included on the list is currently a qualified employee as defined in Section 3.

(b) No person included on the list has any current Senate parking privilege and that no parking privileges will be restored to any person on the list during the period for which the fare media is purchased.

(c) That each month's fare media for each participating employee does not exceed the maximum dollar amount specified in statute (currently [$100] *$105*).

**SEC. 8. OTHER PARTICIPATING PROGRAMS.**

Section 6 provides for procedures for participation by Washington offices in the Metro Pool program established through Metro by the District of Columbia. Additional programs in the Washington, D.C. metropolitan area, or programs offered in other locations where Members have offices that meet the requirements of the law and these regulations, may be used for qualified employees, subject to the following requirements:

(A) Authorization

The public transit system shall submit information to the Committee on Rules and Administration that it participates in an established state or local government program to encourage the use of public transportation for employees in accordance with the provisions of Pub. L. 101–509 and these regulations. If the program meets the requirements of the statute and these regulations and is approved by the Committee on Rules and Administration, any Senate office served by such transit system may provide benefits to its employees pursuant to these regulations.

(B) Procedures

(1) A qualified program operating in the Washington, D.C. metropolitan area that permits purchase arrangements similar to those provided by the Metro Pool program shall participate in the Senate program in accordance with the procedures set forth in Section 6.

(2) A qualified program operating in the Washington, D.C. metropolitan area that does not have purchase arrangements similar to Metro Pool, or a qualified program located outside that metropolitan area, that permits purchases directly by an office, may make arrangements for purchase of media directly with a participating office. Such an office may provide for direct payment to that system and shall submit the certification in accordance with Section 7.

(3) In the case of a qualified program that does not permit purchase arrangements as provided in paragraphs (1) or (2) above, an office may provide for reimbursement to a qualified employee and shall submit a certification in accordance with Section 7.

(C) Documentation

The following documentation must accompany a voucher submitted under paragraph 8(B)(2) or (3):

(1) A copy of the Rules Committee approval, in accordance with section 8(A), with the first voucher submitted for that transit program, provided subsequent vouchers identify the transit program.

(2) The certification.

(3) Proof of purchase of the fare media.

(D) Voucher Guidance

In the case of a Senator's state office, reimbursement for payment to either a qualified transit system, or a qualified employee shall be from the Senators' Official Personnel and Office Expense Account (SOP & OEA) as a home state office expense on a seven part voucher.

In the Washington, D.C. metropolitan area, reimbursement for payment to either a qualified transit system, or a qualified employee shall be as follows:

(1) in the case of a Senator's office from the SOP & OEA as an ''other official expense'' (discretionary expense).

(2) in the case of a Senate committee or administrative office as an ''Other'' expense.

**SEC. 9. SPECIAL CIRCUMSTANCES.**

Any circumstances not covered under these regulations shall be considered on application to the Committee on Rules and Administration.

**SEC. 10. EFFECTIVE DATE.**

These regulations shall take effect on the first day of the month following date of approval.

## REVEREND WILLIAM WEBB

Mr. REID. Mr. President, I rise today to recognize Rev. William Webb, a strong and compassionate leader in the Reno-Sparks community.

Throughout his life, Reverend Webb has demonstrated tremendous perseverance, dedication, and generosity. Born and raised in a small, poor town in southern Arkansas, he was the only student in his eighth grade class to continue on to high school. Despite facing racism and segregation, Reverend Webb remained strongly committed to his education, attending Philander Smith College and receiving his master's degree at Virginia Union University.

Reverend Webb first came to Reno-Sparks area 40 years ago to serve as a minister at Second Baptist Church. His strong and energetic leadership has helped grow Second Baptist Church from a congregation of fifty church members to more than three hundred. Reverend Webb has also challenged his ministry and his community to serve those in need, organizing food drives and other charitable activities throughout his time in Northern Nevada. He has also served as president of the Nevada-California Interstate Missionary Baptist Convention for 22 years.

I am pleased to say that the City of Reno recently honored Reverend Webb's contributions to the community by renaming the roundabout at Clear Acre and Wedekin Road, William C. Webb Circle. Reverend Webb has led a distinguished life and career, and please join me in thanking him for his tremendous service to the Reno-Sparks community.

## SPARKS, NV

Mr. REID. Mr. President, it gives me great pleasure to celebrate the founding of Sparks, NV 100 years ago this week.

In 1904, the Southern Pacific Railroad wanted to straighten its route through northern Nevada. This required them to move from their switching yard at Wadsworth to another location, a hamlet originally known as Harriman. Many residents moved with the railroad, and they brought most of Wadsworth's buildings with them.

Shortly thereafter, the city changed its name to Sparks, in honor of John Sparks, who served as Nevada governor from 1903 to 1908 and who owned a ranch near the city.

Unlike many cities of the day, Sparks was a planned community with wide streets, ample parks, and impressive buildings. As the railroad's power waned in the 1950s, these traits allowed Sparks to become a picturesque, residential community.

Ground was broken for the first hotel in Sparks in 1903. The building was named after its first owner, Charles Walstab, and was the only hotel in Sparks until 1911. In 1920, the hotel was purchased by Frank Gardella and Frank Pasutti who changed the hotel's name to the Lincoln. People came from far and wide for the Lincoln's homestyle meals, including chicken and ravioli. Many old-time patrons remember when it served free lunches and

beer cost only a nickel. The building still stands on Victorian Avenue, and today is home to several small businesses.

The Soroptimist Club International was founded in Sparks in 1958. The Sparks' Soroptimist club was formed to make a difference for women, focusing their extensive efforts on volunteer service in the community. They sponsored the Miss Nevada Pageant and Nevada Girl's State. Additionally, the Soroptimists awarded scholarships to young women graduating from Sparks High School, raised money for books at the Sparks Library, and donated to the Gray Ladies Indigent Fund for the State Hospital.

However, no history of Sparks would be complete without mentioning John Ascuaga, a developer and entrepreneur who built Sparks' first casino: the Nugget. In May of 1958, the Nugget's ambassador became a part of the town's fabric. The ''Tall Cowboy'' appropriately arrived on the railroad, in pieces. When assembled, Last Chance Joe, stood thirty-two feet tall at the entrance to the Nugget.

I would also like to recognize Tony Armstrong, the former mayor of Sparks who died in January of this year. Tony's personality, his vision for the city, his management skills, and his deep humanity made him a terrific mayor and an outstanding man. It was Tony who first contacted me about the Sparks' centennial. I miss Tony and it is fitting to recognize him on this day, which he would have enjoyed so much. I wish his successor, Gino Martini, all the best and look forward to working with him on projects important to Sparks.

Finally, it is remarkable that Sparks has retained its Victorian architecture and charm. The city beckons to us as a relic of a gentler and more beautiful time. It is truly one of the jewels of northern Nevada.

A century has passed since the City of Sparks was founded. I hope you will join me in celebrating this lovely Nevada community's centennial.

## LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to 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.

According to the San Francisco Chronicle, a participant in a Davis, CA, gay-pride parade was assaulted last summer. The apparent motivation for the attack was the sexual orientation of the victim.

I believe that 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. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

## NOPEC

Mr. LEAHY. Mr. President, I, again, join in the introduction of our NOPEC bill. I am sincerely sorry that this bill has not yet become law, and I hope that the situation we face as a nation will lead the Senate to recognize the toll that the OPEC producers are exacting from the American people. As gasoline prices continue to skyrocket, exceeding $2 a gallon in many communities, we must have a real correction. As heating oil prices have soared, the President needs to take notice. Without correction and containment, consumers across the nation will continue to suffer.

The relentless increases in gasoline prices are not the result of natural supply issues. Rather, they are largely due to market manipulation by OPEC, a cartel of those controlling production and supply of oil from the Middle East. When the Antitrust Subcommittee of the Committee on the Judiciary held its hearing on gas prices last year, experts from several fields, both in and out of government, confirmed for us what we already suspected: The higher prices are due to the OPEC cartel that sets production quotas for it members and prevents the free market from setting crude oil prices. The testimony at that hearing revealed that most of the gasoline price increase can be explained by OPEC's unfair production quotas.

The artificial pricing scheme enforced by OPEC affects all of us, not the least of whom are hardworking Vermont farmers. As USDA's Cooperative Extension Office in New Hampshire recently found, the increasing energy costs may add $5,000 or more to the total costs of operating a 100-head dairy operation in the Northeast. In addition, soaring prices have affected a variety of industries across the United States, and will likely force many Americans to make tough choices about family travel.

Over the last year, I have expressed concern that gasoline prices would simply continue to rise. I have hardly been alone in that belief, and I am sorry to say that my prediction has borne fruit. Sadly, that fruit is bitter for those forced to pay ever higher prices to go about their daily lives. This week, the average price for regular gasoline reached $2.00 per gallon. Our economy, our farmers, and our families need relief now. They also need good policy. In the absence of White House leadership, Congress should provide law enforcement the tools needed to fight anticompetitive practices.

If OPEC were simply a foreign business engaged in this type of behavior, it would already be subject to American antitrust law. It is wrong to let OPEC producers off the hook just because their anticompetitive practices come with the seal of approval of the member nations. I urge the Senate to support this bill and to say ''No'' to OPEC.

## SAVING THE IRRAWADDY DOLPHIN

Mr. LEAHY. Mr. President, I rise today to discuss an issue which, while not one that you would likely read about on the front page of the newspapers, is important nonetheless. It concerns the alarming rate of deterioration of the habitat of the Irrawaddy Dolphin in Southeast Asia. Recent statistics indicate that there are fewer than 100 Irrawaddy left in the world.

The International Union for the Conservation of Nature has placed the Irrawaddy Dolphin on its list of critically endangered species. The primary reasons for this sharp decline include destructive fishing practices, such as the use of dynamite or electric current, and mercury runoff from gold mines. These practices are leading to the extinction of an entire species.

Why should we care? Perhaps a quote from President John Kennedy provides the best answers to this question. In a 1963 address at American University, President Kennedy said ''. . . in the final analysis, our most basic common link, is that we all inhabit this small planet, we all breathe the same air, we all cherish our children's futures, and we are all mortal.''

I know every Member of the Senate wants to make the world a better place for our children and grandchildren. I am almost as certain that ensuring the survival of the Irrawaddy dolphin, an extraordinary species, would be something that we could do to help achieve this goal.

Congress has spoken on this issue. In the Senate report that accompanied last year's Foreign Operations Appropriations Act, Congress directed the U.S. Agency for International Development, USAID, to devise a strategy to help reverse the habitat decline of the Irrawaddy dolphin.

Some important nongovernmental organizations are already working on this issue, including the Wildlife Conservation Society and the Bronx Zoo in their Species Survival Program partnership. I hope USAID's strategy, which is due shortly, will be a first step in forming a public-private partnership that will prevent the Irrawaddy dolphin from going the way of the dodo and the passenger pigeon.

Once a species is gone, it is gone forever. We need to be sure this does not happen.

## MANHATTAN PROJECT NATIONAL HISTORICAL PARK STUDY ACT

Mr. BINGAMAN. Mr. President, I briefly would like to say how pleased I am that the Manhattan Project National Historical Park Study Act was enacted in the last Congress. That Act,

Public Law 108–340, directs the Secretary of the Interior to conduct a special resource study to assess the national significance, suitability, and feasibility of designating one or more of the historically significant sites associated with the Manhattan Project as a unit of the National Park System. The significance of the Manhattan Project to this Nation—and indeed the world—would be difficult to overstate, and I believe that passing this bill was an important step in fulfilling our responsibility to ensure that society neither forgets nor misunderstands it.

Mr. DEWINE. Mr. President, I thank my distinguished colleague, Senator BINGAMAN, for sponsoring that measure, and I appreciated the support of Senator DOMENICI and our colleagues from Tennessee and Washington.

The Manhattan Project stands as one of the great technological achievements of the 20th century. Therefore, it is appropriate to recognize the historical importance of the sites most closely associated with the development of the atomic bomb. This legislation has begun a process for the Secretary of the Interior to provide that recognition.

I want to call attention to the critical contributions made in Dayton, OH, toward the Manhattan Project, under what became known as the ''Dayton Project.'' Because the Dayton Project was shrouded in secrecy, its contribution has long been overlooked. Yet, the technological achievements of the Dayton Project were among the most important to the completion of the Manhattan Project. It was in Dayton that scientists discovered how to trigger the chain reaction that unleashed the power of the atom. To continue that effort, the Atomic Energy Commission established the Mound Laboratory in Miamisburg, just southeast of Dayton.

As my colleague explained, the act directs the Secretary of the Interior to study three specifically named sites associated with the history of the Manhattan Project. I would like to ask the distinguished Senator if there is the opportunity for sites associated with the Dayton Project to be recognized?

Mr. BINGAMAN. The legislation directs the Secretary to include within the study the ''historically significant sites associated with the Manhattan Project.'' While the bill lists three of those sites, it does not limit the study to only those sites. Additional sites may be included, and it leaves that decision to the discretion of the Secretary, in consultation with the Secretary of Energy and other interested Federal, State, tribal, and local officials, representatives of organizations, and members of the public. So, by those terms, there certainly is the opportunity for sites such as the Dayton Project to be included in the study.

Mr. DEWINE. I thank the Senator from New Mexico.

## INTERNATIONAL WOMEN'S DAY

Mr. FEINGOLD. Mr. President, I am pleased to commemorate International Women's Day, celebrated on March 8. International Women's Day gives us all an opportunity to reflect on women's accomplishments around the world and to reaffirm our commitment to continuing the vitally important work of securing and advancing women's rights, particularly their health, education, and security.

Today, we can all marvel at the outstanding contributions that women make every day to their communities, their countries, and the entire world. We can reflect on the work of Wangari Maathai, the Kenyan Nobel Peace Prize winner, whose brave and insistent voice on behalf of human rights and environmental protection found an audience not just on the global stage, and not just among elites in government, but among the women of her country, who have made the Green Belt Movement a success. We can celebrate the bravery of Afghan women, who have participated in elections even as the memory of the Taliban's brutal repression of their rights remains so fresh. Women accounted for 41 percent of the October 2004 vote in Afghanistan, and women hold 102 seats of Afghanistan's Constitutional Loya Jirga. We can reflect on the wonderful welcome that Dora Bakoyiannis, the mayor of Athens, extended to the world during this year's Olympic ceremonies.

But in too many parts of the world, the basic human rights of women are violated with impunity. Human rights groups continue to report rampant violence, abuse, and rape of tens of thousands of women and children by militants in Eastern Congo who are rarely, if ever, brought to justice. The murders of more than 370 women in the Chihuahua state of Mexico since 1993 remain unsolved. Thirty more women have been killed there since 2004 and the lack of progress in these cases of brutal violence and sexual assault against women from the cities of Juárez and Chihuahua is deeply disturbing. The internally displaced women of Darfur, Sudan, too often are confronted with a horrible choice—collect firewood and risk being raped by jinjaweit militia, or watch their children go hungry. I have authored or cosponsored legislative initiatives to address each of these crises, but I know that solutions will require hard work over the long term. I also support the U.S. ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW. Ratification of the treaty would send an important message to the international community about our commitment to the rights of women and girls.

The global, rapid progression of HIV/AIDS infection, especially in women, is undeniable. More than 40 million adults and children are infected with HIV/AIDS and over 20 million are women. UNAIDS reports that women and girls in sub-Saharan Africa make up 57 percent of HIV-positive persons in this region. Sub-Saharan Africa is the only region in which women are infected with the virus at a higher rate than men. In sub-Saharan Africa, between the ages of 15 to 24, there are on average 36 women testing positive for HIV for every 10 males. As the ranking member of the Senate Foreign Relations Committee's Subcommittee on African Affairs, I have had the opportunity to travel to numerous countries in Africa and see firsthand the devastating toll that HIV/AIDS and other infectious diseases are taking on the people of this continent. We must find concrete ways to address the special vulnerabilities of women and girls in our HIV/AID prevention and treatment programs.

Nearly 100 million children worldwide are not receiving an education, nearly two-thirds of them female. In countries such as Uganda and Nigeria, some teachers are expected to instruct anywhere from 175 to 215 students, singlehandedly. The education of girls regularly takes a back seat to that of their male siblings and to the needs of the family in many parts of the world. In order to combat global diseases, halt violence against women, and enhance women's rights, ensuring girls are educated must be a global community priority.

In short, while there are shining examples of progress in women's rights, we have much more to do. I urge my colleagues to join me in supporting the efforts I have described and others to improve the lives of women.

# ADDITIONAL STATEMENTS

## REMEMBERING MAX FISHER

• Mr. SANTORUM. Mr. President, today I would like to reflect on the passing of Max Fisher. On March 3, 2005, Max Fisher passed away at his home in Franklin, MI. The Fisher family has suffered a tremendous loss, and I offer them my condolences and deepest sympathy during this difficult time.

Max Fisher was born in my hometown of Pittsburgh, PA. He was a quiet leader who led mostly by example. He inspired his neighbors through his love for and dedication to this country. As the head of several Jewish-American organizations including the United Jewish Appeal, the Council of Jewish Federations, the National Jewish Coalition, and the American Jewish Committee, Max Fisher was able to influence policy with regard to Israeli-American relations and lead an international campaign for Israel after the Arab-Israeli War in 1967.

Max Fisher was a respected friend and adviser to many Republican Presidents and Secretaries, as they sought Max's wisdom in Middle East affairs.

Max not only leaves behind a legacy in the Jewish community and the world of politics, but also a wonderful family. My thoughts and prayers are with the Fisher family during the days and months ahead.•

## TRIBUTE TO SAMUEL T. DANIELS

• Mr. SARBANES. Mr. President, With the death on January 6th, 2005, at the age of 82 of Samuel Thornton Daniels, Sr., my city of Baltimore and the State of Maryland lost a distinguished citizen, a courageous and far-sighted leader, a source of inspiration and, especially, a beloved friend.

Sam Daniels, the Grand Master, was known to his fellow members of the Prince Hall Masons simply as ''The Grand,'' and grand he was. A Baltimorean through and through, he was born in the city and educated at Douglass High School and Coppin State College. He married his beloved wife Gladys, a fellow student at Coppin, and together for more than 60 years they went on to raise a new generation of Baltimoreans. Sam made our community a better place for all its people.

Service to others came naturally to Sam Daniels. He interrupted his college studies to serve in the Army in World War II, returning to Coppin State to receive his degree in 1948. When the Korean War conflict broke out 2 years later, Sam returned to military service, and reached the rank of captain before receiving his honorable discharge. Soon thereafter he joined Gladys as a teacher in the Baltimore public school system.

In the mid-1950s, Sam Daniels set out on the path that was to shape his life's work. It was not just that he joined the civil rights movement; rather, in innumerable ways he shaped it and he led it. His professional commitments tell part of the story: Maryland Commission on Interracial Problems and Relations; Baltimore Community Relations Commission; Baltimore Equal Employment Opportunity Commission; and then, starting in 1967 and continuing for more than two decades, the Baltimore Council for Equal Business Opportunity, or CEBO. During the 1960s, in addition to his other commitments, Sam also worked for the AFSCME local unions representing Baltimore's municipal workers. In 1968 he was named to the city's school board by then-Mayor D'Alessandro, where his intelligence, his principles, his clear vision, and his wise and generous temperament all combined to make him, as the mayor was to observe, ''a calming influence on the board during an unsettling time.'' Sam balanced his professional commitments with his role in The Prince Hall Masons, whose Grand Master he was to become and who knew and loved him as ''The Grand.'' Under his leadership The Prince Hall Masons grew to have 5,000 members and to play a major role in the historic movement toward civil rights. When Dr. King came to Baltimore in October 1964, Sam Daniels stood among the leaders who welcomed him to the Prince Hall Masons Lodge. In everything he did he challenged us to make our Nation live up to its ideals.

Of all his many accomplishments, Sam Daniels considered CEBO the most important. It began modestly enough with a grant from the Ford Foundation, but over more than two decades under Sam Daniels' leadership CEBO became one of the first business development organizations in the country, helping to create opportunities for entrepreneurship and business where precious few existed for Baltimore's African-American community and along with those opportunities, new hopes, new plans, and new dreams. Sam Daniels has been described as a ''giant'' and an ''icon,'' and surely these words reflect the critical role he played in expanding the opportunities for African American entrepreneurship and wealth-building, which has meant so much to the city that he served in so many different ways.

Sam Daniels was a giant and an icon in other ways as well in character and temperament. Mayor D'Alessandro, who nearly 40 years ago appointed him to the school board, remembers him as ''an absolutely decent human being,'' and his pastor, the Reverend Marion C. Bascom, calls him ''the most giving human being this city has ever known.'' In the words of George L. Russell, the former city solicitor and judge, ''he was a temperate person who conveyed a great deal of wisdom.'' He was a great man and a great citizen, and he has left us all a magnificent legacy. We will miss him, and our thoughts are with his wife Gladys, his children, and his grandchildren.

The Baltimore Sun paid tribute to Sam Daniels in an obituary published on January 8, 2005. I ask that it be printed in the RECORD.

The material follows.

[From the Baltimore Sun, Jan. 8, 2005]

SAMUEL T. DANIELS, 82, LEADER IN LOCAL CIVIL RIGHTS STRUGGLE

(By Jacques Kelly)

Samuel T. Daniels, a local leader in the civil rights movement who championed African-American business enterprise and led the Prince Hall Masons for nearly four decades, died Thursday at Levindale Hebrew Geriatric Center of complications from a fall and a brain illness. The Northwest Baltimore resident was 82.

Mr. Daniels had retired in 1989 after more than 20 years as executive director of the Baltimore Council for Equal Business Opportunity, a private organization that encouraged black participation in business. He was also a past grand master of the 5,000–member Prince Hall Lodge, an African-American Masonic organization.

''He was an absolutely decent human being and an integral part of the Baltimore civil rights movement in the 1960s,'' said former Mayor Thomas J. D'Alesandro III, who named Mr. Daniels to the city school board in December 1968. ''He was tough, decent, orderly and competent. He was an articulate spokesman for the black community.''

''He was the most giving human being this city has ever known,'' said the Rev. Marion C. Bascom, Mr. Daniels' pastor and friend. ''Samuel outstretched his hand to just about everyone I've ever known.''

Born in Baltimore and raised on Druid Hill Avenue, he was a 1940 graduate of Frederick Douglass High School and earned a bachelor's degree in education from what is now Coppin State University. He served in the Army in World War II and the Korean War, attaining the rank of captain.

For eight years, he taught in city public schools, including the old Henry H. Garnet School at Division and Lanvale streets.

In 1958, he was named executive secretary of the Baltimore Community Relations Commission and simultaneously worked for Baltimore Municipal Employees Local 44 of the American Federation of State, County and Municipal Employees. In 1961, he attended the Harvard Business School's trade union program.

Mr. Daniels was a school board member from 1969 to 1971. ''He was a calming influence on the board during an unsettling time,'' said Mr. D'Alesandro.

Mr. Daniels became head of the Prince Hall Masons in the early 1960s and was among the leaders who welcomed the Rev. Martin Luther King Jr. to Baltimore on Oct. 31, 1964. Dr. King's visit, including an appearance at the lodge's temple on Eutaw Place, was on behalf of President Lyndon B. Johnson's election campaign.

In a 1999 article in The Sun, Mr. Daniels recalled that day and how Baltimore was becoming aggressive in its pursuit of civil rights. The rally filled the temple.

''They became friends after that visit,'' said Mr. Daniels' wife of more than 60 years, the former Gladys Eva Wise.

Friends said that Mr. Daniels paid travel expenses so that young civil rights advocates could attend the 1965 marches in Selma, Ala.

''He had been central to the advancement of black people in Baltimore,'' said George L. Russell Jr., a lawyer and former city solicitor and judge. ''He was a man who carried a great deal of dignity. He was a temperate person who conveyed a great deal of wisdom.''

In 1967, Mr. Daniels became director of CEBO, an organization initially supported by the Ford Foundation. A decade later, Mr. Daniels told The Sun that his most important accomplishment had been helping African-American business owners establish relationships with large commercial banks.

He also pointed to many black-owned businesses, including the Super Pride grocery chain, as proof that his council was working.

In 1982, Mr. Daniels called for voter mobilization in black communities.

''Legislation, more than anything else, influences our lives daily, monthly, weekly and eternally,'' he said at a meeting reported in The Evening Sun. ''If we are not a voting people, those in office are not going to care about us.''

Mr. Daniels was the recipient of many community honors and testimonials. A room has been named after him at Coppin, and Morgan State University awarded him an honorary degree in 2000.

Mr. Daniels was a longtime member of Douglas Memorial Church.

Mr. Daniels will lie in state from 10 a.m. to 6 p.m. Wednesday at the Willard W. Allen Masonic Temple, 1301 Eutaw Place.

Kappa fraternal services will be held at 6:30 p.m. Wednesday and be followed by Masonic services at 7:30 p.m. Mr. Daniels will rest in a sanctuary named in his honor.

A family hour wake will begin at 11 a.m. Thursday. The funeral service begins at noon and will be followed by interment at Arbutus Cemetery.

In addition to his wife, Mr. Daniels is survived by two sons, Samuel T. Daniels Jr., chief inspector for the city liquor board, and Van B. Daniels, a manager for the Maryland Lottery; a brother, Edward Daniels; and three grandchildren. All are of Baltimore.•

## HONORING CLIFF MANLEY

• Mr. JOHNSON. Mr. President, the Vermillion High School class of 1965, of

which I am a member, will be celebrating its 40th reunion this summer in Vermillion, SD and will be paying tribute to former VHS Principal Cliff Manley with the unveiling of a handsome plaque in his honor.

Ms. Michelle Rydell, the editor of the Vermillion High School newspaper, ''The Vermillionaire,'' recently wrote an excellent column in that newspaper about the class of 1965 and the extraordinary career of Cliff Manley. I ask that this article be printed in the RECORD.

The article follows:

[From the Vermillionaire]

CLASS OF 1965 PAYS TRIBUTE

(By Michelle Rydell)

''When we were young and green, you tried to bend us in the right direction. Now that we are old and bent, we look at the path you lit and say, 'Thank you, Mr. Manley, for helping us set our course. You made a difference.' ''

It is with fond remembrance that the class of 1965 dedicates these words to former Vermillion High School principal, Clifford Manley. Manley was not simply an authoritative figure—he was a friend to all students. VHS alumni remember him as someone with a firm hand yet a soft heart. According to former students, he had a sense of humor that shone through even when he had to be firm with one of his students. He was very personable with both his peers and those under him. According to one class member, ''Mr. Manley loved all of his students. Of course, there was still a degree of fear when we had to go to the principal's office, But he loved kids—he was a great man.''

They also remember him as someone who was always present for extra-curricular activities and who loved watching sports. A former coach himself, Manley made it an objective to support not only the school but his students as well. It if perhaps for his dedication that he is most well-known. As principal, Manley did everything from teaching to coaching, and most importantly, serving as a mentor and role model for his students.

Manley's service and dedication is the reason the class of 1965 (which, incidentally, was the last class to graduate from the old Vermillion High School) has dedicated a plaque in remembrance of is gracious spirit. The plaque, featuring a picture of Manley set against a picture of the old high school and decorated with red birds to signify the class' ever-present Tanager pride, will be hung in the high school in the coming month.

The plaque had recently been hanging in the Sioux Valley Dakota Gardens, where Manley's wife Helen now lives. The plaque was displayed at the Dakota Gardens in order that Helen's children and friends might get the opportunity to see it during Christmas, but now that the holidays are over Helen is giving the plaque to the high school to display. The plaque will stay in the school as a lasting tribute to the man who not only taught his students as a biology teacher and principal, but a man who inspired them on a personal level as well.

VHS students will be some of the first people to see the plaque. The plaque is designated to be revealed at the class of 1965's 40th reunion, which will be occurring this coming summer. The reunion, therefore, will be not only be a time of fellowship for former students to rediscover their classmates, but it will also be a time for students to remember the principal who had such an impact on so many students' lives and take a moment to reflect on their appreciation for his service.

It is hard to find those special people in life who make such an impression that after forty years they are still considered memorable and special. Yet many agree that Manley was such a person. His dedication to Vermillion High School has been remembered and appreciated throughout the decades, and despite the fact that he has since passed away, he is not forgotten. His works live on through the school and through the lives of the many he has touched. It's not always easy to be a disciplinarian and friend, yet Manley managed to do both. As a result, he is remembered not only as a loving husband, father and grandfather, but also as a beloved principal, mentor and friend.●

## PROFESSOR RON SHAFFER

● Mr. FEINGOLD. Mr. President, it is with great sadness that I note the recent passing of Professor Ron Shaffer, a man who dedicated his career to helping communities discuss and plan their economic development.

Ron joined the faculty of the University of Wisconsin-Madison in 1972, the same year he received a doctorate in agricultural economics, and he soon became a pillar of that great institution. For three decades, until his retirement from UW in 2001, Ron was one of the State's—if not the country's—leading experts on community economics and he wrote extensively on the subject. But, throughout his many years in academia, Ron always remained focused on the real world applications of his teaching. Economic development was not an abstract concept for him—it was a way to help people live better, happier, more productive lives. Particularly in the decade he spent as director of the University of Wisconsin Center for Community Economic Development, Ron devoted himself to bolstering the many and varied rural communities that are the backbone of Wisconsin.

Ron won many honors and accolades throughout his career. His work attracted international attention, and he was called upon by governments from Australia to Norway to advise on local economic development policies. In a particularly fitting move, the year he retired from UW, the National Rural Development Partnership established the Ron Shaffer Award, to be given annually for outstanding collaboration in rural America.

But I suspect that none of the honors he won mattered as much to Ron as the love and companionship of his family and friends. They loved his decency, his compassion, and his willingness to lead a patient ear. They admired him for the courage with which he handled his diagnosis of ALS, or Lou Gehrig's Disease. It was typical of Ron that he used his illness as an opportunity to advocate for others afflicted with this terrible disease—after all, he spent his life helping others. He will be sorely missed as a husband, a father, a friend, and a deeply good and giving man.●

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, 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.)

## MESSAGE FROM THE HOUSE

At 9:55 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 841. An Act to require States to hold special elections to fill vacancies in the House of Representatives not later than 49 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, and for other purposes.

The message also announced that pursuant to 15 U.S.C. 1024(a), and the order of the House of January 4, 2005, the Speaker appoints the following Members of the House of Representatives to the Joint Economic Committee, in addition to Mr. SAXTON of New Jersey, appointed January 20, 2005: Mr. RYAN of Wisconsin, Mr. ENGLISH of Pennsylvania, Mr. PAUL of Texas, Mr. BRADY of Texas, Mr. MCCOTTER of Michigan, Mrs. MALONEY of New York, Mr. HINCHEY of New York, Ms. LORETTA SANCHEZ of California, and Mr. CUMMINGS of Maryland.

## MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 539. A bill to amend title 28, United States Code, to provide the protections of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1202. A communication from the Inspector General, General Services Administration, transmitting, pursuant to law, the Administration's Audit Report Register for the period ending September 30, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–1203. A communication from the Chief Executive Officer, Neighborhood Reinvestment Corporation, transmitting, pursuant to law, the Corporation's 2004 Annual Program Performance Report; to the Committee on Homeland Security and Governmental Affairs.

EC–1204. A communication from the Deputy Secretary of Veterans' Affairs, transmitting, the Department of Veterans Affairs'

Special Medical Advisory Group's Annual Report to Congress for Fiscal Year 2004; to the Committee on Veterans' Affairs.

EC–1205. 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 ''Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the City of Weirton Including the Clay and Butler Magisterial Districts SO2 Nonattainment Area and Approval of the Maintenance Plan; Correction'' (FRL No. 7882-4) received on March 7, 2005; to the Committee on Environment and Public Works.

EC–1206. 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 ''Approval and Promulgation of Air Quality Implementation Plan; Revised Format for Materials Being Incorporated by Reference for South Dakota'' (FRL No. 7878-6) received on March 7, 2005; to the Committee on Environment and Public Works.

EC–1207. 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 ''Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arizona'' (FRL No. 7875-2) received on March 7, 2005; to the Committee on Environment and Public Works.

EC–1208. 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 ''Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Pennsylvania; Delegation of Authority'' (FRL No. 7880-4) received on March 7, 2005; to the Committee on Environment and Public Works.

EC–1209. 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 ''Approval and Promulgation of State Plan for Designated Facilities and Pollutants; Nashville, Tennessee'' (FRL No. 7881-7) received on March 7, 2005; to the Committee on Environment and Public Works.

EC–1210. 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 ''Incorporation by Reference of Approved State Hazardous Waste Management Program'' (FRL No. 7877-4) received on March 7, 2005; to the Committee on Environment and Public Works.

EC–1211. 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 ''Revisions to the California State Implementation Plan, Kern County Air Pollution Control District'' (FRL No. 7878-3) received on March 7, 2005; to the Committee on Environment and Public Works.

EC–1212. A communication from the Director, Office of Human Capital Management, Department of Energy, transmitting, pursuant to law, the report of a vacancy in the position of Deputy Secretary of Energy, received on March 7, 2005; to the Committee on Energy and Natural Resources.

EC–1213. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, the Administration's proposed budget for Fiscal Year 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1214. A communication from the Inspector General, Department of Agriculture, transmitting, pursuant to law, the Department's investigative report of the Forest Service fatalities that occurred in the Cramer Fire in the Salmon-Challis National Forest in Idaho on July 22, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1215. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, a report relative to the Administration's notification of its 2005 compensation program adjustments; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1216. A communication from the Chief, Program Design Branch, Food and Nutrition Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Food Stamp Program High Performance Bonuses'' received on March 7 , 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1217. 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 ''Clofentezine; Pesticide Tolerance'' (FRL No. 7699-8) received on March 7, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1218. 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 ''Fenbuconazole; Time-Limited Pesticide Tolerance'' (FRL No. 7699-2) received on March 7, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1219. A communication from the Acting Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Tart Cherries Grown in the State of Michigan, et al.; Final Free and Restricted Percentages for the 2004-2005 Crop Year'' (FVO4-930-2 FR) received on March 7, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1220. A communication from the Acting Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Pistachios Grown in California; Establishment of Continuing Assessment Rate and Reporting Requirements'' (FVO4-983-2 FR) received on March 7, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1221. A communication from the Acting Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Sweet Cherries Grown in Designated Counties in Washington, Establishment of Minimum Size and Maturity Requirements for Lightly Colored Sweet Cherry Varieties'' (FV04-923-1 FR) received on March 7, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1222. A communication from the Acting Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Marketing Order Regulating the Handling of Spearmint Oil Products in the Far West; Revision of the Salable Quantity and Allotment Percentage of Class 3 (Native) Spearmint Oil for the 2004–2005 Marketing Year'' (FV04–985–2 IFR–A) received on March 7, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1223. A communication from the Acting Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Beef Promotion and Research; Reapportionment'' (LS–04–09) received on March 7, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1224. A communication from the Deputy Chief of Naval Operations for Manpower and Personnel, Department of the Navy, transmitting, pursuant to law, the notification of a decision to implement performance by the Most Efficient Organization (MEO) for Public Works Center Maintenance and Repair of Building and Structures in San Diego, CA.; to the Committee on Armed Services.

EC–1225. A communication from the Inspector General, Department of Defense, transmitting, pursuant to law, the Office of the Inspector General's report on inventory of commercial and inherently government activities for fiscal year 2004; to the Committee on Armed Services.

EC–1226. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Government Source Inspection Requirements'' (DFARS Case 2002–D032) received on March 7, 2005; to the Committee on Armed Services.

EC–1227. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Bonds'' (DFARS Case 2003–D033) received on March 7, 2005; to the Committee on Armed Services.

EC–1228. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Resolving Tax Problems'' (DFARS Case 2003–D032) received on March 7, 2005; to the Committee on Armed Services.

EC–1229. A communication from the Secretary of Commerce, transmitting, pursuant to law, the Annual Report for Fiscal Year 2004 of the Commerce Department's Bureau of Industry and Security ; to the Committee on Commerce, Science, and Transportation.

EC–1230. A communication from the Federal Liaison Office, Patent and Trademark Office, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Correspondence with the United States Patent and Trademark Office'' (RIN0651–AB86) received on March 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1231. A communication from the Secretary of the Commission , Bureau of Competition, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Revised Jurisdictional Thresholds for Section 7A of the Clayton Act; Notice'' (RIN3084–AA91) received on March 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1232. A communication from the Secretary of the Commission, Bureau of Competition, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Premerger Notification; Reporting and Waiting Period Requirements; Final Rule'' (RIN3084–AA91) received on March 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1233. A communication from the Deputy Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled

''Technical Corrections to the Export Administration Regulations'' (RIN0694–AD32) received on March 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1234. A communication from the Deputy Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Denied Persons and Specially Designated Nationals'' (RIN0694–AD43) received on March 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1235. A communication from the Deputy Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Revision of License Exception TMP for Activities by Organizations Working to Relieve Human Suffering in Sudan'' (RIN0694–AD38) received on March 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1236. A communication from the Administrator of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the Department's Capital Investment Plan for Fiscal Years 2006–2010; to the Committee on Commerce, Science, and Transportation.

EC–1237. A communication from the Board of Trustees, National Railroad Retirement Investment Trust, transmitting, pursuant to law, a report relative to the Trust's operations and financial condition; to the Committee on Finance.

EC–1238. A communication from the Chief, Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Extension of Import Restrictions Imposed on Certain Categories of Archaeological Material from the Prehispanic Cultures of the Republic of El Salvador'' (RIN1505–AB56) received on March 7, 2005 ; to the Committee on Finance.

EC–1239. A communication from the Regulations Officer, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Wage Credits for Veterans and Members of the Uniformed Services'' (RIN0960–AF90) received on March 7, 2005; to the Committee on Finance.

EC–1240. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Medicare Contracting Reform: A Blueprint for a Better Medicare'' received on March 7, 2005; to the Committee on Finance.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 55. A bill to adjust the boundary of Rocky Mountain National Park in the State of Colorado (Rept. No. 109–19).

S. 57. A bill to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000 (Rept. No. 109–20).

S. 276. A bill to revise the boundary of the Wind Cave National Park in the State of South Dakota (Rept. No. 109–21).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment:

S. 301. A bill to authorize the Secretary of the Interior to provide assistance in implementing cultural heritage, conservation, and recreational activities in the Connecticut River watershed of the States of New Hampshire and Vermont (Rept. No. 109–22).

## 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. JEFFORDS (for himself, Mr. GREGG, Mr. ENZI, Mr. BINGAMAN, Mr. FRIST, and Mrs. MURRAY):

S. 544. A bill to amend title IX of the Public Health Service Act to provide for the improvement of patient safety and to reduce the incidence of events that adversely affect patient safety; to the Committee on Health, Education, Labor, and Pensions.

By Mr. THOMAS (for himself and Mr. KYL):

S. 545. A bill to amend the Internal Revenue Code of 1986 to create Lifetime Savings Accounts; to the Committee on Finance.

By Mr. THOMAS (for himself and Mr. KYL):

S. 546. A bill to amend the Internal Revenue Code of 1986 to provide for retirement savings accounts, and for other purposes; to the Committee on Finance.

By Mr. THOMAS (for himself and Mr. KYL):

S. 547. A bill to amend the Internal Revenue Code of 1986 to provide for employer retirement savings accounts, and for other purposes; to the Committee on Finance.

By Mr. CONRAD (for himself and Mr. ROBERTS):

S. 548. A bill to amend the Food Security Act of 1985 to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make their land available for access by the public under programs administered by States and tribal governments; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. ALLARD (for himself, Mr. HAGEL, Mr. NELSON of Nebraska, Mr. SALAZAR, and Mr. THUNE):

S. 549. A bill to extend a certain high priority corridor in the States of Colorado, Nebraska, South Dakota, and Wyoming; to the Committee on Environment and Public Works.

By Mr. CORZINE (for himself, Mr. OBAMA, Ms. SNOWE, Mr. BINGAMAN, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. DODD, Mr. DURBIN, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. LAUTENBERG, Mr. LEAHY, Ms. MIKULSKI, Mrs. MURRAY, Mr. SCHUMER, Mr. SMITH, and Mr. KERRY):

S. 550. A bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other diseases, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ALLARD:

S. 551. A bill to direct the Secretary of Veterans Affairs to establish a national cemetery for veterans in the Colorado Springs, Colorado, metropolitan area; to the Committee on Veterans' Affairs.

By Mr. AKAKA:

S. 552. A bill to make technical corrections to the Veterans Benefits Improvement Act of 2004; to the Committee on Veterans' Affairs.

By Mrs. FEINSTEIN (for herself and Mr. ALLEN):

S. 553. A bill to amend title 23, United States Code, to provide for HOV-lane exemptions for low-emission and hybrid vehicles; to the Committee on Environment and Public Works.

By Mr. THOMAS (for himself and Mr. ENZI):

S. 554. A bill for the relief of Ashley Ross Fuller; to the Committee on the Judiciary.

By Mr. DEWINE (for himself, Mr. KOHL, Mr. LEAHY, Mr. GRASSLEY, Mr. FEINGOLD, Ms. SNOWE, Mr. SCHUMER, Mr. DURBIN, Mr. LEVIN, Mrs. BOXER, Mr. WYDEN, Mr. CORZINE, and Mr. DAYTON):

S. 555. A bill to amend the Sherman Act to make oil-producing and exporting cartels illegal; to the Committee on the Judiciary.

By Mr. MCCAIN:

S. 556. A bill to direct the Secretary of the Interior and the Secretary of Agriculture to jointly conduct a study of certain land adjacent to the Walnut Canyon National Monument in the State of Arizona; to the Committee on Energy and Natural Resources.

By Mr. COBURN:

S. 557. A bill to provide that Executive Order 13166 shall have no force or effect, to prohibit the use of funds for certain purposes, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. REID (for himself, Mr. BIDEN, Ms. MIKULSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mrs. BOXER, Mr. JOHNSON, Mr. SALAZAR, Mr. BINGAMAN, Ms. LANDRIEU, Mr. JEFFORDS, Mr. KENNEDY, Mrs. LINCOLN, Mrs. CLINTON, Mr. LIEBERMAN, and Mr. DURBIN):

S. 558. A bill to amend title 10, United States Code, to permit certain additional retired members of the Armed Forces who have a service-connected disability to receive both disability compensation from the Department of Veterans Affairs for their disability and either retired pay by reason of their years of military service or Combat-Related Special compensation and to eliminate the phase-in period under current law with respect to such concurrent receipt; to the Committee on Armed Services.

By Mr. BIDEN (for himself and Mr. LUGAR):

S. 559. A bill to make the protection of vulnerable populations, especially women and children, who are affected by a humanitarian emergency a priority of the United States Government, and for other purposes; to the Committee on Foreign Relations.

By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 560. A bill to enhance disclosure of automobile safety information; to the Committee on Commerce, Science, and Transportation.

By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 561. A bill to improve child safety in motor vehicles; to the Committee on Commerce, Science, and Transportation.

By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 562. A bill to amend title 23, United States Code, to improve the highway safety improvement program and provide for a proportional obligation of amounts made available for the highway safety improvement program; to the Committee on Environment and Public Works.

By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 563. A bill to improve driver licensing and education, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 564. A bill to improve traffic safety by discouraging the use of traffic signal preemption transmitters; to the Committee on the Judiciary.

By Mr. DEWINE (for himself and Mr. LAUTENBERG):

S. 565. A bill to direct the National Highway Traffic Safety Administration to establish and carry out traffic safety law enforcement and compliance campaigns, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ROCKEFELLER (for himself, Mr. KENNEDY, Mr. CORZINE, and Mr. LAUTENBERG):

S. 566. A bill to continue State coverage of medicaid prescription drug coverage to medicare dual eligible beneficiaries for 6 months while still allowing the medicare part D benefit to be implemented as scheduled; to the Committee on Finance.

By Mr. LUGAR:

S. 567. A bill to provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage, adoption, or failure to adopt rules of play for athletic competitions and practices; to the Committee on the Judiciary.

By Mr. VOINOVICH (for himself and Mr. FEINGOLD):

S. 568. A bill to balance the budget and protect the Social Security Trust Fund surpluses; to the Committee on the Budget.

By Ms. SNOWE (for herself, Ms. MIKULSKI, Mr. HARKIN, Mr. CORZINE, and Mrs. BOXER):

S. 569. A bill to improve the health of women through the establishment of Offices of Women's Health within the Department of Health and Human Services; to the Committee on Health, Education, Labor, and Pensions.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. BIDEN:

S. Res. 73. A resolution honoring the life of Enrique ''Kiki'' Camarena; to the Committee on the Judiciary.

By Mr. BIDEN (for himself, Mrs. CLINTON, Mr. LUGAR, Mr. KOHL, Mrs. MURRAY, Mr. LAUTENBERG, Ms. STABENOW, Mrs. BOXER, Mr. BAYH, Ms. LANDRIEU, Mr. JOHNSON, Mr. JEFFORDS, Mr. LEVIN, Mr. FEINGOLD, Mr. DODD, Mr. SARBANES, Mr. CORZINE, Mr. KERRY, Mr. OBAMA, Mr. SALAZAR, Mr. KENNEDY, Ms. MIKULSKI, Mrs. LINCOLN, Mr. HATCH, Mrs. FEINSTEIN, and Mr. REID):

S. Res. 74. A resolution designating March 8, 2005, as ''International Women's Day''; considered and agreed to.

By Mr. SPECTER (for himself, Mr. SARBANES, Mr. ALLEN, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. CARPER, Mr. CHAFEE, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COBURN, Mr. COCHRAN, Mr. CORZINE, Mr. CRAIG, Mr. DEWINE, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. INHOFE, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mr. LOTT, Mr. LUGAR, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. OBAMA, Mr. REED, Mr. REID, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SANTORUM, Mr. SCHUMER, Mr. SMITH, Ms. SNOWE, Ms. STABENOW, Mr. STEVENS, Mr. SUNUNU, Mr. THOMAS, Mr. VOINOVICH, and Mr. WYDEN):

S. Res. 75. A resolution designating March 25, 2005, as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy''; considered and agreed to.

By Mr. SANTORUM:

S. Con. Res. 15. A concurrent resolution encouraging all Americans to increase their charitable giving, with the goal of increasing the annual amount of charitable giving in the United States by 1 percent; to the Committee on Finance.

## ADDITIONAL COSPONSORS

S. 8

At the request of Mr. ENSIGN, the names of the Senator from Texas (Mrs. HUTCHISON), the Senator from Alabama (Mr. SHELBY), the Senator from Nebraska (Mr. NELSON), the Senator from Utah (Mr. HATCH) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. 8, a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

S. 37

At the request of Mrs. HUTCHISON, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 37, a bill to extend the special postage stamp for breast cancer research for 2 years.

S. 132

At the request of Mr. SMITH, the name of the Senator from Colorado (Mr. ALLARD) 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. 147

At the request of Ms. MURKOWSKI, her name was added as a cosponsor of S. 147, a bill to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

S. 268

At the request of Mr. HARKIN, the names of the Senator from Iowa (Mr. GRASSLEY), the Senator from Florida (Mr. NELSON), the Senator from Oregon (Mr. SMITH) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 268, a bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 331

At the request of Mr. JOHNSON, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 331, a bill to amend title 38, United States Code, to provide for an assured adequate level of funding for veterans health care.

S. 335

At the request of Mr. LIEBERMAN, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 335, a bill to reauthorize the Congressional Award Act.

S. 338

At the request of Mr. SMITH, the names of the Senator from New York (Mrs. CLINTON), the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. PRYOR) and the Senator from South Carolina (Mr. GRAHAM) were added as cosponsors of S. 338, a bill to provide for the establishment of a Bipartisan Commission on Medicaid.

S. 345

At the request of Mr. DURBIN, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 345, a bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the medicare program.

S. 352

At the request of Ms. MIKULSKI, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 352, a bill to revise certain requirements for H–2B employers and require submission of information regarding H–2B non-immigrants, and for other purposes.

S. 403

At the request of Mr. ENSIGN, the names of the Senator from Montana (Mr. BURNS), the Senator from Louisiana (Mr. VITTER), the Senator from Alabama (Mr. SHELBY), the Senator from Nebraska (Mr. NELSON), the Senator from Texas (Mrs. HUTCHISON), the Senator from Missouri (Mr. TALENT), the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Utah (Mr. HATCH) were added as cosponsors of S. 403, a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

S. 424

At the request of Mr. BOND, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 424, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 438

At the request of Mr. ENSIGN, the names of the Senator from Utah (Mr. BENNETT) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 483

At the request of Mr. CORNYN, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 483, a bill to strengthen religious liberty and combat government hostility to expressions of faith, by extending the reach of The Equal Access Act to elementary schools.

S. 484

At the request of Mr. WARNER, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a

pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 506

At the request of Mr. DURBIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 506, a bill to amend the Public Health Service Act to establish a scholarship and loan repayment program for public health preparedness workforce development to eliminate critical public health preparedness workforce shortages in Federal, State, local, and tribal public health agencies.

S. 520

At the request of Mr. SHELBY, the names of the Senator from Idaho (Mr. CRAIG) and the Senator from Mississippi (Mr. LOTT) were added as cosponsors of S. 520, a bill to limit the jurisdiction of Federal courts in certain cases and promote federalism.

S. 525

At the request of Mr. ALEXANDER, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 525, a bill to amend the Child Care and Development Block Grant Act of 1990 to reauthorize the Act, to improve early learning opportunities and promote school preparedness, and for other purposes.

S. 533

At the request of Mrs. HUTCHISON, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 533, a bill to amend the Internal Revenue Code of 1986 to clarify that a NADBank guarantee is not considered a Federal guarantee for purposes of determining the tax-exempt status of bonds.

S. 534

At the request of Mr. FEINGOLD, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 534, a bill to amend the Internal Revenue Code of 1986 to repeal the percentage depletion allowance for certain hardrock mines, and for other purposes.

S. 539

At the request of Mr. MARTINEZ, the names of the Senator from Oklahoma (Mr. COBURN), the Senator from Oklahoma (Mr. INHOFE), the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 539, a bill to amend title 28, United States Code, to provide the protections of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

S. RES. 40

At the request of Ms. LANDRIEU, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. Res. 40, a resolution supporting the goals and ideas of National Time Out Day to promote the adoption of the Joint Commission on Accreditation of Healthcare Organizations' universal protocol for preventing errors in the operating room.

AMENDMENT NO. 47

At the request of Mr. SCHUMER, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of amendment No. 47 proposed to S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

AMENDMENT NO. 67

At the request of Mr. DODD, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of amendment No. 67 proposed to S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

AMENDMENT NO. 89

At the request of Mr. FEINGOLD, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of amendment No. 89 proposed to S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THOMAS (for himself and Mr. KYL):

S. 545. A bill to amend the Internal Revenue Code of 1986 to create Lifetime Savings Accounts; to the Committee on Finance.

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By Mr. THOMAS (for himself and Mr. KYL):

S. 546. A bill to amend the Internal Revenue Code of 1986 to provide for retirement savings accounts, and for other purposes; to the Committee on Finance.

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By Mr. THOMAS (for himself and Mr. KYL):

S. 547. A bill to amend the Internal Revenue Code of 1986 to provide for employer retirement savings accounts, and for other purposes; to the Committee on Finance.

Mr. THOMAS. Mr. President, today I rise to introduce the Savings Account Vehicle Enhancement, or ''SAVE,'' initiative, comprised of three separate bills to create, respectively, Lifetime Savings Accounts, Retirement Savings Accounts, and Employer Retirement Savings Accounts.

Much attention has been focused lately on the retirement security of Americans, but the focus thus far has centered primarily on Social Security. It is imperative that we remember that Social Security was never intended as a primary income source for retirees, but rather as a safety net and a supplement to private savings. The bills I introduce today focus on private savings, for both pre-retirement expenses and retirement security.

My reasons for introducing these bills are threefold. First of all, it is important that we address the appallingly-low personal savings rate in this country. Personal savings rates in the United States since 1960 have reached a new low at less than 2 percent. These bills will encourage additional savings and reduce the temptation for individuals to tap into retirement savings for other, pre-retirement purposes.

Secondly, our tax code is entirely too complex and contributes to lack of participation in the tax-preferred vehicles that already exist. These bills, by allowing individuals to accumulate tax-free interest and by streamlining current savings vehicles, represent an important step toward fundamental tax reform.

Finally, as the Social Security system strains under increasing pressure, it is even more important that we provide a better, more responsive, simpler system for Americans to accumulate personal savings for retirement.

Mr. President, I ask unanimous consent that the text of the bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 545

*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 ''Lifetime Savings Account Act of 2005''.

**SEC. 2. LIFETIME SAVINGS ACCOUNTS.**

(a) IN GENERAL.—Subchapter F of Chapter 1 of the Internal Revenue Code of 1986 (relating to exempt organizations) is amended by adding at the end the following new part:

**''PART IX—LIFETIME SAVINGS ACCOUNTS**

**''SEC. 530A. LIFETIME SAVINGS ACCOUNTS.**

''(a) GENERAL RULE.—A Lifetime Savings Account shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such account shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

''(b) LIFETIME SAVINGS ACCOUNT.—For purposes of this section, the term 'Lifetime Savings Account' means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries and which is designated (in such manner as the Secretary shall prescribe) at the time of the establishment of the trust as a Lifetime Savings Account, but only if the written governing instrument creating the trust meets the following requirements:

''(1) Except in the case of a qualified rollover contribution described in subsection (d)—

''(A) no contribution will be accepted unless it is in cash, and

''(B) contributions will not be accepted for the calendar year in excess of the contribution limit specified in subsection (c)(1).

''(2) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent with the requirements of this section or who has so demonstrated with respect to any individual retirement plan.

''(3) No part of the trust assets will be invested in life insurance contracts.

''(4) The interest of an individual in the balance of his account is nonforfeitable.

''(5) The assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund.

''(c) TREATMENT OF CONTRIBUTIONS AND DISTRIBUTIONS.—

''(1) CONTRIBUTION LIMIT.—

''(A) IN GENERAL.—The aggregate amount of contributions (other than qualified rollover contributions described in subsection

(d)) for any calendar year to all Lifetime Savings Accounts maintained for the benefit of an individual shall not exceed $5,000.

''(B) COST-OF-LIVING ADJUSTMENT.—

''(i) IN GENERAL.—In the case of any calendar year after 2006, the $5,000 amount under 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, determined by substituting 'calendar year 2005' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500.

''(2) DISTRIBUTIONS.—Any distribution from a Lifetime Savings Account shall not be includible in gross income.

''(d) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section, the term 'qualified rollover contribution' means a contribution to a Lifetime Savings Account—

''(1) from another such account of the same beneficiary, but only if such amount is contributed not later than the 60th day after the distribution from such other account,

''(2) from a Lifetime Savings Account of a spouse of the beneficiary of the account to which the contribution is made, but only if such amount is contributed not later than the 60th day after the distribution from such other account, and

''(3) before January 1, 2007, from—

''(A) a qualified tuition program pursuant to section 529(c)(3)(E), or

''(B) a Coverdell education savings account pursuant to section 530(d)(9).

''(e) LOSS OF TAXATION EXEMPTION OF ACCOUNT WHERE BENEFICIARY ENGAGES IN PROHIBITED TRANSACTION.—Rules similar to the rules of paragraph (2) of section 408(e) shall apply to any Lifetime Savings Account.

''(f) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account or an annuity contract issued by an insurance company qualified to do business in a State shall be treated as a trust under this section if—

''(1) the custodial account or annuity contract would, except for the fact that it is not a trust, constitute a trust which meets the requirements of subsection (b), and

''(2) in the case of a custodial account, the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or annuity contract treated as a trust by reason of the preceding sentence, the person holding the assets of such account or holding such annuity contract shall be treated as the trustee thereof.

''(g) REPORTS.—The trustee of a Lifetime Savings Account shall make such reports regarding such account to the Secretary and to the beneficiary of the account with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required.''.

(b) TAX ON EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Subsection (a) of section 4973 of the Internal Revenue Code of 1986 (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended by striking ''or'' at the end of paragraph (4), by inserting ''or'' at the end of paragraph (5), and by inserting after paragraph (5) the following new paragraph:

''(6) a Lifetime Savings Account (as defined in section 530A),''.

(2) EXCESS CONTRIBUTION.—Section 4973 of such Code is amended by adding at the end the following new subsection:

''(h) EXCESS CONTRIBUTIONS TO LIFETIME SAVINGS ACCOUNTS.—For purposes of this section—

''(1) IN GENERAL.—In the case of Lifetime Savings Accounts (within the meaning of section 530A), the term 'excess contributions' means the sum of—

''(A) the amount by which the amount contributed for the calendar year to such accounts (other than qualified rollover contributions (as defined in section 530A(d))) exceeds the contribution limit under section 530A(c)(1), and

''(B) the amount determined under this subsection for the preceding calendar year, reduced by the excess (if any) of the maximum amount allowable as a contribution under section 530A(c)(1) for the calendar year over the amount contributed to the accounts for the calendar year.

''(2) SPECIAL RULE.—A contribution shall not be taken into account under paragraph (1) if such contribution (together with the amount of net income attributable to such contribution) is returned to the beneficiary before July 1 of the year following the year in which the contribution is made.''.

(c) FAILURE TO PROVIDE REPORTS ON LIFETIME SAVINGS ACCOUNTS.—Paragraph (2) of section 6693(a) of the Internal Revenue Code of 1986 (relating to failure to provide reports on individual retirement accounts or annuities) is amended by striking ''and'' at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting '', and'', and by adding at the end the following new subparagraph:

''(F) section 530A(g) (relating to Lifetime Savings Accounts).''.

(d) ROLLOVERS FROM CERTAIN OTHER TAX-FREE ACCOUNTS.—

(1) QUALIFIED STATE TUITION PLANS.—Paragraph (3) of section 529(c) of the Internal Revenue Code of 1986 (relating to distributions) is amended by adding at the end the following new subparagraph:

''(E) ROLLOVERS TO LIFETIME SAVINGS ACCOUNTS.—

''(i) IN GENERAL.—Subparagraph (A) shall not apply to the qualified portion of any distribution which, before January 1, 2007, and within 60 days of such distribution, is transferred to a Lifetime Savings Account (within the meaning of section 530A) of the designated beneficiary. This subparagraph shall only apply to distributions in accordance with the previous sentence from an account which was in existence with respect to such designated beneficiary on December 31, 2004.

''(ii) QUALIFIED PORTION.—For purposes of this subparagraph, the term 'qualified portion' means the amount equal to the sum of—

''(I) the lesser of $50,000 or the amount which is in the account of the designated beneficiary on December 31, 2004,

''(II) any contributions to such account for the taxable year beginning after December 31, 2004, and before January 1, 2006, and

''(III) any earnings of such account for such year.

''(iii) LIMITATION.—The sum of the amounts taken into account under clause (ii)(II) with respect to all accounts of the designated beneficiary plus any amounts with respect to such designated beneficiary taken into account under section 530(d)(9)(B)(ii) shall not exceed the sum of $5,000 plus the earnings attributable to such amounts.''.

(2) COVERDELL EDUCATION SAVINGS ACCOUNTS.—Subsection (d) of section 530 of such Code (relating to tax treatment of distributions) is amended by inserting at the end the following new paragraph:

''(9) ROLLOVERS TO LIFETIME SAVINGS ACCOUNTS.—

''(A) IN GENERAL.—Paragraph (1) shall not apply to the qualified portion of any amount paid or distributed from a Coverdell education savings account to the extent that the amount received is paid, before January 1, 2007, and not later than the 60th day after the date of such payment or distribution, into a Lifetime Savings Account (within the meaning of section 530A) for the benefit of the same beneficiary. This paragraph shall only apply to amounts paid or distributed in accordance with the preceding sentence from an account which was in existence with respect to such beneficiary on December 31, 2004.

''(B) QUALIFIED PORTION.—For purposes of this paragraph, the term 'qualified portion' means the amount equal to the sum of—

''(i) the amount which is in the account of the beneficiary on December 31, 2004,

''(ii) any contributions to such account for the taxable year beginning after December 31, 2004, and before January 1, 2006 and

''(iii) any earnings of such account for such year.

''(C) LIMITATION.—The sum of the amounts taken into account under subparagraph (B)(ii) with respect to all accounts of the beneficiary plus any amounts with respect to such beneficiary taken into account under section 529(c)(3)(E)(ii)(II) shall not exceed the sum of $5,000 plus the earnings attributable to such amounts.''.

(e) CONFORMING AMENDMENT.—The table of parts for subchapter F of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''PART IX. LIFETIME SAVINGS ACCOUNTS''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

S. 546

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE, ETC.**

(a) SHORT TITLE.—This Act may be cited as the ''Retirement Savings Account Act''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

**SEC. 2. RETIREMENT SAVINGS ACCOUNTS.**

(a) IN GENERAL.—Section 408A (relating to Roth IRAs) is amended to read as follows:

**''SEC. 408A. RETIREMENT SAVINGS ACCOUNTS.**

''(a) IN GENERAL.—Except as provided in this section, a retirement savings account shall be treated for purposes of this title in the same manner as an individual retirement plan.

''(b) RETIREMENT SAVINGS ACCOUNT.—For purposes of this title, the term 'retirement savings account' means an individual retirement plan (as defined in section 7701(a)(37)) which—

''(1) is designated (in such manner as the Secretary may prescribe) at the time of establishment of the plan as a retirement savings account, and

''(2) does not accept any contribution (other than a qualified rollover contribution) which is not in cash.

''(c) TREATMENT OF CONTRIBUTIONS.—

''(1) CONTRIBUTION LIMIT.—Notwithstanding subsections (a)(1) and (b)(2)(A) of section 408, the aggregate amount of contributions for any taxable year to all retirement savings accounts maintained for the benefit of an individual shall not exceed the lesser of—

''(A) $5,000, or

''(B) the amount of compensation includible in the individual's gross income for such taxable year.

''(2) SPECIAL RULE FOR CERTAIN MARRIED INDIVIDUALS.—In the case of any individual who files a joint return for the taxable year, the amount taken into account under paragraph (1)(B) shall be increased by the excess (if any) of—

''(A) the compensation includible in the gross income of such individual's spouse for the taxable year, over

''(B) the aggregate amount of contributions for the taxable year to all retirement savings accounts maintained for the benefit of such spouse.

''(3) CONTRIBUTIONS PERMITTED AFTER AGE 70½.—Contributions to a retirement savings account may be made even after the individual for whom the account is maintained has attained age 70½.

''(4) MANDATORY DISTRIBUTION RULES NOT TO APPLY BEFORE DEATH.—Notwithstanding subsections (a)(6) and (b)(3) of section 408 (relating to required distributions), the following provisions shall not apply to any retirement savings account:

''(A) Section 401(a)(9)(A).

''(B) The incidental death benefit requirements of section 401(a).

''(5) ROLLOVER CONTRIBUTIONS.—

''(A) IN GENERAL.—No rollover contribution may be made to a retirement savings account unless it is a qualified rollover contribution.

''(B) COORDINATION WITH LIMIT.—A qualified rollover contribution shall not be taken into account for purposes of paragraph (1).

''(6) ROLLOVERS FROM PLANS WITH TAXABLE DISTRIBUTIONS.—

''(A) IN GENERAL.—Notwithstanding sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16), in the case of any contribution to which this paragraph applies—

''(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

''(ii) section 72(t) shall not apply, and

''(iii) unless the taxpayer elects not to have this clause apply for any taxable year, any amount required to be included in gross income for such taxable year by reason of this paragraph for any contribution before January 1, 2007, shall be so included ratably over the 4-taxable year period beginning with such taxable year.

Any election under clause (iii) for any contributions during a taxable year may not be changed after the due date (including extensions of time) for filing the taxpayer's return for such taxable year.

''(B) CONTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any qualified rollover contribution to a retirement savings account (other than a rollover contribution from another such account).

''(C) CONVERSIONS OF IRAS.—The conversion of an individual retirement plan (other than a retirement savings account) to a retirement savings account shall be treated for purposes of this paragraph as a contribution to which this paragraph applies.

''(D) ADDITIONAL REPORTING REQUIREMENTS.—Trustees and plan administrators of eligible retirement plans (as defined in section 402(c)(8)(B)) and retirement savings accounts shall report such information as the Secretary may require to ensure that amounts required to be included in gross income under subparagraph (A) are so included. Such reports shall be made at such time and in such form and manner as the Secretary may require. The Secretary may provide that such information be included as additional information in reports required under section 408(i) or 6047.

''(E) SPECIAL RULES FOR CONTRIBUTIONS TO WHICH A 4-YEAR AVERAGING APPLIES.—In the case of a qualified rollover contribution to which subparagraph (A)(iii) applied, the following rules shall apply:

''(i) ACCELERATION OF INCLUSION.—

''(I) IN GENERAL.—The amount required to be included in gross income for each of the first 3 taxable years in the 4-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from retirement savings accounts for such taxable year which are allocable under subsection (d)(3) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

''(II) LIMITATION ON AGGREGATE AMOUNT INCLUDED.—The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 4-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.

''(ii) DEATH OF DISTRIBUTEE.—

''(I) IN GENERAL.—If the individual required to include amounts in gross income under such subparagraph dies before all of such amounts are included, all remaining amounts shall be included in gross income for the taxable year which includes the date of death.

''(II) SPECIAL RULE FOR SURVIVING SPOUSE.—If the spouse of the individual described in subclause (I) acquires the individual's entire interest in any retirement savings account to which such qualified rollover contribution is properly allocable, the spouse may elect to treat the remaining amounts described in subclause (I) as includible in the spouse's gross income in the taxable years of the spouse ending with or within the taxable years of such individual in which such amounts would otherwise have been includible. Any such election may not be made or changed after the due date (including extensions of time) for filing the spouse's return for the taxable year which includes the date of death.

''(F) 5-YEAR HOLDING PERIOD RULES.—If—

''(i) any portion of a distribution from a retirement savings account is properly allocable to a qualified rollover contribution with respect to which an amount is includible in gross income under subparagraph (A)(i),

''(ii) such distribution is made during the 5-taxable year period beginning with the taxable year for which such contribution was made, and

''(iii) such distribution is not described in clause (i), (ii), or (iii) of subsection (d)(2)(A),

then section 72(t) shall be applied as if such portion were includible in gross income.

''(7) TIME WHEN CONTRIBUTIONS MADE.—For purposes of this section, a taxpayer shall be deemed to have made a contribution to a retirement savings account on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

''(8) COST-OF-LIVING ADJUSTMENT.—

''(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2006, the $5,000 amount under paragraph (1)(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.

''(B) ROUNDING RULES.—If any amount after adjustment under subparagraph (A) is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500.

''(d) DISTRIBUTION RULES.—For purposes of this title—

''(1) EXCLUSION.—Any qualified distribution from a retirement savings account shall not be includible in gross income.

''(2) QUALIFIED DISTRIBUTION.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified distribution' means any payment or distribution—

''(i) made on or after the date on which the individual attains age 58,

''(ii) made to a beneficiary (or to the estate of the individual) on or after the death of the individual,

''(iii) attributable to the individual's being disabled (within the meaning of section 72(m)(7)), or

''(iv) to which section 72(t)(2)(F) applies (if such payment or distribution is made before January 1, 2009).

''(B) DISTRIBUTIONS OF EXCESS CONTRIBUTIONS AND EARNINGS.—The term 'qualified distribution' shall not include any distribution of any contribution described in section 408(d)(4) and any net income allocable to the contribution.

''(3) ORDERING RULES.—For purposes of applying this section and section 72 to any distribution from a retirement savings account, such distribution shall be treated as made—

''(A) from contributions to the extent that the amount of such distribution, when added to all previous distributions from the retirement savings account, does not exceed the aggregate contributions to the retirement savings account, and

''(B) from such contributions in the following order:

''(i) Contributions other than qualified rollover contributions with respect to which an amount is includible in gross income under subsection (c)(6)(A)(i).

''(ii) Qualified rollover contributions with respect to which an amount is includible in gross income under subsection (c)(6)(A)(i) on a first-in, first-out basis.

Any distribution allocated to a qualified rollover contribution under subparagraph (B)(ii) shall be allocated first to the portion of such contribution required to be included in gross income.

''(4) AGGREGATION RULES.—Section 408(d)(2) shall be applied separately with respect to retirement savings accounts and other individual retirement plans.

''(e) QUALIFIED ROLLOVER CONTRIBUTION.—

''(1) IN GENERAL.—For purposes of this section, the term 'qualified rollover contribution' means—

''(A) a rollover contribution to a retirement savings account of an individual from another such account of such individual or such individual's spouse, or from an individual retirement plan of such individual, but only if such rollover contribution meets the requirements of section 408(d)(3), and

''(B) a rollover contribution described in section 402(c), 402A(c)(3)(A), 403(a)(4), 403(b)(8), or 457(e)(16).

''(2) COORDINATION WITH LIMITATION ON IRA ROLLOVERS.—For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a retirement savings account) to a retirement savings account.

''(f) INDIVIDUAL RETIREMENT PLAN.—For purposes of this section—

''(1) a simplified employee pension or a simple retirement account may not be designated as a retirement savings account, and

''(2) contributions to any such pension or account shall not be taken into account for purposes of subsection (c)(1).

''(g) COMPENSATION.—For purposes of this section, the term 'compensation' includes earned income (as defined in section 401(c)(2)). Such term does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation. Such term shall include any amount includible in the individual's gross income under section 71 with respect to a divorce or separation instrument described in section 71(b)(2)(A). For purposes of this subsection, section 401(c)(2) shall be applied as if the term trade or business for purposes of section 1402 included service described in section 1402(c)(6).''.

(b) ROTH IRAS TREATED AS RETIREMENT SAVINGS ACCOUNTS.—In the case of any taxable year beginning after December 31, 2005, any Roth IRA (as defined in section 408A(b) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act) shall be treated for purposes of such Code as having been designated at the time of the establishment of the plan as a retirement savings account under section 408A(b) of such Code (as amended by this section).

(c) CONTRIBUTIONS TO OTHER INDIVIDUAL RETIREMENT PLANS PROHIBITED.—

(1) INDIVIDUAL RETIREMENT ACCOUNTS.—Paragraph (1) of section 408(a) is amended to read as follows:

''(1) Except in the case of a simplified employee pension, a simple retirement account, or a rollover contribution described in subsection (d)(3) or in section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), no contribution will be accepted on behalf of any individual for any taxable year beginning after December 31, 2005. In the case of any simplified employee pension or simple retirement account, no contribution will be accepted unless it is in cash and contributions will not be accepted for the taxable year on behalf of any individual in excess of—

''(A) in the case of a simplified employee pension, the amount of the limitation in effect under section 415(c)(1)(A), and

''(B) in the case of a simple retirement account, the sum of the dollar amount in effect under subsection (p)(2)(A)(ii) and the employer contribution required under subparagraph (A)(iii) or (B)(i) of subsection (p)(2).''.

(2) INDIVIDUAL RETIREMENT ANNUITIES.—Paragraph (2) of section 408(b) is amended—

(A) by redesignating subparagraphs (A), (B), and (C) as subparagraphs (B), (C), and (D), respectively, and by inserting before subparagraph (B), as so redesignated, the following new subparagraph:

''(A) except in the case of a simplified employee pension, a simple retirement account, or a rollover contribution described in subsection (d)(3) or in section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), a premium shall not be accepted on behalf of any individual for any taxable year beginning after December 31, 2005,'', and

(B) by amending subparagraph (C), as redesignated by subparagraph (A), to read as follows:

''(C) the annual premium on behalf of any individual will not exceed—

''(i) in the case of a simplified employee pension, the amount of the limitation in effect under section 415(c)(1)(A), and

''(ii) in the case of a simple retirement account, the sum of the dollar amount in effect under subsection (p)(2)(A)(ii) and the employer contribution required under subparagraph (A)(iii) or (B)(i) of subsection (p)(2), and''.

(d) CONFORMING AMENDMENTS.—

(1)(A) Section 219 is amended to read as follows:

**''SEC. 219. CONTRIBUTIONS TO CERTAIN RETIREMENT PLANS ALLOWING ONLY EMPLOYEE CONTRIBUTIONS.**

''(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction the amount contributed on behalf of such individual to a plan described in section 501(c)(18).

''(b) MAXIMUM AMOUNT OF DEDUCTION.—The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of—

''(1) $7,000, or

''(2) an amount equal to 25 percent of the compensation (as defined in section 415(c)(3)) includible in the individual's gross income for such taxable year.

''(c) BENEFICIARY MUST BE UNDER AGE 70½.—No deduction shall be allowed under this section with respect to any contribution on behalf of an individual if such individual has attained age 70½ before the close of such individual's taxable year for which the contribution was made.

''(d) SPECIAL RULES.—

''(1) MARRIED INDIVIDUALS.—The maximum deduction under subsection (b) shall be computed separately for each individual, and this section shall be applied without regard to any community property laws.

''(2) REPORTS.—The Secretary shall prescribe regulations which prescribe the time and the manner in which reports to the Secretary and plan participants shall be made by the plan administrator of a qualified employer or government plan receiving qualified voluntary employee contributions.

''(e) CROSS REFERENCE.—For failure to provide required reports, see section 6652(g).''.

(B) Section 25B(d) is amended—

(i) in paragraph (1)(A), by striking ''(as defined in section 219(e))'', and

(ii) by adding at the end the following new paragraph:

''(3) QUALIFIED RETIREMENT CONTRIBUTION.—The term 'qualified retirement contribution' means—

''(A) any amount paid in cash for the taxable year by or on behalf of an individual to an individual retirement plan for such individual's benefit, and

''(B) any amount contributed on behalf of any individual to a plan described in section 501(c)(18).''.

(C) Section 86(f)(3) is amended by striking ''section 219(f)(1)'' and inserting ''section 408A(g)''.

(D) Section 132(m)(3) is amended by inserting ''(as in effect on the day before the date of the enactment of the Retirement Savings Account Act)'' after ''section 219(g)(5)''.

(E) Subparagraphs (A), (B), and (C) of section 220(d)(4) are each amended by inserting '', as in effect on the day before the date of the enactment of the Retirement Savings Account Act'' at the end.

(F) Section 408(b) is amended in the last sentence by striking ''section 219(b)(1)(A)'' and inserting ''paragraph (2)(C)''.

(G) Section 408(p)(2)(D)(ii) is amended by inserting ''(as in effect on the day before the date of the enactment of the Retirement Savings Account Act)'' after ''section 219(g)(5)''.

(H) Section 409A(d)(2) is amended by inserting ''(as in effect on the day before the date of the enactment of the Retirement Savings Account Act)'' after ''subparagraph (A)(iii))''.

(I) Section 501(c)(18)(D)(i) is amended by striking ''section 219(b)(3)'' and inserting ''section 219(b)''.

(J) Section 6652(g) is amended by striking ''section 219(f)(4)'' and inserting ''section 219(d)(2)''.

(K) The table of sections for part VII of subchapter B of chapter 1 is amended by striking the item relating to section 219 and inserting the following new item:

''Sec. 219. Contributions to certain retirement plans allowing only employee contributions.''.

(2)(A) Section 408(d)(4)(B) is amended to read as follows:

''(B) no amount is excludable from gross income under subsection (h) or (k) of section 402 with respect to such contribution, and''.

(B) Section 408(d)(5)(A) is amended to read as follows:

''(A) IN GENERAL.—In the case of any individual, if the aggregate contributions (other than rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed the dollar amount in effect under subsection (a)(1) or (b)(2)(C), as the case may be, paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount which is excludable from gross income under subsection (h) or (k) of section 402, as the case may be, for the taxable year for which the contribution was paid—

''(i) if such distribution is received after the date described in paragraph (4),

''(ii) but only to the extent that such excess contribution has not been excluded from gross income under subsection (h) or (k) of section 402.''.

(C) Section 408(d)(5) is amended by striking the last sentence.

(D) Section 408(d)(7) is amended to read as follows:

''(7) CERTAIN TRANSFERS FROM SIMPLIFIED EMPLOYEE PENSIONS PROHIBITED UNTIL DEFERRAL TEST MET.—Notwithstanding any other provision of this subsection or section 72(t), paragraph (1) and section 72(t)(1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k)(6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k)(6)(A)(iii) are met with respect to such contribution.''.

(E) Section 408 is amended by striking subsection (j).

(F)(i) Section 408 is amended by striking subsection (o).

(ii) Section 6693 is amended by striking subsection (b) and by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(G) Section 408(p) is amended by striking paragraph (8) and by redesignating paragraphs (9) and (10) as paragraphs (8) and (9), respectively.

(3)(A) Section 4973(a)(1) is amended to read as follows:

''(1) an individual retirement plan,''.

(B) Section 4973(b) is amended to read as follows:

''(b) EXCESS CONTRIBUTIONS TO SIMPLIFIED EMPLOYEE PENSIONS AND SIMPLE RETIREMENT ACCOUNTS.—For purposes of this section, in the case of simplified employee pensions or simple retirement accounts, the term 'excess contributions' means the sum of—

''(1) the excess (if any) of—

''(A) the amount contributed for the taxable year to the pension or account, over

''(B) the amount applicable to the pension or account under subsection (a)(1) or (b)(2) of section 408, and

''(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

''(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

''(B) the distributions out of the account for the taxable year to which section 408(d)(5) applies, and

''(C) the excess (if any) of the maximum amount excludable from gross income for the

taxable year under subsection (h) or (k) of section 402 over the amount contributed to the pension or account for the taxable year.

For purposes of this subsection, any contribution which is distributed from a simplified employee pension or simple retirement account in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.''.

(C) Section 4973 is amended by adding at the end the following new subsection:

''(h) EXCESS CONTRIBUTIONS TO CERTAIN INDIVIDUAL RETIREMENT PLANS.—For purposes of this section, in the case of individual retirement plans (other than retirement savings accounts, simplified employee pensions, and simple retirement accounts), the term 'excess contribution' means the sum of—

''(1) the aggregate amount contributed for the taxable year to the individual retirement plans, and

''(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

''(A) the distributions out of the plans which were included in gross income under section 408(d)(1), and

''(B) the distributions out of the plans for the taxable year to which section 408(d)(5) applies.

For purposes of this subsection, any contribution which is distributed from the plan in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.''.

(4)(A) Sections 402(c)(8)(B), 402A(c)(3)(A)(ii), 1361(c)(2)(A), 3405(e)(1)(B), and 4973(f) are each amended by striking ''Roth IRA'' each place it appears and inserting ''retirement savings account''.

(B) Section 4973(f)(1)(A) is amended by striking ''Roth IRAs'' and inserting ''retirement savings accounts''.

(C) Paragraphs (1)(B) and (2)(B) of section 4973(f) are each amended by striking ''sections 408A(c)(2) and (c)(3)'' and inserting ''section 408A(c)(1)''.

(D) Subsection (f) of section 4973 is amended in the heading by striking ''ROTH IRAS'' and inserting ''RETIREMENT SAVINGS ACCOUNTS''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

S. 547

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. EMPLOYER RETIREMENT SAVINGS ACCOUNTS.**

(a) IN GENERAL.—Subpart A of part 1 of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 401 the following new section:

**''SEC. 401A. EMPLOYER RETIREMENT SAVINGS ACCOUNTS.**

''(a) IN GENERAL.—A defined contribution plan shall not fail to meet the requirements of section 401(a) merely because the plan includes an employer retirement savings account arrangement.

''(b) EMPLOYER RETIREMENT SAVINGS ACCOUNT ARRANGEMENT.—An employer retirement savings account arrangement is any arrangement which is part of a plan which meets the requirements of section 401(a)—

''(1) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash,

''(2) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election—

''(A) may not be distributable to participants or other beneficiaries earlier than—

''(i) severance from employment, death, or disability,

''(ii) an event described in subsection (g),

''(iii) the attainment of age 59½, or

''(iv) upon hardship of the employee, and

''(B) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years,

''(3) which provides that an employee's right to the employee's accrued benefit derived from employer contributions made to the trust pursuant to the employee's election is nonforfeitable, and

''(4) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof).

''(c) APPLICATION OF NONDISCRIMINATION STANDARDS.—

''(1) CONTRIBUTION PERCENTAGE REQUIREMENT.—An arrangement shall not be treated as an employer retirement savings account arrangement for any plan year unless—

''(A) the contribution percentage for eligible highly compensated employees for the plan year does not exceed 200 percent of such percentage for all other eligible employees for the preceding plan year, or

''(B) the contribution percentage of nonhighly compensated employees for the preceding plan year exceeded 6 percent.

''(2) ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—

''(A) IN GENERAL.—An arrangement shall be treated as meeting the requirements of paragraph (1)(A) if such arrangement—

''(i) meets the contribution requirements of subparagraph (B), and

''(ii) meets the notice requirements of subparagraph (D).

''(B) CONTRIBUTION REQUIREMENT.—The requirements of this subparagraph are met if, under the arrangement, the employer is required to make contributions to a defined contribution plan on behalf of each eligible employee who is not a highly compensated employee in an amount equal to at least 3 percent of the employee's compensation. For purposes of this subparagraph, elective deferrals and employee contributions shall not be taken into account in determining the amount of contributions the employer makes to the plan.

''(C) SPECIAL RULES FOR MATCHING CONTRIBUTIONS.—

''(i) IN GENERAL.—If an employer takes matching contributions into account for purposes of subparagraph (B), the requirements of such subparagraph shall be treated as met only if the matching contributions on behalf of each employee who is not a highly compensated employee are equal to 50 percent of the elective deferrals of the employee to the extent that such elective deferrals do not exceed 6 percent of the employee's compensation.

''(ii) ALTERNATIVE PLAN DESIGNS.—If the rate of any matching contribution with respect to any rate of elective deferral is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

''(I) the rate of an employer's matching contribution does not increase as an employee's rate of elective contributions increases, and

''(II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

''(iii) RATE FOR HIGHLY COMPENSATED EMPLOYEES.—The requirements of this subparagraph are not met if, under the arrangement, the rate of matching contribution with respect to any elective deferral of a highly compensated employee at any rate of elective deferral is greater than that with respect to an employee who is not a highly compensated employee.

''(D) NOTICE REQUIREMENT.—An arrangement meets the requirements of this subparagraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

''(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

''(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

''(E) OTHER REQUIREMENTS.—

''(i) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) unless the requirements of paragraphs (2) and (3) of subsection (b) are met with respect to all employer contributions (including matching contributions) taken into account in determining whether the requirements of subparagraph (B) are met.

''(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) unless such requirements are met without regard to section 401(l), and, for purposes of section 401(l), employer contributions under subparagraph (B) shall not be taken into account.

''(F) OTHER PLANS.—An arrangement shall be treated as meeting the requirements of subparagraph (B) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

''(3) CONTRIBUTION PERCENTAGE.—For purposes of paragraph (1), the contribution percentage for an eligible employee for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

''(A) the sum of the elective deferrals, matching contributions, employee contributions, and qualified nonelective contributions paid under the plan on behalf of each such employee for such plan year, to

''(B) the employee's compensation for such plan year.

''(4) SPECIAL RULES.—For purposes of this subsection—

''(A) MULTIPLE ARRANGEMENTS.—If 2 or more plans which include employer retirement savings account arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), all such arrangements included in such plans shall be treated as 1 arrangement.

''(B) EMPLOYEES IN MORE THAN 1 ARRANGEMENT.—If any highly compensated employee is a participant under 2 or more employer retirement savings account arrangements of the employer, for purposes of determining the contribution percentage with respect to such employee, all such arrangements shall be treated as 1 arrangement.

''(C) USE OF CURRENT YEAR.—An employer may elect to apply paragraph (1) (A) or (B) by using the plan year rather than the preceding plan year. An employer may change such an election only with the consent of the Secretary.

''(D) 1ST PLAN YEAR.—In the case of the first plan year of any plan (other than a successor plan), the amount taken into account as the contribution percentage of nonhighly compensated employees for the preceding plan year shall be—

''(i) 3 percent, or

''(ii) if the employer makes an election under this clause, the contribution percentage of nonhighly compensated employees determined for such first plan year.

''(E) SPECIAL RULE FOR EARLY PARTICIPATION.—If an employer elects to apply section 410(b)(4)(B) in determining whether an employer retirement savings account arrangement meets the requirements of section 410(b)(1), the employer may, in determining whether the arrangement meets the requirements of this subsection, exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

''(5) EXCEPTIONS.—

''(A) GOVERNMENTAL PLANS.—A governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof) shall be treated as meeting the requirements of this subsection.

''(B) TAX EXEMPT PLANS.—

''(i) IN GENERAL.—A plan not described in subparagraph (A) which is maintained by an organization described in section 501(c)(3) shall be treated as meeting the requirements of this subsection for any plan year if the plan provides that all employees of such organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions pursuant to such agreement.

''(ii) EXCEPTION.—Clause (i) shall not apply to any plan if under the plan—

''(I) matching contributions may be made on behalf of any employee, or

''(II) an employee may make contributions other than elective deferrals.

''(iii) EXCLUSION.—For purposes of clause (i), there may be excluded any employee who is—

''(I) a participant in another employer retirement savings account arrangement of the organization,

''(II) a nonresident alien described in section 410(b)(3)(C), or

''(III) subject to the conditions applicable under section 410(b)(4), a student performing services described in section 3121(b)(10) or an employee who normally works less than 20 hours per week.

''(6) COORDINATION WITH SUBSECTION (a)(4).—A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of paragraph (1) are met.

''(d) OTHER REQUIREMENTS.—For purposes of this section—

''(1) BENEFITS (OTHER THAN MATCHING CONTRIBUTIONS) MUST NOT BE CONTINGENT ON ELECTION TO DEFER.—An employer retirement savings account arrangement of any employer shall not be treated as such an arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution made by reason of such an election.

''(2) COORDINATION WITH OTHER PLANS.—Any employer contribution made pursuant to an employee's election under an employer retirement savings account arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This paragraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii).

''(e) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means any employee who is eligible to benefit under the employer retirement savings account arrangement.

''(2) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term 'highly compensated employee' has the meaning given such term by section 414(q).

''(3) MATCHING CONTRIBUTION.—The term 'matching contribution' means—

''(A) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee contribution made by such employee, and

''(B) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee's elective deferral.

''(4) ELECTIVE DEFERRAL.—The term 'elective deferral' means any employer contribution described in section 402(g)(3).

''(5) QUALIFIED NONELECTIVE CONTRIBUTIONS.—The term 'qualified nonelective contribution' means any employer contribution (other than a matching contribution) with respect to which—

''(A) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

''(B) the requirements of paragraphs (2) and (3) of subsection (b) are met.

''(6) COMPENSATION.—The term 'compensation' has the meaning given such term by section 414(s).

''(f) ARRANGEMENT NOT DISQUALIFIED IF EXCESS CONTRIBUTIONS DISTRIBUTED.—

''(1) IN GENERAL.—An employer retirement savings account arrangement shall not be treated as failing to meet the requirements of subsection (c)(1)(A) for any plan year if, before the close of the following plan year—

''(A) the amount of the excess contributions for such plan year (and any income allocable to such contributions) is distributed, or

''(B) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

''(2) EXCESS CONTRIBUTIONS.—For purposes of paragraph (1), the term 'excess contributions' means, with respect to any plan year, the excess of—

''(A) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

''(B) the maximum amount of such contributions permitted under the limitations of subsection (c)(1)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the contribution percentages beginning with the highest of such percentages).

''(3) METHOD OF DISTRIBUTING EXCESS CONTRIBUTIONS.—Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions by, or on behalf of, each of such employees.

''(4) ADDITIONAL TAX UNDER SECTION 72(t) NOT TO APPLY.—No tax shall be imposed under section 72(t) on any amount required to be distributed under this subsection.

''(5) TREATMENT OF MATCHING CONTRIBUTIONS FORFEITED BY REASON OF EXCESS DEFERRAL OR CONTRIBUTION.—For purposes of subsection (b)(3), a matching contribution shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under paragraph (2) or an excess deferral under section 402(g)(2)(A).

''(6) CROSS REFERENCE.—For excise tax on certain excess contributions, see section 4979.

''(g) DISTRIBUTIONS UPON TERMINATION OF PLAN.—

''(1) IN GENERAL.—An event described in this subsection is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

''(2) DISTRIBUTIONS MUST BE LUMP SUM DISTRIBUTIONS.—

''(A) IN GENERAL.—A termination shall not be treated as described in paragraph (1) with respect to any employee unless the employee receives a lump sum distribution by reason of the termination.

''(B) LUMP-SUM DISTRIBUTION.—For purposes of this paragraph, the term 'lump-sum distribution' has the meaning given such term by section 402(e)(4)(D) (without regard to subclauses (I), (II), (III), and (IV) of clause (i) thereof). Such term includes a distribution of an annuity contract from—

''(i) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

''(ii) an annuity plan described in section 403(a).

''(h) SPECIAL RULES FOR SMALL EMPLOYERS.—

''(1) IN GENERAL.—An arrangement maintained by an eligible employer shall not fail to meet the requirements of this section merely because contributions under the arrangement on behalf of any employee are made to an individual retirement plan (as defined under section 7701(a)(37)) established on behalf of the employee.

''(2) ELIGIBLE EMPLOYER.—For purposes of paragraph (1), the term 'eligible employer' means, with respect to any year, an employer which had no more than 10 employees who received at least $5,000 of compensation from the employer for the preceding year. An eligible employer who establishes and maintains an arrangement under this subsection for 1 or more years and who fails to be an eligible employer for any subsequent year shall be treated as an eligible employer for the 2 years following the last year the employer was an eligible employer. If such failure is due to any acquisition, disposition, or similar transaction involving an eligible employer, the preceding sentence shall not apply.

''(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations permitting appropriate aggregation of plans and contributions.

''(j) TRANSITION RULES.—

''(1) DEEMED ERSAS.—Any arrangement which, as of December 31, 2005—

''(A) is part of a plan meeting the requirements of section 401(a), and

''(B) is—

''(i) a qualified cash or deferred arrangement (as defined in section 401(k)(2)), or

''(ii) subject to the requirements of section 401(m),

shall be treated as an employer retirement savings account arrangement and subject to the requirements of this title applicable to such an arrangement for plan years beginning after December 31, 2005.

''(2) ELECTABLE ERSAS.—

''(A) IN GENERAL.—If an employer makes an election under this paragraph with respect to

any applicable arrangement, such arrangement shall be treated as an employer retirement savings account arrangement and subject to the requirements of this title applicable to such an arrangement for plan years beginning after December 31, 2005.

''(B) APPLICABLE ARRANGEMENT.—For purposes of subparagraph (A), the term 'applicable arrangement' means an arrangement which, as of December 31, 2005, is—

''(i) an arrangement under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

''(ii) an eligible deferred compensation plan (within the meaning of section 457(b)) maintained by an eligible employer described in section 457(e)(1)(A),

''(iii) a simplified employee pension (within the meaning of section 408(k)) for which an election is in effect under paragraph (6) thereof, or

''(iv) a simple retirement account (within the meaning of section 408(p).''.

(b) ELECTIVE DEFERRALS.—Section 402 of such Code is amended—

(1) in subsection (e)(3), by inserting '', an employer retirement savings account arrangement (as defined in section 401A(b)),'' after ''section 401(k)(2))'' , and

(2) in subsection (g)(3)(A), by inserting '', or an employer retirement savings account arrangement (as defined in section 401A(b)),'' before ''to the extent''.

(c) TERMINATION OF CONTRIBUTIONS TO OTHER PLANS.—

(1) 401(k) PLANS.—Section 401(k) of such Code is amended by adding at the end the following new paragraph:

''(13) TERMINATION.—This subsection shall not apply to any plan year beginning after December 31, 2005.''.

(2) 403(b) ANNUITY CONTRACTS.—Section 403(b) of such Code is amended by adding at the end the following new paragraph:

''(14) TERMINATION.—No elective deferral (as defined in section 402(g)(3)) may be contributed under this subsection by an employer, and no amount may be transferred under an eligible rollover, for an annuity contract after December 31, 2006.''.

(3) GOVERNMENTAL 457 PLANS.—Section 457 of such Code is amended by adding at the end the following new subsection:

''(h) TERMINATION.—No amount may be deferred under this subsection under a plan maintained by an eligible employer described in subsection (e)(1)(A), and no amount may be transferred under an eligible rollover to an eligible deferred compensation plan maintained by such an employer, after December 31, 2006.''.

(4) SARSEPS.—Subparagraph (H) of section 408(k)(6) of such Code is amended by adding at the end the following new sentence: ''No amount may be contributed under this paragraph to a simplified employee pension by an employer, and no amount may be transferred to a simplified employee pension maintained under this paragraph under an eligible rollover, after December 31, 2006.''.

(5) SIMPLE IRAS.—Section 408(p) of such Code is amended by adding at the end the following new paragraph:

''(11) TERMINATION.—No amount may be contributed under this paragraph to a simple retirement account after December 31, 2006.''.

(d) OTHER CONFORMING CHANGES.—

(1) Section 401 of such Code is amended by striking subsection (m).

(2) Section 7701(j) of such Code (relating to tax treatment of Federal Thrift Savings Fund) is amended—

(A) in paragraph (1)(C), by striking ''section 401(k)(4)(B)'' and inserting ''section 401A(d)(1)'', and

(B) in paragraph (2), by striking ''section 401(k)'' and inserting ''section 401A''.

(3) The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, submit such technical and other conforming changes as are necessary to carry out the amendments made by this section.

(e) CLERICAL AMENDMENT.—The table of sections for subpart A of part 1 of subchapter D of chapter 1 of such Code is amended by inserting after the item relating to section 401 the following new item:

''Sec. 401A. Employer Retirement Savings Accounts.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2005.

(g) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any plan or contract amendment—

(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(C)(i), and

(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 401A of the Internal Revenue Code of 1986 by reason of such amendment.

(2) AMENDMENTS TO WHICH SECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any amendment made by this section, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2007.

(B) GOVERNMENTAL PLAN.—In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), subparagraph (A) shall be applied by substituting ''2009'' for ''2007''.

(C) CONDITIONS.—This subsection shall not apply to any amendment unless—

(i) during the period—

(I) beginning on the date the legislative or regulatory amendment described in subparagraph (A)(i) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(II) ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

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By Mr. CORZINE (for himself, Mr. OBAMA, Ms. SNOWE, Mr. BINGAMAN, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. DODD, Mr. DURBIN, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. LAUTENBERG, Mr. LEAHY, Ms. MIKULSKI, Mrs. MURRAY, Mr. SCHUMER, Mr. SMITH, and Mr. KERRY):

S. 550. A bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other diseases, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. CORZINE. Mr. President, I rise today to introduce legislation, the Microbicides Development Act of 2005. I am very pleased to be introducing this bipartisan bill along with my colleagues, Senators SNOWE, OBAMA, BINGAMAN, CANTWELL, CLINTON, DODD, DURBIN, FEINSTEIN, KENNEDY, LAUTENBERG, LEAHY, MIKULSKI, MURRAY, SCHUMER, and SMITH. I thank my colleagues for their support of this important legislation, which we believe is vital to the pursuit of combating the global HIV/AIDS crisis.

Today we are celebrating International Women's Day. Not only should we celebrate the achievements of women nationally and globally today, but we should also promise to redouble our efforts to improve the lives of women around the globe. I can't think of an issue more deserving of our attention in the United States Senate than that of the toll that HIV/AIDS is having on women and their children around the world.

Today, nearly half of the 37 million adults now living with HIV worldwide are women. The U.N.'s new Epidemic Update released in late 2004 shows that women and girls are increasingly affected by the disease in each region of the world and the epidemic continues to worsen. Women are the new face of AIDS. Approximately 7,000 women are infected with HIV everyday. The biggest rise in HIV/AIDS among women is occurring in East Asia, which has seen a 56 percent infection rate increase, followed by the region of Eastern Europe and Central Asia.

Notably, these are areas of the world that are not currently included in the President's AIDS initiative (PEPFAR). I would like to note that later this week I will be introducing legislation to make India eligible for PEPFAR assistance. It is estimated that by 2010, India could have 20 million HIV infected individuals up from five million currently and women are at the center of the rapid growth of the disease.

I would like to quote from a recent news article in USA Today, which discusses the HIV/AIDS vulnerabilities that women confront.

''In this male-dominated society, ironclad traditions surrounding marriage leave women little say over their sexual or reproductive lives. So many married men bring HIV home to their wives that married women are one of India's highest-risk groups. Nearly half of all new HIV infections occur in women, and studies indicate that 90 percent of women with HIV were virgins when they married and remained faithful to their husbands.''

This statement describes the plight of women in so many societies and countries where women simply do not have the economic or political power to insist that their husbands use condoms or abstain from having sex outside of marriage. The typical woman who gets infected with HIV has only one partner—her husband. This trend devastates families and puts children at risk.

This astounding reality bears restating: The single greatest risk factor for a woman in the developing world of

contracting the HIV virus is being married.

Women need HIV-prevention tools that they can control to safeguard their health and that of their families and communities. Unfortunately, there exists absolutely no HIV or STD prevention method that is within a woman's personal control. Condom use must be negotiated with a partner. We are all aware that for too many women, particularly low-income women in the developing world and many in our own country who rely upon a male partner for economic support, there is no power of negotiation. We know these women are at risk—yet, we expect them to protect themselves without any tools.

Today we have the opportunity to invest in groundbreaking research that can produce these tools, and ultimately, empower women. Microbicides are self-administered products that women could use to prevent transmission of STDs, including HIV/AIDS. I say ''could'', because due to insufficient research investments, no microbicides have been brought to market. This legislation would expand Federal investments for microbicide research at the National Institutes for Health (NIH), the Centers for Disease Control and Prevention (CDC), and the United States Agency for International Development (USAID).

In addition to encouraging new investments in microbicide research, the Microbicides Development Act will expedite the implementation of the NIH's five-year strategic plan for microbicide research, as well as expand coordination among federal agencies already involved in this research, including NIH, CDC, and the United States Agency on International Development (USAID).

Perhaps most importantly, the legislation calls for the establishment of a Microbicide Research and Development Branch within the National Institute of Allergy and Infectious Diseases.

The National Institutes of Health, principally through the National Institute of Allergy and Infectious Diseases (NIAID), spends the majority of Federal dollars in this area. However, microbicide research at NIH is currently conducted with no single line of administrative accountability or specific funding coordination. In addition, other Federal agencies such as CDC and USAID undertake microbicides research and development activities. Because there is no Federal coordination, however, there is the risk that inefficiencies and duplication of effort could result. Through a variety of committees Congress has requested that NIH and its Office of AIDS Research provide Congress with a ''Federal coordination plan'' for research and development in this area, but formal submission of this plan has been repeatedly delayed.

A unit dedicated to microbicide research and development at the NIH is essential to providing the appropriate staff and funding for the coordination of these activities at the NIH and across agencies.

Microbicides may not be a magic bullet, but they are essential to addressing the HIV/AIDS crisis. With leading scientists concluding that a vaccine is likely to be at least 10 years away, we need to make a strong commitment to developing complementary prevention tools such as microbicides.

Microbicides are a public health good for which the social benefits are high but economic incentives to private investment are low. Despite the potential market size, neither pharmaceutical nor major biotech companies have made large investments in the field because development is costly and the likelihood of finding an effective product is unknown. Like other public health goods, such as vaccines, public funding must fill the gap left by market failure.

The cost of developing the existing pipeline of microbicide candidate products has been estimated at $775 million over five years. This investment should generate a number of safe, effective microbicides by 2010. Currently, however, U.S. Federal funding for microbicides is only about $88.8 million annually and is spread across all areas of microbicide research, not just product development.

As for any pharmaceutical or health care product, the key to developing safe, effective, affordable and accessible microbicides is sufficient investment. If we are to realize the promise of microbicides and the lifesaving properties they may provide, then additional public funding must be made available for research and development. The Microbicide Development Act of 2005 will help us achieve this goal.

I ask unanimous consent that the text of my legislation be printed in the RECORD.

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

S. 550

*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 ''Microbicide Development Act''.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) Women and girls are the new face of HIV/AIDS, and are increasingly affected by the disease in each region of the world. Women account for nearly ½ of the 37,000,000 adults living with HIV and AIDS worldwide as of 2005. Approximately 7,000 women are newly infected with HIV each day.

(2) Because of their social and biological vulnerabilities, young women are particularly at risk. In Sub-Saharan Africa, 76 percent of the young people (between ages 15 and 24) with HIV are girls under 20.

(3) When women become infected with HIV, they can pass along the infection to their children during pregnancy, labor and delivery, or breast-feeding. The most effective way to halt mother-to-child transmission is to ensure that mothers are not infected in the first place.

(4) An increasing number of women who become infected with HIV have only 1 sexual partner, their husband. Unfortunately, marriage is not necessarily effective protection against HIV, because to protect themselves from HIV, women have to rely on their male partners to be faithful or to use condoms. Many women in the developing world are unable to insist on mutual monogamy or negotiate condom use, especially in long-term relationships.

(5) Scientists are working on a promising new prevention tool that could slow down the spread of the HIV/AIDS epidemic, microbicides. Formulated as gels, creams, or rings, microbicides inactivate, block, or otherwise interfere with the transmission of the pathogens that cause AIDS and other sexually transmitted diseases (''STD''s). Microbicides could allow a woman to protect herself from disease.

(6) Married couples need a method of HIV protection that will allow them to conceive a child and start a family. No existing HIV prevention method also allows conception. Microbicides are being developed to allow women to both conceive children and protect themselves from HIV.

(7) Households in developing countries often dissolve when a mother dies. In the hardest hit countries, the number of children who are orphaned by AIDS is increasing dramatically.

(8) Women in the United States also need HIV prevention tools like microbicides. AIDS is now the number 1 cause of death among African–American women between the ages of 25 and 34.

(9) In addition to HIV, other STDs continue to be a major health threat in the United States. The United States has the highest rates of sexually transmitted diseases of any industrialized nation. Nineteen million STD infections occur every year. It is estimated that by age 25, ½ of all sexually active people in the United States can expect to be infected with an STD.

(10) HIV and AIDS represent a threat to national security and economic well being, with direct medical costs of up to $15,500,000,000 per year. The pandemic undermines armies, foments unrest, and burdens the United States military.

(11) As the Nation's largest single provider of HIV/AIDS care, the Veterans Affairs health care system spent $359,000,000 to provided care to more than 20,000 American veterans with HIV/AIDS in fiscal year 2004.

(12) The microbicide field has achieved an extraordinary amount of scientific momentum, with several first-generation candidates now in large scale human trials around the world. At same time, new products, based upon recent advances in HIV treatment, have advanced into early safety trials.

(13) Microbicides are a classic public health good for which the social benefits are high but the economic incentive to private investment is low. Like other public health goods, such as vaccines, public funding must fill the gap. Microbicide research depends in large part on Government leadership and investment.

(14) The Federal Government needs to make a strong commitment to microbicide research and development. Three agencies—the National Institutes of Health (''NIH''), the Centers for Disease Control and Prevention (''CDC''), and the United States Agency of International Development (''USAID'')—have played important roles in the progress to date, but further strong, well-coordinated, and visible public sector leadership will be essential for the promise of microbicides to be realized.

(15) As of 2005, microbicide research at NIH is conducted under several institutes with no single line of administrative accountability, no specific funding coordination, and highly

variable levels of interest and commitment across institute leadership. Only a few NIH staff can claim microbicides as their sole focus.

(16) The President's Emergency Plan for AIDS Relief (''PEPFAR'') recognizes the urgency of developing safe and effective microbicides to prevent HIV. In addition, NIH documents state that ''the US government is firmly committed to accelerating the development of safe and effective microbicides to prevent HIV,'' recognizing that microbicides may provide ''one of the most promising preventative interventions given that could be inexpensive, readily available, and widely acceptable''. But as of 2005, NIH spends barely 2 percent of its HIV/AIDS research budget on microbicides. As more microbicide candidates are advanced into later-stage clinical trials and development costs rise correspondingly, 2005 funding levels are simply inadequate.

(17) USAID and the CDC have expanded their microbicide portfolios, but without overall Federal coordination, costly inefficiencies and unproductive duplication of effort may result. USAID sustains strong partnerships with public and private organizations working on microbicide research, importantly including clinical trials in developing countries where its experience is extensive. USAID is well positioned to facilitate the introduction of microbicides once they are available. The CDC also engages in critical microbicide research and clinical testing, and has a long history of conducting field trials in developing countries.

(18) HIV prevention options available as of 2005 are not enough. HIV prevention strategies must recognize women's needs and vulnerabilities. If women are to have a genuine opportunity to protect themselves, their best option is the rapid development of new HIV-prevention technologies like microbicides, which women can initiate and control.

## TITLE I—MICROBICIDE RESEARCH AT THE NATIONAL INSTITUTES OF HEALTH

### SEC. 101. OFFICE OF AIDS RESEARCH; PROGRAM REGARDING MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

Subpart I of part D of title XXIII of the Public Health Service Act (42 U.S.C. 300cc-40 et seq.) is amended by inserting after section 2351 the following:

### ''SEC. 2351A. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

''(a) FEDERAL STRATEGIC PLAN.—

''(1) IN GENERAL.—The Director of the Office of AIDS Research shall—

''(A) expedite the implementation of a Federal strategic plan for the conduct and support of microbicide research and development; and

''(B) annually review and, as appropriate, revise such plan, to prioritize funding and activities in terms of their scientific urgency.

''(2) COORDINATION.—In implementing, reviewing, and prioritizing elements of the plan described under paragraph (1), the Director of the Office of AIDS Research shall coordinate with—

''(A) other Federal agencies, including the Director of the Centers for Disease Control and Prevention and the Administrator of the United States Agency for International Development, involved in microbicide research;

''(B) the microbicide research community; and

''(C) health advocates.

''(b) EXPANSION AND COORDINATION OF ACTIVITIES.—The Director of the Office of AIDS Research, acting in coordination with other relevant institutes and offices, shall expand, intensify, and coordinate the activities of all appropriate institutes and components of the National Institutes of Health with respect to research and development of microbicides to prevent the transmission of the human immunodeficiency virus ('HIV') and other sexually transmitted diseases.

''(c) MICROBICIDE DEVELOPMENT UNIT.—In carrying out subsection (b), the Director of the National Institute of Allergy and Infectious Diseases shall establish within the Division of AIDS in the Institute, a clearly defined organizational unit charged with carrying out microbicide research and development. In establishing such unit, the Director shall ensure that there are a sufficient number of employees dedicated to carrying out the mission of the unit.

''(d) MICROBICIDE CLINICAL TRIALS.—In carrying out subsection (c), the Director of the National Institute of Allergy and Infectious Diseases shall assign priority to ensuring adequate funding and support for the integration of basic science and clinical research, with particular emphasis on implementation of trials leading to product licensure.

''(e) REPORTS TO CONGRESS.—

''(1) IN GENERAL.—Not later than 6 months after the date of enactment of the Microbicide Development Act, and annually thereafter, the Director of the Office of AIDS Research shall submit to the appropriate committees of Congress a report that describes the strategies being implemented by the Federal Government regarding microbicide research and development.

''(2) CONTENTS OF REPORTS.—Each report submitted under paragraph (1) shall include—

''(A) a description of activities with respect to microbicide research and development conducted and supported by the Federal Government;

''(B) a summary and analysis of the expenditures made by the Director of the Office of AIDS Research during the preceding year for activities with respect to microbicide-specific research and development, including basic research, preclinical product development, clinical trials, and process development and production;

''(C) a description and evaluation of the progress made, during the preceding year, toward the development of effective and acceptable microbicides; and

''(D) a review of scientific and programmatic obstacles to expediting the commercial availability of microbicide products.

''(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each fiscal year to carry out this section.''.

## TITLE II—MICROBICIDE RESEARCH AT THE CENTERS FOR DISEASE CONTROL AND PREVENTION

### SEC. 201. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended—

(1) by transferring section 317R so as to appear after section 317Q; and

(2) by inserting after section 317R (as so transferred) the following:

### ''SEC. 371S. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

''(a) DEVELOPMENT AND IMPLEMENTATION OF THE MICROBICIDE AGENDA SUPPORTED BY THE CENTERS FOR DISEASE CONTROL AND PREVENTION.—The Director of the Centers for Disease Control and Prevention shall fully implement such Centers' topical microbicide agenda to support microbicide research and development. Such an agenda shall include—

''(1) conducting laboratory research in preparation for, and support of, clinical microbicide trials;

''(2) conducting behavioral research in preparation for, and support of, clinical microbicide trials;

''(3) developing and characterizing domestic populations and international cohorts appropriate for Phases I, II, and III clinical trials of candidate topical microbicides;

''(4) conducting Phases I and II clinical trials to assess the safety and acceptability of candidate microbicides;

''(5) conducting Phase III clinical trials to assess the efficacy of candidate microbicides;

''(6) providing technical assistance to, and consulting with, a wide variety of domestic and international entities involved in developing and evaluating topical microbicides, including health agencies, extramural researchers, industry, health advocates, and nonprofit organizations; and

''(7) developing and evaluating the diffusion and effects of implementation strategies for use of effective topical microbicides.

''(b) PERSONNEL.—The Centers for Disease Control and Prevention shall ensure that there are sufficient numbers of dedicated employees for carrying out the microbicide agenda under subsection (a).

''(c) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Microbicide Development Act, and annually thereafter, the Director of the Centers for Disease Control and Prevention shall submit to the appropriate committees of Congress, a report on the strategies being implemented by the Centers for Disease Control and Prevention with respect to microbicide research and development. Such report shall be submitted alone or as part of the overall Federal strategic plan on microbicides compiled annually by the National Institutes of Health Office of AIDS Research as required under section 2351A.

''(2) CONTENTS OF REPORT.—Such report shall include—

''(A) a description of activities with respect to microbicides conducted or supported by the Director of the Centers for Disease Control and Prevention;

''(B) a summary and analysis of the expenditures made by such Director during the preceding year, for activities with respect to microbicide-specific research and development, including the number of employees of such Centers involved in such activities;

''(C) a description and evaluation of the progress made, during the preceding year, toward the development of effective and acceptable microbicides; and

''(D) a review of scientific and programmatic obstacles to expediting the commercial availability of microbicide products.

''(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—For the purposes of this subsection, the term 'appropriate committees of Congress' means the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each fiscal year to carry out this section.''.

**TITLE III—MICROBICIDE RESEARCH AT THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT**

**SEC. 301. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.**

Section 104A of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b–2) is amended by adding at the end the following new subsection:

''(h) MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.—

''(1) DEVELOPMENT AND IMPLEMENTATION OF THE MICROBICIDE AGENDA.—The head of the Office of HIV/AIDS of the United States Agency for International Development, in conjunction with other offices of such Agency, shall develop and implement a program to support the development of microbicides products for the prevention of the transmission of HIV and other diseases, and facilitate wide-scale availability of such products after such development. The program shall be known as the 'microbicide agenda' and shall include—

''(A) support for the discovery, development, and preclinical evaluation of topical microbicides;

''(B) support for the conduct of clinical studies of candidate microbicides to assess the safety, acceptability, and effectiveness of such microbicides in reducing the transmission of HIV and other sexually transmitted diseases;

''(C) support for behavioral and social science research relevant to microbicide development, testing, acceptability, and use;

''(D) support for preintroductory and introductory studies of safe and effective microbicides in developing countries; and

''(E) facilitation of access to microbicides by women at highest risk of contracting HIV or other sexually transmitted diseases, at the earliest possible time.

''(2) STAFFING.—The head of the Office of HIV/AIDS shall ensure that the Agency has a sufficient number of dedicated employees to carry out the microbicide agenda.

''(3) REPORTS TO CONGRESS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Microbicide Development Act, and annually thereafter, the Administrator of the Agency shall submit to the appropriate committees of Congress a report on the activities of the Administrator to carry out the microbicide agenda and on any other activities carried out by the Administrator related to microbicide research and development.

''(B) CONTENTS OF REPORT.—Each report submitted under subparagraph (A) shall include—

''(i) a description of activities with respect to microbicides conducted or supported by the Administrator;

''(ii) a summary and analysis of the expenditures made by the Administrator during the preceding year for activities with respect to microbicide-specific research and development, including the number of employees of the Agency who are involved in such activities;

''(iii) a description and evaluation of the progress made during the preceding year toward the development of effective and acceptable microbicides;

''(iv) a review of scientific and programmatic obstacles to expediting the commercial availability of microbicide products; and

''(v) a description of the activities carried out to increase the availability of microbicides approved to prevent the transmission of HIV or other sexually transmitted diseases.

''(C) CONSULTATION.—The Administrator shall consult with the Director of the Office of AIDS Research of the National Institutes of Health in preparing a report required by subparagraph (A).

''(D) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this paragraph, the term 'appropriate committees of Congress' means the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each fiscal year to carry out this subsection.''.

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By Mr. AKAKA:

S. 552. A bill to make technical corrections to the Veterans Benefits Improvement Act of 2004; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, today I introduce a bill that would provide a technical correction to the Veterans Benefits Improvements Act of 2004.

Last session, the law that allowed severely disabled members of the Armed Forces to receive specially adapted housing grants from the Department of Veterans Affairs (VA), while still on active duty, was inadvertently repealed. This was an oversight that occurred when the law was changed that authorized the Secretary of Veterans Affairs to provide specially adapted housing for veterans whose disability is the result of the loss, or loss of use, of both upper arms above the elbow.

Currently, only veterans are statutorily eligible for adapted housing grants. Congress originally intended eligibility for both disabled veterans and servicemembers, as was the case before the change in law last Session.

The correcting language in my bill would again provide the adapted housing benefit to disabled servicemembers in need of accommodations as they return to their homes. The adapted housing benefit is essential for providing an adequate standard of living for our disabled servicemembers. The benefit provides necessary modifications to servicemembers' homes to accommodate their disabilities.

I ask that we continue to make every effort to ensure that those servicemembers who have sacrificed to defend Freedom receive the benefits that they deserve. We owe it to these great men and women to pass this legislation.

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. 552

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. TECHNICAL CORRECTIONS TO VETERANS BENEFITS IMPROVEMENT ACT OF 2004.**

Section 2101 of title 38, United States Code, as amended by section 401 of the Veterans Benefits Improvement Act of 2004 (Public Law 108–454), is further amended—

(1) by redesignating subsection (c) as subsection (d);

(2) by inserting after subsection (b) a new subsection (c) consisting of the text of subsection (c) of such section 2101 as in effect immediately before the enactment of such Act, modified—

(A) by inserting after ''(c)'' the following: ''ASSISTANCE TO MEMBERS OF THE ARMED FORCES.—'';

(B) in paragraph (1)—

(i) in the first sentence, by striking ''paragraph (1), (2), or (3)'' and inserting ''subparagraph (A), (B), (C), or (D) of paragraph (2)''; and

(ii) in the second sentence, by striking ''the second sentence'' and inserting ''paragraph (3)''; and

(C) in paragraph (2)—

(i) in the first sentence, by striking ''paragraph (1)'' and inserting ''paragraph (2)''; and

(ii) in the second sentence, by striking ''paragraph (2)'' and inserting ''paragraph (3)''; and

(3) in subsection (a)(3), by striking ''subsection (c)'' in the matter preceding subparagraph (A) and inserting ''subsection (d)''.

**SEC. 2. EFFECTIVE DATE.**

The amendments made by section 1 shall take effect immediately after the enactment of the Veterans Benefits Improvement Act of 2004 (Public Law 108–454).

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By Mrs. FEINSTEIN (for herself and Mr. ALLEN):

S. 553. A bill to amend title 23, United States Code, to provide for HOV-lane exemptions for low-emission and hybrid vehicles; to the Committee on Environment and Public Works.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce a bill with Senator ALLEN that would allow hybrids to access High Occupancy Vehicle (HOV) lanes.

California and other States, such as Arizona, Colorado, and Georgia, do not want to risk losing their Federal highway dollars by acting without a waiver from the Department of Transportation to implement laws permitting hybrid vehicles to use HOV lanes.

Virginia has decided to take that risk because the benefit of having more fuel efficient cars on the roads is greater.

This bill would allow the Department of Transportation to grant such a waiver to States.

The purpose of this bill is to encourage Americans to buy and drive hybrids, which provide an innovative solution to help reduce our thirst for gasoline.

Allowing hybrids into HOV lanes is a low-cost and quick incentive to promote the use of hybrids.

Hybrid vehicles are more fuel efficient than cars powered by internal combustion engines and they emit fewer greenhouse gases that lead to global warming.

Burning less gas can also help us to gain independence from foreign sources of energy.

The cost of hybrid technology will decrease by bringing more hybrids into the market.

And, people can make smarter, more fuel efficient, less polluting choices while getting to and from work faster.

Several States, including my State of California, have acted on their own to permit hybrid vehicles to use HOV lanes.

Current Federal law, however, only grants States the flexibility to allow electric or natural gas powered vehicles to drive in the HOV lanes with a single passenger.

Right now, there are approximately 20,000 high-mileage hybrid car owners in California waiting to take advantage of a State law that went into effect on January 1, 2005. This State law, sponsored by assemblywoman Fran Pavley, allows hybrid vehicles that get 45 miles-per-gallon or better to use diamond or HOV lanes until 2008.

As California has 40 percent of the Nation's carpool lanes, high-mileage hybrid owners stand to gain a significant benefit for driving these cars.

Some critics have expressed concerns that HOV lanes will get overloaeded, but each State can stop the program if congestion becomes a problem.

Hybrids only account for a fraction of the cars sold today—43,435 hybrids out of a total of 16.7 million vehicles were sold in 2003!

If States want to act to encourage their citizens to drive more fuel efficient, less polluting vehicles, we need to give them the tools to do so.

It is my hope that Congress will pass this bill quickly so that hybrid drivers in California, Georgia, Colorado and elsewhere can take advantage of the HOV lanes.

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. 553

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. HOV-LANE EXEMPTION FOR LOW-EMISSION AND HYBRID VEHICLES**

Section 102(a)(2) of title 23, United States Code, is amended—

(1) by striking the first sentence and inserting the following:

''(A) IN GENERAL.—Notwithstanding paragraph (1), a State may permit a vehicle with fewer than 2 occupants to operate in high occupancy vehicle lanes if the vehicle is—

''(i)(I) certified as meeting the inherently low-emission vehicle evaporative emission standard under part 88 of title 40, Code of Federal Regulations (or a successor regulation) (including a vehicle produced before or during the 2004 model year that meets that standard); and

''(II) labeled in accordance with section 88.312–93(c) of title 40, Code of Federal Regulations (or a successor regulation); or

''(ii) a motor vehicle that—

''(I) draws propulsion energy from onboard sources of stored energy produced or stored by—

''(aa) an internal combustion or heat engine using combustible fuel; and

''(bb) a rechargeable energy storage system that provides at least 5 percent of the maximum available power; and

''(II) meets such other requirements or criteria as may be specified by the State.''; and

(2) in the second sentence, by striking ''Such permission'' and inserting the following:

''(B) REVOCATION.—The permission under subparagraph (A)''.

By Mr. DEWINE (for himself, Mr. KOHL, Mr. LEAHY, Mr. GRASSLEY, Mr. FEINGOLD, Ms. SNOWE, Mr. SCHUMER, Mr. DURBIN, Mr. LEVIN, Mrs. BOXER, Mr. WYDEN, Mr. CORZINE, and Mr. DAYTON):

S. 555. A bill to amend the Sherman Act to make oil-producing and exporting cartels illegal; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I rise today, along with my colleagues—Senators KOHL, LEAHY, GRASSLEY, FEINGOLD, SNOWE, SCHUMER, DURBIN, LEVIN, BOXER, WYDEN, CORZINE, and DAYTON—to introduce the No Oil Producing and Exporting Cartels Act of 2005 (NOPEC). This legislation would give the Department of Justice and Federal Trade Commission legal authority to bring an antitrust case against the Organization of Petroleum Exporting Countries (OPEC).

Every consumer in America knows that gasoline prices have reached record highs recently. Likewise, the price of home heating oil has dramatically increased. These price increases have been acutely painful to people in my home State of Ohio.

Moreover, the rise in jet fuel prices is crippling our already weak airline industry. One of the main reasons that many U.S. airlines have not been able to make a profit has been due to skyrocketing jet fuel costs. For example, in the fourth quarter of 2004, Continental Airlines' jet fuel costs were $453 million, which was a 48 percent increase compared to last year, and Delta's jet fuel costs were $385 million, which was 76 percent increase compared to last year. No wonder so many U.S. airlines are teetering on the edge of bankruptcy or are already in bankruptcy.

What is the cause of these high gas and fuel prices? There are a number of factors at play, but there is clear agreement among industry experts about the primary cause of high gas and fuel prices—and that is the increase in imported crude oil prices. Who sets crude oil prices? OPEC does. The unacceptably high price of imported crude oil is a direct result of price fixing by the OPEC nations to keep the price of oil unnaturally high.

OPEC's hunger for ill-gotten gains is astounding. It seems its appetite can never be satisfied. For example, despite the fact that oil prices recently hit the historic high of $55 a barrel, OPEC members met in December 2004 and decided to cut the output of oil by another 1 million barrels. When demand is high and supplies are cut, that means prices will increase. Nonetheless, OPEC cut production. This is an outrage.

OPEC is probably the most notorious example of an illegal cartel in the world today. It is an affront to the principle that markets should be free. Nation after nation has adopted antitrust laws that make it illegal to fix prices. In 1998, the Organization for Economic Cooperation and Development, then composed of 29 member nations, issued a formal recommendation denouncing price fixing. OPEC's continued actions, in ongoing defiance of American and international antitrust norms, should not be tolerated.

Until now, however, OPEC has effectively received a ''free pass'' from prosecution under U.S. antitrust laws. For over two decades, enforcement has been constrained by two related court opinions. In 1979, a Federal district court found that OPEC's price-setting decisions were ''governmental'' acts. As a result, they were given sovereign status and protected by the Foreign Sovereign Immunities Act. Subsequently, in 1981, a Federal court of appeals declined to consider the appeal of that antitrust case based on the so-called ''act of state'' doctrine, which holds that a court will not consider a case regarding the legality of the acts of a foreign nation.

Our bill would effectively reverse these decisions. It makes it clear that OPEC's activities are not protected by sovereign immunity and that the Federal courts should not decline to hear a case against OPEC based on the ''act of state'' doctrine. As a result, under NOPEC, the Department of Justice and the Federal Trade Commission could bring an antitrust enforcement action against OPEC's member nations. This bill would force OPEC to begin pricing in a competitive, free-market manner or face the possibility of civil or criminal antitrust prosecution.

Senator KOHL and I have introduced this bill three times before—in 2000, 2001, and 2004. We intend to keep fighting for American consumers and businesses so that they will not be fleeced by OPEC in the future.

NOPEC says to OPEC: When you want to do business with America, you must abide by our antitrust laws and the rules of the free market. And when OPEC, one day, abides by the rules of the free market, we will all see lower oil and gas prices.

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. 555

*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 ''No Oil Producing and Exporting Cartels Act of 2005'' or ''NOPEC''.

**SEC. 2. SHERMAN ACT.**

The Sherman Act (15 U.S.C. 1 et seq.) is amended by adding after section 7 the following:

**''SEC. 7A. OIL PRODUCING CARTELS.**

''(a) IN GENERAL.—It shall be illegal and a violation of this Act for any foreign state, or any instrumentality or agent of any foreign state, to act collectively or in combination with any other foreign state, any instrumentality or agent of any other foreign state, or any other person, whether by cartel or any other association or form of cooperation or joint action—

''(1) to limit the production or distribution of oil, natural gas, or any other petroleum product;

''(2) to set or maintain the price of oil, natural gas, or any petroleum product; or

''(3) to otherwise take any action in restraint of trade for oil, natural gas, or any petroleum product;

when such action, combination, or collective action has a direct, substantial, and reasonably foreseeable effect on the market, supply, price, or distribution of oil, natural gas, or other petroleum product in the United States.

''(b) SOVEREIGN IMMUNITY.—A foreign state engaged in conduct in violation of subsection (a) shall not be immune under the doctrine of sovereign immunity from the jurisdiction or judgments of the courts of the United States in any action brought to enforce this section.

''(c) INAPPLICABILITY OF ACT OF STATE DOCTRINE.—No court of the United States shall decline, based on the act of state doctrine, to make a determination on the merits in an action brought under this section.

''(d) ENFORCEMENT.—The Attorney General of the United States and the Federal Trade Commission may bring an action to enforce this section in any district court of the United States as provided under the antitrust laws.''.

**SEC. 3. SOVEREIGN IMMUNITY.**

Section 1605(a) of title 28, United States Code, is amended—

(1) in paragraph (6), by striking ''or'' after the semicolon;

(2) in paragraph (7), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(8) in which the action is brought under section 7A of the Sherman Act.''.

Mr. KOHL. Mr. President, I rise today to introduce, with Senator DEWINE and 11 co-sponsors, of the No Oil Producing and Exporting Cartels Act of 2005 (''NOPEC''). It is time for the U.S. government to fight back on the price of oil and hold OPEC accountable when it acts illegally. This bill will hold OPEC member nations to account under U.S. antitrust law when they agree to limit supply or fix price in violation of the most basic principles of free competition.

Our bill will authorize the Attorney General and Federal Trade Commission to file suit against nations or other entities that participate in a conspiracy to limit the supply, or fix the price, of oil. In addition, it will expressly specify that the doctrines of sovereign immunity and act of state do not exempt nations that participate in oil cartels from basic antitrust law. Senator DEWINE and I have introduced this bill in each of the last three Congresses. This legislation was the subject of an extensive hearing at the Antitrust Subcommittee last year, and subsequently passed the Judiciary Committee without dissent. It is now time, in this new Congress, to finally pass this legislation into law and give our nation a long needed tool to counteract this pernicious and anti-consumer conspiracy.

Throughout the last year, consumers all across the Nation have watched gas prices rise to previously unimagined levels. As crude oil prices exceeded $40, then $50 and then $55 per barrel, retail prices of gasoline over $2.00 per gallon became commonplace. While prices temporarily receded for short periods, the general trend was significantly upwards, and rising even today. We now hear predictions that the price of crude oil may soon break the $60 barrier, and oil industry analysts even say $80 per barrel is not unthinkable. And one fact has remained consistent—any move downwards in price would end as soon as OPEC decided to cut production. The price of crude oil danced to the tune set by OPEC members. Such blatantly anti-competitive conduct by the oil cartel violates the most basic principles of fair competition and free markets and should not be tolerated.

Real people suffer real consequences every day in our nation because of OPEC's actions. Rising gas prices are a silent tax that takes hard-earned money away from Americans every time they visit the gas pump. Higher oil prices drive up the cost of transportation, harming thousands of companies throughout the economy from trucking to aviation. And those costs are passed on to consumers in the form of higher prices for manufactured goods. Higher oil prices mean higher heating oil and electricity costs. Anyone who has gone through a Midwest winter can tell you about the tremendous personal costs associated with higher home heating bills.

We have all heard many explanations offered for rising energy prices. Some say that the oil companies are gouging consumers. Some blame disruptions in supply. Others point to the EPA requirement mandating use of a new and more expensive type of ''reformulated'' gas in the Midwest or other ''boutique'' fuels around the country. Some even claim that refiners and distributors have illegally fixed prices. On this issue, Senator DEWINE and I have repeatedly asked the Federal Trade Commission to investigate these allegations. As a result of our requests, the FTC has put a task force in place to find out if those allegations were true. While we continue to urge the FTC to be vigilant, the FTC has to date found no evidence of illegal domestic price fixing as a cause of higher gas prices. And we conducted our own inquiry in the Antitrust Subcommittee last year which found no basis to challenge the FTC's conclusions.

But one cause of these escalating prices is indisputable: the price fixing conspiracy of the OPEC nations. For years, this conspiracy has unfairly driven up the cost of imported crude oil to satisfy the greed of the oil exporters. We have long decried OPEC, but, sadly, no one in government has yet tried to take any action. Our bill will, for the first time, establish clearly and plainly that when a group of competing oil producers like the OPEC nations act together to restrict supply or set prices, they are violating U.S. law. The bill will not authorize private lawsuits, but it will authorize the Attorney General or FTC to file suit under the antitrust laws for redress. Our bill will also make plain that the nations of OPEC cannot hide behind the doctrines of ''Sovereign Immunity'' or ''Act of State'' to escape the reach of American justice. In so doing, our bill will overrule one twenty-year old lower court decision which incorrectly failed to recognize that the actions of OPEC member nations was commercial activity exempt from the protections of sovereign immunity.

The most fundamental principle of a free market is that competitors cannot be permitted to conspire to limit supply or fix price. There can be no free market without this foundation. And we should not permit any nation to flout this fundamental principle.

Some critics of this legislation have argued that suing OPEC will not work or that threatening suit will hurt more than help. I disagree. Our NOPEC legislation will, for the first time, enable our antitrust authorities to take legal action to combat the illegitimate price-fixing conspiracy of the oil cartel. It will, at a minimum, have a real deterrent effect on nations that seek to join forces to fix oil prices to the detriment of consumers. This legislation will be the first real weapon the U.S. government has ever had to deter OPEC from its seemingly endless cycle of price increases. There is nothing remarkable about applying U.S. antitrust law overseas. Our government has not hesitated to do so when faced with clear evidence of anti-competitive conduct that harms American consumers. A few years ago, for example, the Justice Department secured record fines totaling $725 million against German and Swiss companies engaged in a price fixing conspiracy to raise and fix the price of vitamins sold in the United States and elsewhere. Their behavior harmed consumers by raising the prices consumers paid for vitamins every day and plainly needed to be addressed. As this and other cases show, the mere fact that the conspirators are foreign nations is no basis to shield them from violating these most basic standards of fair economic behavior.

Even under current law, there is no doubt that the actions of the international oil cartel would be in gross violation of antitrust law if engaged in by private companies. If OPEC were a group of international private companies rather than foreign governments, their actions would be nothing more than an illegal price fixing scheme. But OPEC members have used the shield of ''sovereign immunity'' to escape accountability for their price-fixing. The Foreign Sovereign Immunities Act, though, already recognizes that the ''commercial'' activity of nations is not protected by sovereign immunity. And it is hard to imagine an activity that is more obviously commercial than selling oil for profit, as the OPEC nations do. Our legislation will establish that the sovereign immunity doctrine will not divest a U.S. court from jurisdiction to hear a lawsuit alleging that members of the oil cartel are violating antitrust law.

The suffering of consumers across the Nation in the last year has made me more certain than ever that this legislation is necessary. Between OPEC's repeated decisions to cut oil production and the FTC's conclusion for the last several years that there is no illegal conduct by domestic companies responsible for rising gas prices, I am convinced that we need to take action, and take action now, before the damage spreads too far.

I urge my colleagues to support our legislation so that our Nation will finally have an effective means to combat this price-fixing conspiracy of oil-rich nations.

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By Mr. McCAIN:

S. 556. A bill to direct the Secretary of the Interior and the Secretary of Agriculture to jointly conduct a study of certain land adjacent to the Walnut Canyon National Monument in the State of Arizona; to the Committee on Energy and Natural Resources.

Mr. McCAIN. Mr. President, I am pleased to be joined today by my colleague in the House of Representatives, Congressman RICK RENZI, in introducing legislation to authorize a special resources and land management study for the Walnut Canyon National Monument in Arizona. The study is intended to evaluate a range of management options for public lands adjacent to the monument to ensure adequate protection of the canyon's cultural and natural resources.

For several years, local communities adjacent to the Walnut Canyon National Monument have debated whether the land surrounding the monument would be best protected from future development under management of the U.S. Forest Service or the National Park Service. The Coconino County Board and the Flagstaff City Council have passed resolutions concluding that the preferred method to determine what is best for the land surrounding Walnut Canyon National Monument is by having a Federal study conducted. The recommendations from such a study would help to resolve the question of future management and whether expanding the monument's boundaries could compliment current public and multiple-use needs.

The legislation also would direct the Secretary of the Interior and the Secretary of Agriculture to provide recommendations for management options for maintenance of the public uses and protection of resources of the study area.

Mr. President, this legislation would provide a mechanism for determining the management options for one of Arizona's high uses scenic areas and protect the natural and cultural resources of this incredibly beautiful monument. I urge my colleagues to support its passage.

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By Mr. REID (for himself, Mr. BIDEN, Ms. MIKULSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mrs. BOXER, Mr. JOHNSON, Mr. SALAZAR, Mr. BINGAMAN, Ms. LANDRIEU, Mr. JEFFORDS, Mr. KENNEDY, Mrs. LINCOLN, Mrs. CLINTON, Mr. LIEBERMAN, and Mr. DURBIN):

S. 558. A bill to amend title 10, United States Code, to permit certain additional retired members of the Armed Forces who have a service-connected disability to receive both disability compensation from the Department of Veterans Affairs for their disability and either retired pay by reason of their years of military service or Combat-Related Special compensation and to eliminate the phase-in period under current law with respect to such concurrent receipt; to the Committee on Armed Services.

Mr. President, I rise today to again introduce a bill along with my colleagues Mr. BIDEN, Ms. MIKULSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mrs. BOXER, Mr. JOHNSON, Mr. SALAZAR, Mr. BINGAMAN, Ms. LANDRIEU, Mr. JEFFORDS, Mr. KENNEDY, Mrs. LINCOLN, Mrs. CLINTON, Mr. LIEBERMAN, and Mr. DURBIN.

Nothing is more important than keeping America safe. The key to our security is a professional, well-trained military. And in order to attract the dedicated soldiers we need, we must honor our commitment to America's veterans. Most everyone in the Senate knows about the ban on concurrent receipt . . . and our veterans certainly know about the hardship it causes.

This is the outdated and unfair policy that prevents disabled veterans from collecting both their military retirement pay and disability compensation at the same time. Under current law, a retired disabled veteran must deduct from his retirement pay, dollar for dollar, the amount of any disability compensation he receives.

In many cases, this totally wipes out the veteran's retirement pay. The end result is that the disabled military retiree loses all of the value of his 20 or more years of service to our Nation. We don't subject any other Federal retiree to this kind of offset, only our disabled military retirees. So this policy amounts to a special tax on our disabled veterans . . . men and women who have already sacrificed so much for our Nation.

When this situation was first brought to my attention a few years ago by a veteran from Nevada, I could hardly believe it. It seemed too outrageous to be true. And to this day, I can't understand why it has taken so long to correct the problem. Because to me, it just goes without saying that we should treat our disabled veteran with honor . . . with dignity . . . and with respect.

The members of this Senate share my feelings. For the past years, the Senate has passed measures to end the ban on concurrent receipt. I want to especially thank Senators LEVIN and WARNER for their support of this issue, year after year. Thanks to their strong leadership we have made some progress each year.

In 2003 we passed a measure to allow concurrent receipt for those who are 100 percent disabled. Last year we made that change immediate, instead of being phased in over 10 years. This will benefit as many as 50,000 severely disabled veterans. But there are still hundreds of thousands of disabled veterans who need our help.

We would not dream of leaving a soldier behind on the battlefield. And we should not walk away from our disabled veterans now, when they need our help. Frankly, I can't understand why the administration is even debating whether this policy should be changed for veterans whose disabilities make them unemployable. The fact is, many veterans with a disability rated at less than 100 percent cannot get or hold a job because of their disabilities.

And a 10-year phase-in simply isn't fair for these veterans, because many of them will never live to see the benefits. They deserve immediate help. We have to take care of these veterans—now. If the administration doesn't want to do it, then Congress will be forced to legislate the necessary changes. Taking care of veterans is the right thing to do because we must never forget the sacrifices they made to protect our freedom.

Taking care of our veterans is also a key to winning the war on terror. In our all-volunteer military, it is critical to attract and retain professional, dedicated soldiers.

These people serve because they love America. They don't expect to get rich in the military but they do expect that we will honor our commitments to provide health care and other benefits for them and their families.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 558

*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 ''Retired Pay Restoration Act of 2005''.

**SEC. 2. FINDINGS AND SENSE OF CONGRESS.**

(a) FINDINGS.—Congress finds the following:

(1) For more than 100 years before 1999, all disabled military retirees were required to fund their own veterans' disability compensation by forfeiting one dollar of earned retired pay for each dollar received in veterans' disability compensation.

(2) Since 1999, Congress has enacted legislation every year to progressively expand eligibility criteria for relief of the retired pay disability offset and further reduce the burden of financial sacrifice on disabled military retirees.

(3) Absent adequate funding to eliminate the sacrifice for all disabled retirees, Congress has given initial priority to easing financial inequities for the most severely disabled and for combat-disabled retirees.

(4) In the interest of maximizing eligibility within cost constraints, Congress effectively has authorized full concurrent receipt for all

qualifying retirees with 100-percent disability ratings and all with combat-related disability ratings, while phasing out the disability offset to retired pay over 10 years for retired members with noncombat-related, service-connected disability ratings of 50 percent to 90 percent.

(5) In pursuing these good-faith efforts, Congress acknowledges the regrettable necessity of creating new thresholds of eligibility that understandably are disappointing to disabled retirees who fall short of meeting those new thresholds.

(6) Congress is not content with the status quo.

(b) SENSE OF CONGRESS.—It is the sense of Congress that military retired pay earned by service and sacrifice in defending the Nation should not be reduced because a military retiree is also eligible for veterans' disability compensation awarded for service-connected disability.

**SEC. 3. ELIGIBILITY FOR PAYMENT OF BOTH RETIRED PAY AND VETERANS' DISABILITY COMPENSATION FOR CERTAIN ADDITIONAL MILITARY RETIREES WITH COMPENSABLE SERVICE-CONNECTED DISABILITIES.**

(a) EXTENSION OF CONCURRENT RECEIPT AUTHORITY TO RETIREES WITH SERVICE-CONNECTED DISABILITIES RATED LESS THAN 50 PERCENT.—Section 1414 of title 10, United States Code, is amended by striking paragraph (2) of subsection (a).

(b) REPEAL OF PHASE-IN OF CONCURRENT RECEIPT OF RETIRED PAY AND VETERANS' DISABILITY COMPENSATION.—Such section is further amended—

(1) in subsection (a), by striking the final sentence of paragraph (1);

(2) by striking subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively; and

(3) in subsection (d) (as so redesignated), by striking subparagraph (4).

(c) CLERICAL AMENDMENTS.—

(1) The heading for section 1414 of such title is amended to read as follows:

**"§ 1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: concurrent payment of retired pay and disability compensation".**

(2) The item relating to such section in the table of sections at the beginning of chapter 71 of such title is amended to read as follows:

"1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: concurrent payment of retired pay and disability compensation.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as of January 1, 2006, and shall apply to payments for months beginning on or after that date.

**SEC. 4. COORDINATION OF SERVICE ELIGIBILITY FOR COMBAT-RELATED SPECIAL COMPENSATION AND CONCURRENT RECEIPT.**

(a) ELIGIBILITY FOR TERA RETIREES.—Subsection (c) of section 1413a of title 10, United States Code, is amended by striking "entitled to retired pay who—" and all that follows and inserting "who—

"(1) is entitled to retired pay, other than a member retired under chapter 61 of this title with less than 20 years of service creditable under section 1405 of this title and less than 20 years of service computed under section 12732 of this title; and

"(2) has a combat-related disability".

(b) AMENDMENTS TO STANDARDIZE SIMILAR PROVISIONS.—

(1) CLERICAL AMENDMENT.—The heading for paragraph (3) of section 1413a(b) of such title is amended by striking "RULES" and inserting "RULE".

(2) SPECIFICATION OF QUALIFIED RETIREES FOR CONCURRENT RECEIPT PURPOSES.—Subsection (a) of section 1414 of such title, as amended by section 2(a), is amended—

(A) by striking "a member or" and all that follows through "retiree')" and inserting "an individual who is a qualified retiree for any month";

(B) by inserting "retired pay and veterans' disability compensation" after "both"; and

(C) by adding at the end the following new paragraph:

"(2) QUALIFIED RETIREES.—For purposes of this section, a qualified retiree, with respect to any month, is a member or former member of the uniformed services who—

"(A) is entitled to retired pay, other than in the case of a member retired under chapter 61 of this title with less than 20 years of service creditable under section 1405 of this title and less than 20 years of service computed under section 12732 of this title; and

"(B) is also entitled for that month to veterans' disability compensation.".

(3) STANDARDIZATION WITH CRSC RULE FOR CHAPTER 61 RETIREES.—Subsection (b) of section 1414 of such title is amended—

(A) by striking "SPECIAL RULES" in the subsection heading and all that follows through "is subject to" in paragraph (1) and inserting "SPECIAL RULE FOR CHAPTER 61 DISABILITY RETIREES.—In the case of a qualified retiree who is retired under chapter 61 of this title, the retired pay of the member is subject to"; and

(B) by striking paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as of January 1, 2006, and shall apply to payments for months beginning on or after that date.

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By Mr. BIDEN (for himself and Mr. LUGAR):

S. 559. A bill to make the protection of vulnerable populations, especially women and children, who are affected by a humanitarian emergency a priority of the United States Government, and for other purposes; to the Committee on Foreign Relations.

Mr. BIDEN. Mr. President, as we stand here today women and children are suffering the ravages and privations of war and natural disasters. They are suffering food shortages and lack the most basic necessities in so many nations around the world. Five million people have been affected by the tsunami. Of that 5 million, 1.5 million are children, many alone and parentless, vulnerable to human trafficking, forced recruitment into military service or worse.

We can help. We can do our share by making sure U.S. programs do their share.

Today, I am introducing—along with Senator LUGAR—the Protection of Vulnerable Populations During Humanitarian Emergencies Act of 2005, to make vulnerable people, especially women and children, an absolute priority of our foreign assistance programs. As a Nation, as a people, we probably should do more, but we certainly can do no less than to ensure the international community has a system in place to prevent the exploitation of so many lost, vulnerable, suffering women and children who are struggling to survive the most God-awful conditions imaginable.

Over the past fifty years the nature of war has changed dramatically. In today's world, 90 percent of the casualties in any war are civilians, most of them women and children. Since 1990, more than 2 million children have been killed, and 6 million maimed or injured as a result of a war somewhere in this world.

It is extraordinary to think that, in what we believe is the most sophisticated, technologically advanced period in world history, rape has become a routine weapon of war used at will by bands of marauding military forces—some of them young boys—everywhere from Burma to Bosnia, and from Sierra Leone to Sudan.

Forced displacement of civilians, rather than being one of the unfortunate results of war is now a deliberate tactic of war.

Look at Darfur in the last 18 months.

Civilians have been targeted by Khartoum in one of the most horrific genocides we have seen in recent years. Homes have been bombed, and villages attacked. Government sponsored militia are destroying crops and have fouled the water supply. They're burning homes, leaving mothers no choice but to flee for their lives and their children's lives.

Civilians forced to flee during war find their way to camps, but instead of relative safety what do they find? They find more suffering. The camps become virtual prisons. Women and girls are beaten and raped if they venture outside the camps for firewood.

When I recently read a report by a United Nations investigatory team which states that a number of U.N. peacekeepers—U.N. peacekeepers, mind you—deployed to protect civilians from ethnic violence in the eastern Democratic Republic of Congo were sexually exploiting girls as young as 13 years old, it reinforced my belief that we cannot stand by any longer. Something must be done and this bill only begins to do it. Let me read you what that report said:

> Interviews with Congolese women and girls confirmed that sexual contact with peacekeepers occurred with regularity, usually in exchange for food or small sums of money . . ."
>
> . . . "Many of the contacts involved girls under the age of 18."

What's more horrifying to me: the investigators found that the abuse was going on while they were there, on the ground, conducting the investigation. These incidents as well as allegations of sexual exploitation by camp residents and humanitarian workers in refugee camps in West Africa and Nepal in 2002 are incredible, real life examples of the sad fact that women and children remain vulnerable even in the very places they flee for safety.

This bill seeks to do something about it.

It enhances the U.S. government's ability to see that women and children are protected before, during, and after a complex humanitarian emergency. It directs the Secretary of State to designate a special coordinator for protection issues who will be charged with

making sure our embassies and consular posts are made aware of the warning signs that an emergency which may put the lives and safety of women and children at risk is imminent.

It directs the coordinator to compile a watch list of such countries and regions so that the Agency for International Development can plan to meet potential need. It prohibits U.S. funding for relief agencies that do not sign a code of conduct that outlaws improper exploitative relationships between aid workers and recipients.

It expresses the Sense of Congress that the U.N. Department of Peacekeeping Operations should improve its mechanism to prevent and respond to allegations of sexual exploitation and abuse by peacekeepers.

It establishes a fellowship with the AID for someone with expertise and skills in preventing and responding to violence and exploitation of those made vulnerable by war.

It calls upon the United States Executive Director of the International Bank of Reconstruction and Development to try to make sure World Bank demobilization, disarmament, and reintegration programs extend the same benefits that ex-combatants receive to women and children who were associated with them.

As it now stands, women and children who were used as cooks and porters and so called ''wives,'' a euphemism for women who were kidnaped to serve as sexual slaves, may well not be given a single thing through these programs—nothing with which to rebuild their lives despite the fact that they were not there by choice. Yet the very people who forced them into such conditions receive assistance with no qualms or reservations.

Finally, it amends the Foreign Assistance Act to authorize programs and activities specifically aimed at making people—especially women and children—who are affected by humanitarian emergencies safer from further exploitation and abuse.

This bill is by no means a panacea, but it is a decent beginning. It is the least we can do to mitigate the extraordinary violence against women and children in times of war and natural disasters the results of which we see all too often in a world that seems to have gone mad.

To do nothing in the face of it would be sinful, inhumane, and wrong.

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. 559

*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 ''Protection of Vulnerable Populations During Humanitarian Emergencies Act of 2005''.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Definitions.
Sec. 4. Findings.

TITLE I—PROGRAM AND POLICY COORDINATION

Sec. 101. Requirement to develop integrated strategy.
Sec. 102. Designation of coordinator.

TITLE II—PREVENTION AND PREPAREDNESS

Sec. 201. Reporting and monitoring systems.
Sec. 202. Protection training and expertise.

TITLE III—PROTECTION OF REFUGEES AND INTERNALLY DISPLACED PERSONS

Sec. 301. Codes of conduct.
Sec. 302. Health services for refugees and displaced persons.
Sec. 303. Economic self-sufficiency of vulnerable populations affected by a humanitarian emergency.
Sec. 304. International military education and training.
Sec. 305. Sense of Congress regarding actions of United Nations peacekepers.

TITLE IV—PROTECTION OF VULNERABLE POPULATIONS AFFECTED BY A HUMANITARIAN EMERGENCY

Sec. 401. Report regarding programs to protect vulnerable populations.
Sec. 402. Protection assistance.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) AGENCY.—The term ''Agency'' means the United States Agency for International Development.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(3) CHILDREN.—The term ''children'' means persons under the age of 18 years.

(4) COORDINATOR.—The term ''coordinator'' means the individual designated by the Secretary under section 102(a).

(5) DEPARTMENT.—The term ''Department'' means the Department of State.

(6) EXPLOITATION OF CHILDREN.—The term ''exploitation of children'' includes—

(A) adult sexual activity with children;

(B) kidnapping or forcibly separating children from their families;

(C) subjecting children to forced child labor;

(D) forcing children to commit or witness acts of violence, including compulsory recruitment into armed forces or as combatants; and

(E) withholding or obstructing access of children to food, shelter, medicine, and basic human services.

(7) HIV.—The term ''HIV'' means the human immunodeficiency virus, the virus that causes the acquired immune deficiency syndrome (AIDS).

(8) HUMANITARIAN EMERGENCY.—The term ''humanitarian emergency'' means a situation in which, due to a natural or manmade disaster, civilians, including refugees and internally displaced persons, require basic humanitarian assistance.

(9) INTER-AGENCY STANDING COMMITTEE.—The term ''Inter-Agency Standing Committee'' means the Inter-Agency Standing Committee established in response to United Nations General Assembly Resolution 46/182 of December 19, 1991.

(10) PROTECTION.—The term ''protection'' means all appropriate measures to provide the physical and psychological security of, provide equal access to basic services for, and safeguard the legal and human rights of, individuals.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of State.

(12) SEX TRAFFICKING.—The term ''sex trafficking'' has the meaning given the term in section 103 of Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).

(13) SEXUAL EXPLOITATION AND ABUSE.—The term ''sexual exploitation and abuse'' means causing harm to a person through—

(A) rape;

(B) sexual assault or torture;

(C) sex trafficking and trafficking in persons;

(D) demands for sex in exchange for employment, goods, services, or protection; and

(E) other forms of sexual violence.

(14) TRAFFICKING IN PERSONS.—The term ''trafficking in persons'' has the meaning given the term ''severe forms of trafficking in persons'' in section 103 of Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).

(15) VULNERABLE POPULATIONS.—The term ''vulnerable populations'' means those people, such as women, children, the disabled, and the elderly, who by virtue of their status are at a disadvantage in obtaining or accessing goods and services.

**SEC. 4. FINDINGS.**

Congress makes the following findings:

(1) The nature of war has changed dramatically in recent decades, putting civilians, especially women and children, at greater risk of death, disease, displacement, and exploitation.

(2) In the last decade alone, more than 2,000,000 children have been killed during wars, while more than 4,000,000 have survived physical mutilation, and more than 1,000,000 have been orphaned or separated from their families as a result of war.

(3) The use of rape, particularly against women and girls, is an increasingly common tactic in modern war.

(4) Civilians, particularly women and children, account for the vast majority of those adversely affected by humanitarian emergencies, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements for murder, abduction, forced military conscription, involuntary servitude, displacement, sexual abuse and slavery, mutilation, and loss of freedom.

(5) Large-scale natural disasters, such as the tsunami that struck South East Asia, South Asia, and East Africa on December 26, 2004, and claimed over 200,000 lives, are particularly threatening to children, who are often orphaned or separated from their families.

(6) Traditionally, the response to such humanitarian emergencies has focused on providing food, medical care, and shelter needs, and has placed less emphasis on the safety and security of those affected by a humanitarian emergency.

(7) Refugee women and girls face particular threats because of power inequities, including being forced to exchange sex for food and humanitarian supplies, and being at increased risk of rape and sexual exploitation and abuse due to poor security in refugee camps.

(8) In some circumstances, humanitarian agencies have failed to make individuals affected by a humanitarian emergency, especially women and children, aware of their rights to protection and assistance, to give them access to effective channels of redress, and to make humanitarian workers aware of their duty to respect these rights and provide adequate assistance.

(9) Refugee and displaced women face heightened risks of developing complications

during pregnancy, suffering a miscarriage, dying, being injured during childbirth, becoming infected with HIV or another sexually transmitted infection, or suffering from posttraumatic stress disorder.

(10) Despite the heightened risks for women during a humanitarian emergency, women's needs for specialized health services have often been overlooked by donors and relief organizations, which are focused on providing food, water, and shelter.

(11) There is a substantial need for the protection of civilians, especially women and children, to be given a high priority during all humanitarian emergencies.

## TITLE I—PROGRAM AND POLICY COORDINATION

### SEC. 101. REQUIREMENT TO DEVELOP COMPREHENSIVE STRATEGY.

(a) IN GENERAL.—The Secretary shall, in consultation with the Administrator of the United States Agency for International Development, develop a comprehensive strategy for the protection of vulnerable populations, especially women and children, who are affected by a humanitarian emergency. The strategy shall include—

(1) measures to address the specific protection needs of women and children;

(2) training for personnel to respond to the specific needs of such vulnerable populations; and

(3) measures taken to comply with section 301.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the appropriate congressional committees a report setting forth the strategy described in subsection (a).

### SEC. 102. DESIGNATION OF COORDINATOR.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall designate an individual within the Department or the Agency as the coordinator to be responsible for the oversight and coordination of efforts by the Department and the Agency to provide protection for vulnerable populations, especially women and children, affected by a humanitarian emergency.

(b) CONSULTATION REQUIREMENT.—The Secretary shall consult with the Administrator of the United States Agency for International Development in making a designation under subsection (a).

(c) NOTIFICATION.—Not later than 5 days after designating an official as a coordinator under subsection (a), the Secretary shall inform the appropriate congressional committees of such designation.

## TITLE II—PREVENTION AND PREPAREDNESS

### SEC. 201. REPORTING AND MONITORING SYSTEMS.

(a) DUTIES OF COORDINATOR.—The coordinator shall—

(1) develop and maintain a database of historical information about occurrences of sexual exploitation and abuse, and other exploitation, of children during a humanitarian emergency;

(2) establish a reporting and monitoring system for United States diplomatic missions to collect and submit to the coordinator information that indicates that vulnerable populations, especially women and children, are being targeted for or are at substantial risk of violence or exploitation in humanitarian emergencies;

(3) assist United States diplomatic missions in developing responses to situations where there is a substantial risk of sexual exploitation and abuse or exploitation of children that may occur during a humanitarian emergency; and

(4) develop mechanisms for the receipt and distribution of reports to and from the public and relevant nongovernmental and international organizations of evidence of sexual exploitation and abuse and exploitation of children during a humanitarian emergency.

(b) CONSULTATION.—In carrying out duties under paragraphs (1) and (2) of subsection (a), the Coordinator shall consult with inter-governmental organizations and nongovernmental organizations.

### SEC. 202. PROTECTION TRAINING AND EXPERTISE.

(a) FELLOWSHIP PROGRAM.—The Administrator of the United States Agency for International Development is authorized to establish a fellowship program at the Agency to increase the expertise of the personnel of the Agency in developing programs and policies to carry out activities related to the protection of vulnerable populations, especially women and children, affected by a humanitarian emergency.

(b) TERM OF FELLOWSHIP.—An individual may participate in a fellowship under this section for a term of not more than 3 years.

(c) NUMBER OF FELLOWS.—The Administrator is authorized to employ up to 10 fellows at any one time under this program.

(d) QUALIFICATION.—An individual is qualified to participate in a fellowship under this section if such individual has the specific expertise required—

(1) to develop and implement policies and programs related to the protection of vulnerable populations, especially women and children; and

(2) to promote the exchange of knowledge and experience between the Agency and entities that assist the Agency in carrying out assistance programs.

## TITLE III—PROTECTION OF REFUGEES AND INTERNALLY DISPLACED PERSONS

### SEC. 301. CODES OF CONDUCT.

None of the funds made available by the Department or Agency to provide assistance under section 491 of the Foreign Assistance Act of 1961 (22 U.S.C. 2292) or overseas assistance under section 2 of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) may be provided to a primary grantee or contractor for the purpose of providing assistance to refugees or internally displaced persons unless such grantee or contractor has adopted a code of conduct that is consistent with the 6 core principles recommended by the Inter-Agency Standing Committee. To the extent practicable, a grantee or contractor that has adopted such a code of conduct shall ensure that subgrantees and subcontractors of such grantee or contractor have adopted, or agree to act in accordance with, such a code of conduct.

### SEC. 302. HEALTH SERVICES FOR REFUGEES AND DISPLACED PERSONS.

(a) PROVISION OF HEALTH SERVICES TO VULNERABLE POPULATIONS AFFECTED BY HUMANITARIAN EMERGENCIES.—The coordinator shall seek to ensure that organizations funded by the Department and the Agency for the purpose of responding to a humanitarian emergency coordinate and implement activities needed to respond to the health needs of vulnerable populations, especially women and children, as soon as practicable and not later than 30 days after the onset of a humanitarian emergency.

(b) ACTIVITIES DEFINED.—The activities referred to in subsection (a) include activities to—

(1) prevent and manage the consequences of sexual violence;

(2) reduce transmission of HIV;

(3) provide obstetric care; and

(4) develop a plan to integrate women's health services into the primary health care services provided during a humanitarian emergency.

### SEC. 303. ECONOMIC SELF-SUFFICIENCY OF VULNERABLE POPULATIONS AFFECTED BY A HUMANITARIAN EMERGENCY.

(a) AMENDMENTS TO MICROENTERPRISE ACT OF 2000.—Section 102 of the Microenterprise for Self-Reliance Act of 2000 (22 U.S.C. 2151f note) is amended—

(1) in paragraph (4)—

(A) by redesignating subparagraphs (B), (C), and (D) and subparagraphs (C), (D), and (E), respectively; and

(B) by inserting after subparagraph (A) the following:

''(B) Women displaced by armed conflict are particularly at risk, lacking access to traditional livelihoods and means for generating income.''; and

(2) in paragraph (13)—

(A) by redesignating subparagraph (B) as subparagraph (C); and

(B) by inserting after subparagraph (A) the following:

''(B) Particular efforts should be made to expand the availability of microcredit programs to internally displaced persons, who historically have not had access to such programs.''.

(b) AMENDMENT TO THE FOREIGN ASSISTANCE ACT.—Section 256(b)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2212(b)(3)) is amended by inserting after ''clients'' the following: '', including women microentrepeneurs,''.

### SEC. 304. INTERNATIONAL MILITARY EDUCATION AND TRAINING.

Section 541 of the Foreign Assistance Act of 1961 (22 U.S.C. 2347) is amended—

(1) by striking ''or (iv)'' and inserting ''(iv)''; and

(2) by striking ''rights.'' and inserting ''rights, or (v) improve the protection of civilians, especially women and children, including those who are refugees or displaced persons.''.

### SEC. 305. SENSE OF CONGRESS REGARDING ACTIONS OF UNITED NATIONS PEACEKEEPERS.

It is the sense of Congress that—

(1) the Secretary-General of the United Nations should strengthen the existing ability of the United Nations Department of Peacekeeping Operations to protect civilians, especially women and children, from sexual exploitation and abuse by personnel in peace operation missions by—

(A) directing the Department of Peacekeeping Operations to identify nongovernmental organizations and local community officials to receive and communicate to senior level mission officials credible reports from civilians of sexual exploitation and abuse;

(B) ensuring that there is a mechanism in place for all credible allegations of sexual exploitation and abuse to be brought to the attention of senior level mission officials in an expedited fashion;

(C) developing missions based rapid response teams to investigate allegations of sexual exploitation and abuse;

(D) improving informational programs for United Nations personnel on their responsibility not to engage in acts of sexual exploitation and abuse and the sanctions for such actions;

(E) identifying troop contributing countries that refuse to investigate allegations of sexual exploitation and abuse by nationals serving in peacekeeping missions;

(F) permanently excluding individuals found to have engaged in sexual abuse or exploitation, as well as troop contingent commanders and civilian managerial personnel complicit in such behavior, from participating in future United Nations peacekeeping missions; and

(G) demanding that troop contributing countries—

(i) thoroughly investigate cases in which their nationals have been alleged to have engaged in sexual abuse or exploitation which on United Nations peacekeeping missions; and

(ii) punish those found guilty of such misconduct;

(2) troop contributing states should ensure that their soldiers are properly trained on United Nations guidelines regarding proper conduct towards civilians, in particular those guidelines that address gender-based violence, before participating in United Nations peace operation missions;

(3) the United Nations should suspend payment of peacekeeping funds to countries when there is credible evidence of sexual exploitation and abuse by troops of such countries that are participating in peacekeeping operations, and the governments of such countries are not investigating or punishing such conduct; and

(4) the Secretary should consider a suspension of United States military assistance to countries that do not—

(A) investigate allegations of sexual exploitation and abuse by troops participating in United Nations peacekeeping operations; or

(B) hold perpetrators of such abuse and exploitation accountable.

**TITLE IV—PROTECTION OF VULNERABLE POPULATIONS AFFECTED BY A HUMANITARIAN EMERGENCY**

**SEC. 401. ACTIONS TO SUPPORT PROTECTION.**

(a) PROGRAMS OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT.—The United States Executive Director of the International Bank for Reconstruction and Development should take steps to ensure that disarmament, demobilization, and reintegration programs developed and funded by the International Bank for Reconstruction and Development provide benefits to former combatants that are comparable to the benefits provided by such programs to other individuals.

(b) REPORT REGARDING PROGRAMS TO ASSIST CIVILIAN POLICE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report to the appropriate congressional committees on all current programs being conducted by the Department or the Agency to assist foreign countries with the enforcement of the laws of such countries that are designed to protect women and children and improve accountability for sexual exploitation and abuse.

**SEC. 402. PROTECTION ASSISTANCE.**

Chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended by adding at the end the following new section:

**"SEC. 135. ASSISTANCE FOR THE PROTECTION OF VULNERABLE POPULATIONS DURING HUMANITARIAN EMERGENCIES.**

''(a) AUTHORITY.—Notwithstanding any other provision of law, and subject to the limitations of subsection (b), the President is authorized to provide assistance for programs, projects, and activities to promote the security of, provide equal access to basic services for, and safeguard the legal and human rights of civilians, especially women and children, who are affected by a humanitarian emergency. Such assistance shall include programs—

''(1) to build the capacity of nongovernmental organizations to address the special protection needs of vulnerable populations, especially women and children, affected by a humanitarian emergency;

''(2) to support local and international nongovernmental initiatives to prevent, detect, and report exploitation of children and sexual exploitation and abuse, including through the provision of training humanitarian protection monitors for refugees and internally displaced persons;

''(3) to conduct protection and security assessments for refugees and internally displaced persons in camps or in communities for the purpose of improving the design and security of camps for refugees and internally displaced persons, with special emphasis on the security of women and children;

''(4) to provide, when practicable, education during a humanitarian emergency, including structured activities that create safe spaces for children, in particular girls;

''(5) to reintegrate and rehabilitate former combatants and survivors of a humanitarian emergency, including through education, psychosocial assistance and trauma counseling, family and community reinsertion, medical assistance, and strengthening community systems to support sustained reintegration;

''(6) to establish registries and clearinghouses to trace relatives and begin family reunification, with a specific focus on helping children find their families;

''(7) to provide interim care and placement for separated children and orphans, including monitoring and followup services;

''(8) to provide legal services for survivors of sexual exploitation, abuse, or torture, including the collection of evidence for war crimes tribunals and advocacy for legal reform; and

''(9) to provide to local law enforcement personnel working in areas affected by a humanitarian emergency training in human rights law, particularly as it relates to the protection of women and children.

''(b) AVAILABILITY OF ASSISTANCE.—Amounts made available to carry out this part and chapter 4 of part II may be made available to carry out this section.''.

Mr. LUGAR. Mr. President, I rise to comment on International Women's Day and to join Senator BIDEN in introducing the Protection of Vulnerable Populations During Humanitarian Emergencies Act of 2005.

Today is International Women's Day, a day on which we celebrate the progress of women and rededicate ourselves to overcoming the inequities facing women around the globe. In many places in the world, discrimination continues to deny women and girls full political and economic equality. The lives and health of women and girls continue to be endangered by violence that is directed at them simply because they are female. In recognition of these issues, I co-sponsored a Resolution with Senators BIDEN and CLINTON commemorating International Women's Day and reaffirming the Senate's commitment to improving the status of women worldwide.

In addition, I am co-sponsoring with Senator BIDEN the Protection of Vulnerable Populations During Humanitarian Emergencies Act of 2005, which the Committee on Foreign Relations supported as an amendment to our Foreign Affairs Authorization Act for fiscal years 2006 and 2007. During humanitarian emergencies, women and children become more vulnerable to a range of abuses including sexual exploitation, trafficking and gender-based violence. Our bill seeks to ensure that U.S. foreign assistance programs are a force for protecting women, children, and other vulnerable populations in the wake of military conflict and natural disasters.

The recent tsunami tragedy in the Indian Ocean region has highlighted this important issue. Tens of thousands of children have lost family members and friends and are coping with unspeakable trauma. Nearly 35,000 children have been orphaned, and many more have been separated from their families. These children face the imminent threats of hunger, disease, and diarrhea. Beyond these dangers, children are vulnerable to being trafficked for sexual exploitation, forced labor, or conscription. Without their families, the children orphaned by the tsunami lack protection from predators who would profit from their tragedy.

During many of the humanitarian crises that we have witnessed over the last decade, including Rwanda, Bosnia, and Sudan, we have learned that women and children are uniquely vulnerable to sexual violence and exploitation. Over the course of the past year, the world has heard accounts of rape at the camps in Darfur in Western Sudan. Our bill aims to improve the ability of the United States to protect women and children, like those in the tsunami-affected region and in Darfur, from the additional dangers they face during a humanitarian emergency. Our bill calls for a coordinator for protection issues and a strategy to improve our ability to protect and respond to the needs of women and children in such crises. Our bill authorizes funding for the specific health care needs of women during an emergency, the establishment of registries and clearinghouses to trace relatives and help children find their families, and legal services for survivors of sexual exploitation and abuse. In addition, the bill requires that any organization receiving U.S. funds to assist in a humanitarian emergency have in place a code of conduct forbidding its employees from sexually abusing the victims of the crisis. Finally, our bill urges the United Nations to strengthen its policies concerning sexual abuse and exploitation by UN personnel involved in UN peacekeeping operations. I am hopeful that Senators will join me in backing this legislation.

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By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 560. A bill to enhance disclosure of automobile safety information; to the Committee on Commerce, Science, and Transportation.

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By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 561. A bill to improve child safety in motor vehicles; to the Committee on Commerce, Science, and Transportation.

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By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 562. A bill to amend title 23, United States Code, to improve the highway safety improvement program and provide for a proportional obligation of amounts made available for the

highway safety improvement program; to the Committee on Environment and Public Works.

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By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 563. A bill to improve driver licensing and education, and for other purposes; to the Committee on Commerce, Science, and Transportation.

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By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 564. A bill to improve traffic safety by discouraging the use of traffic signal preemption transmitters; to the Committee on the Judiciary.

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By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 565. A bill to direct the National Highway Traffic Safety Administration to establish and carry out traffic safety law enforcement and compliance campaigns, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. DEWINE. Mr. President, the number one killer of those between the ages of 4 and 34 in this country today is auto fatalities. If you look at those between the ages of 16 and 25, the figures are even more exaggerated. We all know that in this country over 42,000 Americans lose their lives every year in auto accidents. That figure stays fairly constant. The last year we have figures for is 2003, and in that year, 42,643 of our fellow citizens lost their lives.

In fact, in the next 12 minutes, to be precise, at least one person will be killed in an automobile accident in this country, while nearly six people will be injured in just the next 60 seconds.

This is a tragedy that we as a society are much too willing to tolerate. If a foreign enemy were doing this to us, we would not tolerate it. We would be up in arms. Someone said it is the equivalent of a 747 airplane going down every two days in this country. If that were happening, of course, it would be on CNN; we would be demanding an explanation. Yet, these auto fatalities that occur, hour-by-hour, day-by-day, just go on, and for some reason, we have become immune to it, hardened to it. They just continue.

I come to the Floor today to discuss five bills—five bills that my staff and I have been working on for a few years now—five bills that I will be introducing, but hope will be incorporated in the transportation bill we will be considering in the next several weeks. These bills are commonsense, practical ways to save lives. Each bill is built on solid evidence of what will, in fact, make a difference. These are bills that will, in fact, save lives.

Last year, the Senate passed each of these bills as a part of the SAFE-TEA transportation bill. I want to thank Senators INHOFE, JEFFORDS, BOND, REID, and MCCAIN for their assistance in making that happen. Our former colleague Senator HOLLINGS was also instrumental in clearing these bills. So, what I'm talking about today is a set of bills that has already enjoyed the support of the Senate, and I believe we ought to pass each and every one of them again this year as a part of the transportation reauthorization. In particular, I look forward to working with Senators STEVENS, LOTT, and INOUYE on the Commerce Committee portion of my transportation safety package.

I am thankful for the support and assistance of Senator ROCKEFELLER as the lead co-sponsor on the first several bills—the vehicle safety bills—as well as Senator LAUTENBERG'S leadership as my chief co-sponsor on the drunk driving prevention campaign bill. Both Senators are great leaders on highway safety, and I'm pleased to be working with them this year in an effort to get these bills signed into law.

The first bill we call ''Stars on Cars.'' While its name is cute, its focus is quite serious. When you go to buy a new car, there is a large label in the window detailing the price, features, gas mileage, and other information about the vehicle. This label is referred to in the auto industry as the ''Monroney Label'' after a former member of this body, Senator MONRONEY from Oklahoma. We all know what the sticker looks like.

But, what we may not know is that most of the content on that sticker is mandated by the Federal Government. The mileage per gallon has been on there for a number of years. The Federal government says that your city mileage has to be on there and your highway mileage has to be on there. It has to tell you whether the vehicle has air-conditioning. It has to tell you whether it has a stereo. It has to tell you a whole bunch of other stuff.

One piece of information is not on there—and that is the vehicle's safety rating.

The funny thing is that in the vast majority of cases, you have already paid to have the Federal Government—specifically the National Highway Traffic Safety Administration (NHTSA)—spend millions of dollars to test that very car and others like it. In fact, the National Highway Traffic Safety Administration has put that information up on the Internet. Nonetheless, the basic fact is that when you go in to buy that car, that information is not available to you. It is not available to the American consumer in the one place where it would make a difference—where you buy the car, at the dealership.

Doing this right wouldn't cost the taxpayers another dime. The car companies are already printing the labels. Under this legislation, we would add a new section to the label titled ''Government Safety Information.'' The new section would clearly lay out information from each of the government crash tests—frontal crash impact, side impact, and rollover resistance. For vehicles that haven't been tested yet, the label will say so. We would show the ratings pure and simple, as graphical star ratings on the label, just like many automakers do in their commercials.

The bill requires that this be done in a manner that can be clearly understood by your average car buyer, with short explanations as to what each rating means.

What impact would this have? I happen to believe the consumer is better off with more information than less information on whatever we are talking about. The consumer ought to know what the Government does. The consumer ought to know that type of information. The consumer would make better choices. Consumers care about safety. They will make better choices, and in all likelihood, they are going to choose safer vehicles and more lives will, in fact, be saved.

It just makes good common sense to do this. We have worked hard to fashion a bill that gets this life-saving information to consumers in a way that is sensitive to the concerns of automakers, as well as the NHTSA. We've reached out to a broad coalition to craft our bill for 2005, and I look forward to working with interested parties to continue to improve and shape the language contained in it. In the end, this bill is my number one safety priority for passage into law this year.

The second bill we call ''Safe Kids and Cars.'' Cars, unfortunately, are involved in child deaths at unbelievable rates. According to NHTSA data, automobile accidents happen to be the leading cause of death in the United States for children age 4 and up, and are right among the top causes for those ages 0 to 3.

More than cancer, more than homicide, more than fire, more than drowning, more than anything else, auto accidents are the source of child fatalities. We have a problem. And, while I congratulate auto manufacturers, safety groups, and NHTSA for working hard on this issue, there's more work to be done. Anything we can do to make a car safer for our kids, we should be doing it. Complacency is not an option.

The focus of this bill is to improve data collection and vehicle testing with regard to some specific dangers that small children face. NHTSA has done an excellent job in terms of working from solid data, and this is one area where unfortunately we just don't have enough data to move forward. Likewise, we need the tools to perform effective vehicle tests once we have those numbers, and my bill contains measures to see to it that we develop these tools.

In terms of testing, child-size dummies are an area where NHTSA needs to review its testing and look for areas where increased use of these dummies would lead to increased safety, or a better understanding of how crash forces impact small children. My bill directs NHTSA to conduct a full review of test procedures and incorporate

these child dummies when and where suitable. We also ask the agency to give a status update on the extremely important Hybrid-III 10-year-old child test dummy.

The rest of the bill focuses on an emerging danger for small children often referred to as ''non-traffic, non-crash'' accident situations. These are incidents in which interaction between an automobile and a child leads to injury or death when the vehicle is not on the road, or where no actual crash has occurred. Instead, these are incidents that happen in parked cars, driveways, parking lots, and other very common situations. Unfortunately, these common situations can be deadly under the wrong circumstances.

A prime example of ''non-traffic, non-crash'' dangers to small children has to do with dangerous power window switches. In many cases, children are left alone in a vehicle and manage to inadvertently activate a power window switch—a situation which can lead to the window moving up and crushing a limb or other part of the child's body. Some children are killed almost instantaneously by the force of the rising window. These incidents are not terribly frequent, but they are preventable at almost no cost to consumers and manufacturers.

Power windows are an area where NHTSA has taken action since I last introduced the child safety bill, and I want to pause to thank Dr. Jeffrey Runge, NHTSA Administrator; Janette Fennel, President of the safety advocacy group Kids and Cars; and several other groups for their work to make the new power window safety rule possible. The new rule, which I helped announce in Columbus late last year, will lead to the elimination of unsafe power window switches—switches that can be accidentally tripped by children with ease—in every car and light truck sold in the United States. It is clearly a step in the right direction, and it will save lives.

Unsafe power window switches show one kind of ''non-traffic, non-crash'' danger children face today. Were it not for a one-time study of death certificates by NHTSA, we would have no government data whatsoever on how widespread this problem happens to be. We would not know much about other types of ''non-traffic, non-crash'' dangers, such as backover incidents and heat exhaustion in closed vehicles. These are areas where there is a clear need for better data collection and testing. My bill tackles each head-on.

The ''Safe Kids and Cars'' bill directs NHTSA to continue pushing forward on ''non-traffic, non-crash'' incidents by instituting, for the first time, regular collection of data on these kinds of accidents. With time and some solid data, we may be able to tackle other kinds of ''non-traffic, non-crash'' problems in the future. Understanding the problem is the first step.

A third bill has to do with dangerous road intersections. Every State has them. Most States, fortunately, rank these roads. They keep a list of the bad ones. But, amazingly, there are many States that keep this information secret and don't tell the public.

Again, citizens have a right to know this information. What would you do with the information? As a parent, I might tell my 16-year-old not to go that way to the movie. At least I have the right to have that information and would be able to say go another way. It might take another 10 minutes, but go that way. Don't go by that intersection. Don't go on that curvy road. State Departments of Transportation already have that information.

Each State should provide that information to the public. They already know it, and they should provide it. Policymakers need to know that to make decisions about how to spend money in that state and what roads to fix.

I would like to briefly talk about a woman by the name of Sandy Johnson and her mother Jacqueline. On October 5, 2002, Sandy and Jacqueline were killed in a car crash at a dangerous intersection near Columbus.

What they did not know as they drove into that intersection—and what countless other area residents who used the roads that cross through it did not know at the time—was that this particular intersection was known at that time by the Ohio Department of Transportation to be a very dangerous area. In fact, ODOT had indeed known that information for quite some time. Perhaps if Sandy Johnson had known that she would have taken a different route that day. We will never know.

Following the tragic death of his wife and his mother-in-law, Dean Johnson initiated a campaign to tackle the issue of dangerous roads and dangerous intersections, not just in Ohio, but across the country. He has tried with varying results from state to state to get information on dangerous roads and intersection locations out to the public so tragedies like the one involving his wife could be prevented.

As I have in the past, I would like to thank Dean Johnson for his dedication to this very important public safety issue and for the progress he has made in my home State of Ohio and elsewhere in terms of getting critical lifesaving information out to citizens through the Sandy Johnson Foundation. His assistance has been an asset in crafting this legislation, and I look forward to working with him in the future.

My bill requires that safety information be disclosed to the public as an eligibility requirement for a new Federal safety funding program—the Highway Safety Improvement Program. States seeking additional Federal dollars for safety construction projects will have to take the quick and easy step of identifying their danger spots, ranking them according to severity, and then disclosing them to the public. I believe this is the least we can ask from States in exchange for large chunks of federal aid.

In some cases, States would like to release the data but fear the legal ramifications of doing so. My bill contains a fix for this that provides the same kind of protection States already enjoy for other types of highway safety data. In other words, no legal harm could come to a State for releasing lists of dangerous locations under this bill.

Further, States need to find ways to get safety experts, law enforcement, engineers, transportation officials, and the general public working together to identify and correct dangerous locations. I've borrowed language in my bill from last year's Senate-passed SAFE–TEA bill—excellent language drafted and passed by Senator INHOFE and the Environment and Public Works Committee that creates incentives for States to foster this kind of collaboration. Collaboration between these entities is essential to finding quick, effective solutions to fatalities arising from dangerous intersections, as well as long stretches of roadway that account for high crash rates. I am including the Committee's language on Highway Safety Improvement Programs in my bill because I strongly believe that it is a step in the right direction.

The fourth bill I am introducing has to do with driver education. Teen driving is an area where fatality rates are extremely high and unfortunately where programs across the country are not getting the job done.

Above average crash and fatality rates may be inevitable for teenage drivers, but they can certainly be reduced substantially from present-day levels. The Federal Government cannot run driver education. It is clearly a State responsibility. But it can play a small, productive role.

For decades, our attempt to address this problem—standard classroom-based driver education—has been ineffective or worse, inspiring false confidence in students and parents alike that graduates are ready to drive safely. Fortunately, we've started to move in a new direction as a nation, with 41 States adding innovative graduated driver licensing (GDL) laws to their ongoing driver education efforts. These new laws have been proven to be effective in reducing accident and fatality rates. While my bill contains language to raise the bar on GDL laws and make them more effective, its real emphasis is on finding a better way with respect to driver education.

Revitalized driver education needs to be data-driven and cognizant of the limitations associated with classroom-based instruction. It must utilize new ways of inculcating young drivers with the knowledge and skills they need to avoid unnecessary high-risk situations, particularly in the first six months behind the wheel. Integration of driver education with the graduated driver licensing process to maximize the safety value of both programs also must be addressed.

Past failures in our Nation's history with regard to driver education are not a reason to abandon these programs. They are a reason to go back to the drawing board to re-invent more effective means of promoting safe driving.

A recent study by the National Institutes for Health sheds some light on the problem. The study suggests that due to their unique brain development, risk tolerance, and other tendencies—teen drivers are naturally inclined toward increased danger on the roads. Clearly, some methods used in driver education today aren't getting the message through, and in some areas, the message may never get through independent of who does the teaching.

NHTSA and its research partners must find ways to tailor the content and delivery of driver education so that it recognizes these realities and focuses on areas where novice drivers can learn the skills necessary to be safer drivers. A NHTSA pilot program is currently under way with several states to test out updated ''best practices'' driver education models—not mandates, not national standards, but just best practices.

My bill responds to the call for national leadership in driver education and licensing made at a recent National Transportation Safety Board forum by creating a Driver Education and Licensing Improvement Program within NHTSA. The new Improvement Program will provide NHTSA with the resources and time it needs to run the pilot program and then evaluate the results to see what works and what doesn't.

Once this pilot program has run its course, my bill provides a modest amount of grant funding to supply states with the resources and technical expertise necessary to implement the ''best practices'' model in a way that fits their specific needs and circumstances. The grants will be competitively awarded, and also will be available for fulfillment of several other state needs with regard to novice driver education and licensing. This grant program is 100 percent voluntary, and my bill has been crafted carefully to ensure that the prerogatives of States are protected in every manner.

The areas ripe for improvement are numerous: instructor certification, curriculum improvement, outreach to increase parental involvement, enforcement of graduated driver licensing laws, and follow-up testing to ensure program effectiveness. These are just a few examples. By creating a National Driver Education and Licensing Improvement Program within NHTSA, and tasking that program to come up with best practices, we can help States interested in improving their programs do so without having to expend the time and resources necessary to ''re-invent the wheel'' on their own.

I have worked for over a year with NHTSA, the American Driver Training and Safety Education Association, the Governors' Highway Safety Association, the American Motor Vehicle Administrators' Association, AAA, the Driving School Association of America, Advocates for Auto and Highway Safety, and several other groups to come up with the bill that will be introduced today. Its contents are a compromise that reflects significant input from each of these fine organizations, and I believe we are now at a point where the road ahead toward safer, more effective driver education and licensing programs is clear. The goals set by this bill are clear, and the means to achieve them are provided for in full. The time has come to take serious action on driver education and licensing in this country.

Lastly, I'd like to introduce the Safe Intersections Act of 2005. This bill would criminalize the unauthorized sale or use of mobile infrared transmitters, also known as ''MIRTs.''

A MIRT is a remote control for changing traffic signals. These devices have been used for years by ambulances, police cars, and fire trucks, and maintenance crews, allowing them to reach emergencies faster. As an ambulance approaches an intersection where the light is red, the driver engages the transmitter. That transmitter then sends a signal to a receiver on the traffic light, which changes to green within a few seconds. This is a very useful tool when properly used in emergency situations.

In a 2002 survey, the U.S. Department of Transportation found that in the top 78 metropolitan areas, there are 24,683 traffic lights equipped with the sensors. In Ohio, there is a joint pilot project underway by the Washington Township Fire Department and the Dublin Police Department to install these devices. Other areas in Ohio where they are in use include Mentor, Twinsburg, Willoughby, and Westerville. Here in the District of Columbia, emergency services across the country, law enforcement officers, fire departments, and paramedics utilize this technology to make communities safer.

However, recently it has come to light that this technology may be sold to unauthorized individuals—individuals who want to use this technology to bypass red lights during their commute or during their everyday driving. MIRT was never intended for this use. MIRT technology—in the hands of unauthorized users—could result in traffic problems, like gridlock, or even worse, accidents in which people are injured or killed.

Let me quote from an ad that was posted on the Internet auction site, eBay:

''Tired of sitting at endless red lights? Frustrated by lights that turn from green to red too quickly, trapping you in traffic? The MIRT light changer used by police and other emergency vehicles Change the Traffic Signal Red to Green [for] only $499.00. Traffic Signal Changing Devices—it's every motorist's fantasy to be able to make a red traffic light turn green without so much as easing off the accelerator. The very technology that has for years allowed fire trucks, ambulances, and police cars to get to emergencies faster—a remote control that changes traffic signals—is now much cheaper and potentially accessible.''

This ad demonstrates the extent to which the potential widespread sale and possession of MIRT technology by drivers would be a hazard to public safety and must be stopped before it starts. The Congressional Fire Service Institute, Ohio Fire Alliance, and several other organizations have come out in support of this measure. I look forward to working with my colleagues to ensure that it becomes law.

The sixth bill I am introducing today is a bi-partisan bill aimed at reducing the number of drinking and driving deaths and injuries on our roads. Tragically, our Nation has experienced increases in alcohol-related traffic fatalities three of the past four years. In 2003—the last year for which full statistics are available—17,013 Americans died in alcohol-related incidents. This total represents 40 percent of the 42,643 people killed in traffic incidents.

The bill I am introducing today along with Senator LAUTENBERG—the Traffic Safety Law Enforcement Campaign Act—would require states to conduct a combined media/law enforcement campaign aimed at reducing drunk driving fatalities. Specifically, the law enforcement portion consists of sobriety checkpoints in the District of Columbia and in the 39 States that allow them and saturation patrols in those states that do not. The Centers for Disease Control estimate that the sobriety checkpoints proposed in the underlying bill may reduce alcohol related crashes by as much as 20 percent. Law enforcement officials from across the United States underscored this point in a recent conference sponsored by MADD, making high visibility enforcement campaigns a top priority. More than 75 percent of the public has indicated in NHTSA polls their support for sobriety checkpoints. In fact, NHTSA has concluded that 62 percent of Americans want sobriety checkpoints to be used more often.

These six bills will go a long way. They are common sense. They will make a difference. This is something I have been interested in for many years, going back to my time in the Ohio Legislature 20 years ago when I introduced the drunk driving bill, and we were able to pass a tough drunk driving bill in the Ohio Legislature. I worked for .08. It was very controversial in the Senate, but we were able to pass .08. Senator LAUTENBURG and I worked on that.

Anytime you lose 42,643 Americans every year, highway safety is something we all have to be concerned about.

I know the SAFE–TEA highway bill is not on the Floor yet, but I have seen it, and of course was pleased to support

it on the Floor last year. As passed by the Senate in 2004, the bill goes farther than any highway bill regard to safety. This year's bill from the Environment and Public Works Committee will enable the same great progress on highway safety. I congratulate the authors.

In the weeks ahead, I look forward to working with the respective committees and outside organizations on the bills I have described above as amendments to the 2005 SAFE–TEA bill. But, I want to make it very clear that these bills and amendments are not in any way critical of the underlying bill. In fact, I hope they will be complementary and simply add to a good product that is already a good product and will help to improve it.

I ask unanimous consent that the text of the bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 560

*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 ''Stars on Cars Act of 2005''.

**SEC. 2. AMENDMENT OF AUTOMOBILE INFORMATION DISCLOSURE ACT.**

(a) SAFETY LABELING REQUIREMENT.—Section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232) is amended—

(1) in subsection (e), by striking ''and'' at the end;

(2) in subsection (f)—

(A) in paragraph (3), by inserting ''and'' after the semicolon; and

(B) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(g) if 1 or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—

''(1) includes a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;

''(2) refers to frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests);

''(3) contains information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including http://www.safecar.gov; and

''(4) is presented in a legible, visible, and prominent fashion and covers at least—

''(A) 8 percent of the total area of the label; or

''(B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches; and

''(h) if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect.''.

(b) REGULATIONS.—Not later than January 1, 2006, the Secretary of Transportation shall issue regulations to implement the labeling requirements under subsections (g) and (h) of section 3 of the Automobile Information Disclosure Act, as added by subsection (a).

(c) APPLICABILITY.—The labeling requirements under subsections (g) and (h) of section 3 of such Act (as added by subsection (a)), and the regulations prescribed under subsection (b), shall apply to new automobiles delivered on or after—

(1) September 1, 2006, if the regulations under subsection (b) are prescribed not later than August 31, 2005; or

(2) September 1, 2007, if the regulations under subsection (b) are prescribed after August 31, 2005.

**SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary of Transportation, to accelerate the testing processes and increasing the number of vehicles tested under the New Car Assessment Program of the National Highway Traffic Safety Administration—

(1) $15,000,000 for fiscal year 2006;

(2) $8,134,065 for fiscal year 2007;

(3) $8,418,760 for fiscal year 2008;

(4) $8,713,410 for fiscal year 2009; and

(5) $9,018,385 for fiscal year 2010.

S. 561

*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 ''Safe Kids and Cars Act of 2005''.

(a) INCORPORATION OF CHILD DUMMIES IN SAFETY TESTS.—

(1) REVIEW PROCESS REQUIRED.—Not later than 2 years after the date of the enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall conduct a review process to increase utilization of child dummies, including Hybrid-III child dummies, in motor vehicle safety tests, including crash tests, conducted by the Administration.

(2) CRITERIA.—In conducting the review process under subsection (a), the Administrator shall select motor vehicle safety tests in which the inclusion of child dummies will lead to—

(A) increased understanding of crash dynamics with respect to children; and

(B) measurably improved child safety.

(3) PUBLIC INPUT.—The Secretary of Transportation shall solicit and consider input from the public regarding the review process under paragraph (1).

(4) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall publish a report regarding the implementation of this section. The report shall include information regarding the current status of the Hybrid-III 10 year old child test dummy.

(b) CHILD SAFETY INFORMATION PROGRAMS.—

(1) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Transportation shall supplement ongoing consumer information programs relating to child safety with information regarding hazards to children in nontraffic, noncrash accident situations.

(2) ACTIVITIES TO SUPPLEMENT INFORMATION.—In supplementing such programs, the Secretary shall—

(A) utilize information collected in the database maintained under subsection (e) regarding nontraffic, noncrash injuries, as well as other relevant data from private organizations, to establish priorities for the program;

(B) address ways in which parents can mitigate dangers to small children arising from preventable causes, including backover incidents, hyperthermia in closed vehicles, and accidental activation of power windows;

(C) partner with national child safety research organizations and other interested organizations with respect to the delivery of program information; and

(D) make information related to child safety available to the public via the Internet and other means.

(c) REPORT ON VEHICLE VISIBILITY.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Transportation shall submit a report to Congress on the extent to which driver visibility of the area immediately surrounding [light passenger vehicles] and obstructions to such visibility affect pedestrian safety, including the safety of infants and small children, in nontraffic, noncrash situations.

(d) REPORT ON ENHANCED VEHICLE SAFETY TECHNOLOGIES.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report that describes, evaluates, and determines the relative effectiveness of—

(1) currently available and emerging technologies, including auto-reverse functions, that are designed to prevent and reduce the number of injuries and deaths to children left unattended inside parked motor vehicles, including injuries and deaths that result from hyperthermia or are related to power windows or power sunroofs; and

(2) currently available and emerging technologies that are designed to prevent deaths and injuries to small children resulting from vehicle blind spots and backover incidents.

(e) DATABASE ON INJURIES AND DEATHS IN NONTRAFFIC, NONCRASH EVENTS.—

(1) IN GENERAL.—The Secretary of Transportation shall maintain a database of, and regularly collect data regarding, injuries and deaths in nontraffic, noncrash events involving motor vehicles. The database shall include information regarding—

(A) the number, types, and proximate causes of injuries and deaths resulting from such events;

(B) the characteristics of motor vehicles involved in such events;

(C) the characteristics of the motor vehicle operators and victims involved in such events; and

(D) the presence or absence in motor vehicles involved in such events of advanced technologies designed to prevent such injuries and deaths.

(2) REGULATIONS.—The Secretary shall prescribe regulations regarding how to structure and compile the database. The Secretary shall solicit and consider input from the public regarding data collection procedures and the structure of the database maintained under paragraph (1).

(3) DEADLINES.—The Secretary shall—

(A) complete the prescription of regulations and the consideration of public input under paragraph (2) not later than September 1, 2006; and

(B) commence the collection of data under paragraph (1) not later than January 1, 2007.

(4) AVAILABILITY.—The Secretary shall make the database maintained under paragraph (1) available to the public.

S. 562

*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 ''Safe Streets and Highways Act of 2005''.

**SEC. 2. HIGHWAY SAFETY IMPROVEMENT PROGRAM.**

(a) SAFETY IMPROVEMENT.—

(1) IN GENERAL.—Section 148 of title 23, United States Code, is amended to read as follows:

**''§ 148. Highway safety Improvement program**

''(a) DEFINITIONS.—In this section:

''(1) DRIVER CONDITIONING.—The term 'driver conditioning' means the process by which drivers learn to respond to specific road conditions and traffic patterns that generally remain consistent over time, making the driver susceptible to error when confronted with minor changes in those road conditions or traffic patterns.

''(2) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'highway safety improvement program' means the program carried out under this section.

''(3) HIGHWAY SAFETY IMPROVEMENT PROJECT.—

''(A) IN GENERAL.—The term 'highway safety improvement project' means a project described in the State strategic highway safety plan that—

''(i) corrects or improves a hazardous road location or feature; or

''(ii) addresses a highway safety problem.

''(B) INCLUSIONS.—The term 'highway safety improvement project' includes a project for—

''(i) an intersection safety improvement;

''(ii) pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition);

''(iii) installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians;

''(iv) installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents;

''(v) an improvement for pedestrian or bicyclist safety;

''(vi)(I) construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130, including the separation or protection of grades at railway-highway crossings;

''(II) construction of a railway-highway crossing safety feature; or

''(III) the conduct of a model traffic enforcement activity at a railway-highway crossing;

''(vii) construction of a traffic calming feature;

''(viii) elimination of a roadside obstacle;

''(ix) improvement of highway signage and pavement markings, including improvements designed to implement minimum retroflectivity standards in compliance with section 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (106 Stat. 1564), and signage designed to identify high-crash locations or address driver conditioning hazards;

''(x) installation of a priority control system for emergency vehicles at signalized intersections;

''(xi) installation of a traffic control or other warning device at a location with high accident potential;

''(xii) safety-conscious planning;

''(xiii) improvement in the collection and analysis of crash data;

''(xiv) planning, integrated, interoperable emergency communications, equipment, operational activities, or traffic enforcement activities (including police assistance) relating to workzone safety;

''(xv) installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of motorists and workers), and crash attenuators;

''(xvi) the addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife; or

''(xvii) installation and maintenance of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.

''(4) SAFETY PROJECT UNDER ANY OTHER SECTION.—

''(A) IN GENERAL.—The term 'safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

''(B) INCLUSION.—The term 'safety project under any other section' includes a project to—

''(i) promote the awareness of the public and educate the public concerning highway safety matters; or

''(ii) enforce highway safety laws.

''(5) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'State highway safety improvement program' means projects or strategies included in the State strategic highway safety plan carried out as part of the State transportation improvement program under section 135(f).

''(6) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term 'State strategic highway safety plan' means a plan developed by the State transportation department that—

''(A) is developed after consultation with—

''(i) a highway safety representative of the Governor of the State;

''(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

''(iii) representatives of major modes of transportation;

''(iv) State and local traffic enforcement officials;

''(v) persons responsible for administering section 130 at the State level;

''(vi) representatives conducting Operation Lifesaver;

''(vii) representatives conducting a motor carrier safety program under section 31104 or 31107 of title 49;

''(viii) motor vehicle administration agencies; and

''(ix) other major State and local safety stakeholders;

''(B) analyzes and makes effective use of State, regional, or local crash data;

''(C) addresses engineering, management, operation, education, enforcement, and emergency services elements (including integrated, interoperable emergency communications) of highway safety as key factors in evaluating highway projects;

''(D) considers safety needs of, and high-fatality segments of, public roads;

''(E) considers the results of State, regional, or local transportation and highway safety planning processes;

''(F) describes a program of projects or strategies to reduce or eliminate safety hazards;

''(G) is approved by the Governor of the State or a responsible State agency; and

''(H) is consistent with the requirements of section 135(f).

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a highway safety improvement program.

''(2) PURPOSE.—The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on public roads.

''(c) ELIGIBILITY.—

''(1) IN GENERAL.—To obligate funds apportioned under section 104(b)(5) to carry out this section, a State shall have in effect a State highway safety improvement program under which the State—

''(A) develops and implements a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in paragraph (2);

''(B) produces a program of projects or strategies to reduce identified safety problems;

''(C) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of proposed improvements; and

''(D) submits to the Secretary an annual report that—

''(i) describes, in a clearly understandable fashion, not less than 25 percent of locations determined by the State, using criteria established in accordance with paragraph (2)(B)(ii), as exhibiting the most severe safety needs; and

''(ii) contains an assessment of—

''(I) potential remedies to hazardous locations identified;

''(II) estimated costs associated with those remedies; and

''(III) impediments to implementation other than cost associated with those remedies.

''(2) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.—As part of the State strategic highway safety plan, a State shall—

''(A) have in place a crash data system with the ability to perform safety problem identification and countermeasure analysis;

''(B) based on the analysis required by subparagraph (A)—

''(i) identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists, bicyclists, pedestrians, and other highway users; and

''(ii) using such criteria as the State determines to be appropriate, establish the relative severity of those locations, in terms of accidents, injuries, deaths, traffic volume levels, and other relevant data;

''(C) adopt strategic and performance-based goals that—

''(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

''(ii) focus resources on areas of greatest need; and

''(iii) are coordinated with other State highway safety programs;

''(D) advance the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that—

''(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

''(ii) includes all public roads;

''(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists, bicyclists, pedestrians, and other highway users; and

''(iv) includes a means of identifying the relative severity of hazardous locations described in clause (iii) in terms of accidents, injuries, deaths, and traffic volume levels;

''(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through crash data analysis;

''(ii) identify opportunities for preventing the development of such hazardous conditions; and

''(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

''(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

''(ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

''(d) ELIGIBLE PROJECTS.—

''(1) IN GENERAL.—A State may obligate funds apportioned to the State under section 104(b)(5) to carry out—

''(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail; or

''(B) as provided in subsection (e), for other safety projects.

''(2) USE OF OTHER FUNDING FOR SAFETY.—

''(A) EFFECT OF SECTION.—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

''(B) USE OF OTHER FUNDS.—States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

''(e) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.—

''(1) IN GENERAL.—To further the implementation of a State strategic highway safety plan, a State may use up to 25 percent of the amount of funds made available under this section for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan.

''(2) OTHER TRANSPORTATION AND HIGHWAY SAFETY PLANS.—Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this section.

''(f) REPORTS.—

''(1) IN GENERAL.—A State shall submit to the Secretary a report that—

''(A) describes progress being made to implement highway safety improvement projects under this section;

''(B) assesses the effectiveness of those improvements; and

''(C) describes the extent to which the improvements funded under this section contribute to the goals of—

''(i) reducing the number of fatalities on roadways;

''(ii) reducing the number of roadway-related injuries;

''(iii) reducing the occurrences of roadway-related crashes;

''(iv) mitigating the consequences of roadway-related crashes; and

''(v) reducing the occurrences of roadway-railroad grade crossing crashes.

''(2) CONTENTS; SCHEDULE.—The Secretary shall establish the content and schedule for a report under paragraph (1).

''(3) TRANSPARENCY.—The Secretary shall make reports under subsection (c)(1)(D) available to the public through—

''(A) the Internet site of the Department; and

''(B) such other means as the Secretary determines to be appropriate.

''(4) DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION.—Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose directly relating to paragraph (1) or subsection (c)(1)(D), or published by the Secretary in accordance with paragraph (3), shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in such reports, surveys, schedules, lists, or other data.

''(g) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement project carried out with funds made available under this section shall be 90 percent.

''(h) FUNDS FOR BICYCLE AND PEDESTRIAN SAFETY.—A State shall allocate for bicycle and pedestrian improvements in the State a percentage of the funds remaining after implementation of sections 130(e) and 150, in an amount that is equal to or greater than the percentage of all fatal crashes in the States involving bicyclists and pedestrians.

''(i) ROADWAY SAFETY IMPROVEMENTS FOR OLDER DRIVERS AND PEDESTRIANS.—For each of fiscal years 2005 through 2010, $25,000,000 is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for projects in all States to improve traffic signs and pavement markings in a manner consistent with the recommendations included in the publication of the Federal Highway Administration entitled 'Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians (FHWA-RD-01-103)' and dated October 2001.''.

(2) ALLOCATIONS OF APPORTIONED FUNDS.—Section 133(d) of title 23, United States Code, is amended—

(A) by striking paragraph (1);

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(C) in paragraph (2) (as redesignated by subparagraph (B))—

(i) in the first sentence of subparagraph (A)—

(I) by striking ''subparagraphs (C) and (D)'' and inserting ''subparagraph (C)''; and

(II) by striking ''80 percent'' and inserting ''90 percent'';

(ii) in subparagraph (B), by striking ''tobe'' and inserting ''to be'';

(iii) by striking subparagraph (C);

(iv) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and

(v) in subparagraph (C) (as redesignated by clause (iv)), by adding a period at the end; and

(D) in paragraph (4)(A) (as redesignated by subparagraph (B)), by striking ''paragraph (2)'' and inserting ''paragraph (1)''.

(3) ADMINISTRATION.—Section 133(e) of title 23, United States Code, is amended in each of paragraphs (3)(B)(i), (5)(A), and (5)(B) of subsection (e), by striking ''(d)(2)'' each place it appears and inserting ''(d)(1)''.

(4) CONFORMING AMENDMENTS.—

(A) The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 148 and inserting the following:

''148. Highway safety improvement program''.

(B) Section 104(g) of title 23, United States Code, is amended in the first sentence by striking ''sections 130, 144, and 152 of this title'' and inserting ''sections 130 and 144''.

(C) Section 126 of title 23, United States Code, is amended—

(i) in subsection (a), by inserting ''under'' after ''State's apportionment''; and

(ii) in subsection (b)—

(I) in the first sentence, by striking ''the last sentence of section 133(d)(1) or to section 104(f) or to section 133(d)(3)'' and inserting ''section 104(f) or 133(d)(2)''; and

(II) in the second sentence, by striking ''or 133(d)(2)''.

(D) Sections 154, 164, and 409 of title 23, United States Code, are amended by striking ''152'' each place it appears and inserting ''148''.

(b) APPORTIONMENT OF HIGHWAY SAFETY IMPROVEMENT PROGRAM FUNDS.—Section 104(b) of title 23, United States Code, is amended—

(1) in the matter preceding paragraph (1), by inserting after ''Improvement program,'' the following: ''the highway safety improvement program,''; and

(2) by adding at the end the following:

''(5) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

''(A) IN GENERAL.—For the highway safety improvement program, in accordance with the following formula:

''(i) 25 percent of the apportionments in the ratio that—

''(I) the total lane miles of Federal-aid highways in each State; bears to

''(II) the total lane miles of Federal-aid highways in all States.

''(ii) 40 percent of the apportionments in the ratio that—

''(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

''(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

''(iii) 35 percent of the apportionments in the ratio that—

''(I) the estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available; bears to

''(II) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.

''(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.''.

(c) ELIMINATION OF HAZARDS RELATING TO RAILWAY-HIGHWAY CROSSINGS.—

(1) FUNDS FOR RAILWAY-HIGHWAY CROSSINGS.—Section 130(e) of title 23, United States Code, is amended by inserting before ''At least'' the following: ''For each fiscal year, at least $200,000,000 of the funds authorized and expended under section 148 shall be available for the elimination of hazards and the installation of protective devices at railway-highway crossings.''.

(2) BIENNIAL REPORTS TO CONGRESS.—Section 130(g) of title 23, United States Code, is amended in the third sentence—

(A) by inserting ''and the Committee on Commerce, Science, and Transportation,'' after ''Public Works''; and

(B) by striking ''not later than April 1 of each year'' and inserting ''every other year''.

(3) EXPENDITURE OF FUNDS.—Section 130 of title 23, United States Code, is amended by adding at the end the following:

''(k) EXPENDITURE OF FUNDS.—Funds made available to carry out this section shall be—

''(1) available for expenditure on compilation and analysis of data in support of activities carried out under subsection (g); and

''(2) apportioned in accordance with section 104(b)(5).''.

(d) TRANSITION.—

(1) IMPLEMENTATION.—Except as provided in paragraph (2), the Secretary shall approve obligations of funds apportioned under section 104(b)(5) of title 23, United States Code (as added by subsection (b)) to carry out section 148 of that title, only if, not later than October 1 of the second fiscal year after the date of enactment of this Act, a State has developed and implemented a State strategic highway safety plan as required under section 148(c) of that title.

(2) INTERIM PERIOD.—

(A) IN GENERAL.—Before October 1 of the second fiscal year after the date of enactment of this Act and until the date on which a State develops and implements a State strategic highway safety plan, the Secretary shall apportion funds to a State for the highway safety improvement program and the State may obligate funds apportioned to the State for the highway safety improvement program under section 148 for projects that were eligible for funding under sections 130 and 152 of that title, as in effect on the day before the date of enactment of this Act.

(B) NO STRATEGIC HIGHWAY SAFETY PLAN.—If a State has not developed a strategic highway safety plan by October 1 of the second fiscal year after the date of enactment of this Act, but demonstrates to the satisfaction of the Secretary that progress is being made toward developing and implementing such a plan, the Secretary shall continue to apportion funds for 1 additional fiscal year for the highway safety improvement program under section 148 of title 23, United States Code, to the State, and the State may continue to obligate funds apportioned to the State under this section for projects that were eligible for funding under sections 130 and 152 of that title, as in effect on the day before the date of enactment of this Act.

(C) PENALTY.—If a State has not adopted a strategic highway safety plan by the date that is 2 years after the date of enactment of this Act, funds made available to the State under section 1101(6) shall be redistributed to other States in accordance with section 104(b)(3) of title 23, United States Code.

S. 563

*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 ''Driver Licensing and Education Improvement Act of 2005''.

**SEC. 2. DRIVER LICENSING AND EDUCATION.**

(a) NATIONAL DRIVER LICENSING AND EDUCATION IMPROVEMENT PROGRAM.—Section 105 of title 49, United States Code, is amended by adding at the end the following:

''(f)(1) There is established, within the National Highway Traffic Safety Administration, the National Driver Licensing and Education Improvement Program.

''(2) The National Driver Licensing and Education Improvement Program shall—

''(A) provide States with services for coordinating the motor vehicle driver education and licensing programs of the States;

''(B) develop, and make available to the States, a cooperatively developed, research-based model for novice driver motor vehicle driver education and graduated licensing that incorporates the best practices in driver education and graduated licensing;

''(C) carry out such research and undertake such other activities that the Administrator determines appropriate to develop and continually improve the model described in subparagraph (B);

''(D) provide States with voluntary technical assistance for the implementation and deployment of the model described in subparagraph (B) through pilot programs and other means;

''(E) develop and recommend to the States methods for harmonizing the presentation of motor vehicle driver education and licensing with the requirements of multistage graduated licensing systems, including systems described in section 410(b)(1)(D) of title 23, and to demonstrate and evaluate the effectiveness of those methods in selected States;

''(F) develop programs identifying best practices for the certification of driver education instructors;

''(G) provide States with financial assistance under section 412 of title 23 for—

''(i) the implementation of the motor vehicle driver education and licensing comprehensive model recommended under subparagraph (B);

''(ii) the establishment or improved administration of multistage graduated licensing systems; and

''(iii) the support of other improvements in motor vehicle driver education and licensing programs;

''(H) evaluate the effectiveness of the comprehensive model recommended under subparagraph (B); and

''(I) perform such other functions relating to motor vehicle driver education or licensing as the Secretary may require.

''(3) Not later than 3 years after the date of enactment of the Driver Licensing and Education Improvement Act of 2005, the Administrator shall submit to Congress a report on the progress made by the National Driver Licensing and Education with respect to the functions described in paragraph (2).''.

(b) GRANT PROGRAM FOR IMPROVEMENT OF DRIVER EDUCATION AND LICENSING.—

(1) AUTHORITY.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following:

**''§ 412. Driver education and licensing**

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Secretary shall establish a program to provide grants to States to—

''(A) improve motor vehicle driver education programs; and

''(B) establish and improve the administration of graduated licensing systems, including systems described in section 410(b)(1)(D).

''(2) PROGRAM ADMINISTRATION.—The Secretary shall administer the program established under this section through the National Driver Licensing and Education Improvement Program.

''(b) RULEMAKING.—

''(1) ELIGIBILITY REQUIREMENTS.—Not later than 18 months after the date of enactment of this section, the Secretary shall issue regulations, which describe the eligibility requirements, application and approval procedures and standards, and authorized uses of grant funds awarded under this section.

''(2) USE OF FUNDS.—The regulations issued under this subsection shall authorize the use of grant funds—

''(A) for quality assurance testing, including followup testing to monitor the effectiveness of—

''(i) driver licensing and education programs;

''(ii) instructor certification testing; and

''(iii) other statistical research designed to evaluate the performance of driver education and licensing programs;

''(B) to improve motor vehicle driver education curricula;

''(C) to train instructors for motor vehicle driver education programs;

''(D) to test and evaluate motor vehicle driver performance;

''(E) for public education and outreach regarding motor vehicle driver education and licensing; and

''(F) to improve State graduated licensing programs and carry out related enforcement activities.

''(3) CONSULTATION REQUIREMENT.—In prescribing regulations under this subsection, the Secretary shall consult with—

''(A) the heads of such Federal departments and agencies as the Secretary considers appropriate on the basis of relevant interests or expertise;

''(B) appropriate officials of the governments of States and political subdivisions of States; and

''(C) other experts and organizations recognized for expertise, with respect to novice drivers, in—

''(i) graduated driver licensing;

''(ii) publicly administered driver education; or

''(iii) privately administered driver education.

''(c) MATCHING REQUIREMENT.—The amount of grant funds awarded for a program, project, or activity under this section may not exceed 75 percent of the total cost of such program, project, or activity.

''(d) PROHIBITED ACTIVITIES.—Grant funds provided to States under this section may not be used to finance—

''(1) the day-to-day operational expenses, including employee salaries and facilities costs, of publicly or privately administered driver education programs; or

''(2) the activities described in subparagraphs (A) through (C) of subsection (b)(2) in fiscal year 2006 or 2007.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 of title 23, United States Code, is amended by adding at the end the following:

''412. Driver education and licensing.''.

(c) STUDY OF NATIONAL DRIVER EDUCATION STANDARDS.—

(1) REQUIREMENT FOR STUDY.—The Secretary of Transportation shall conduct a study to determine whether the establishment and imposition of nationwide minimum standards of motor vehicle driver education would improve national highway traffic safety or the performance and legal compliance of novice drivers.

(2) TIME FOR COMPLETION OF STUDY.—The Secretary shall complete the study not later than 2 years after the date of enactment of this Act.

(3) REPORT.—The Secretary shall publish a report on the results of the study under this section not later than 2 years after the study is completed.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated $25,000,000 for each of the fiscal years 2006 through 2010 to carry out section 412 of title 23, United States Code, as added by subsection (b).

(2) AVAILABILITY.—Funds appropriated pursuant to paragraph (1) for fiscal years 2006 and 2007 may be used for the National Driver Licensing and Education Improvement Program established under section 105(f) of title 49, United States Code.

(e) GRANTS FOR SUPPORT OF ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES.—

(1) REVISED ELIGIBILITY REQUIREMENTS.—Section 410(b)(1)(D) of title 23, United States Code, is amended to read as follows:

''(D) GRADUATED LICENSING SYSTEM.—A multiple-stage graduated licensing system for young drivers that—

''(i) authorizes the issuance of an initial license or learner's permit to a driver on or after the driver's 16th birthday;

''(ii) makes it unlawful for a person under age 21 to operate a motor vehicle with a blood alcohol concentration of .02 percent or greater;

''(iii) provides for a learning stage of at least 6 months and an intermediate stage of at least 6 months; and

''(iv) applies the following restrictions and features to the stages described in clause (iii) and to such other stage or stages as may be provided under State law:

''(I) A restriction that not more than 2 passengers under age 18 may occupy a vehicle while it is being operated by a young driver.

''(II) Nighttime driving restrictions applicable, at a minimum, during the hours between 10:00 p.m. and 5:00 a.m.

''(III) Special penalties (including delays in progression through the stages of the graduated licensing system) for violations of restrictions under the system and violations of other State laws relating to operation of motor vehicles.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect 1 year after the date of enactment of this Act.

S. 564

*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 ''Safe Intersections Act of 2005''.

**SEC. 2. SAFE INTERSECTIONS.**

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following:

**"§ 39. Traffic signal preemption transmitters**

''(a) OFFENSES.—

''(1) SALE.—A person who knowingly sells a traffic signal preemption transmitter in or affecting interstate or foreign commerce to a person who is not acting on behalf of a public agency or private corporation authorized by law to provide fire protection, law enforcement, emergency medical services, transit services, maintenance, or other services for a Federal, State, or local government entity, shall, notwithstanding section 3571(b) of title 18, United States Code, be fined not more than $10,000, imprisoned not more than 1 year, or both.

''(2) USE.—A person who makes unauthorized use of a traffic signal preemption transmitter in or affecting interstate or foreign commerce shall be fined not more than $10,000, imprisoned not more than 6 months, or both.

''(b) DEFINITIONS.—In this section, the following definitions apply:

''(1) TRAFFIC SIGNAL PREEMPTION TRANSMITTER.—The term 'traffic signal preemption transmitter' means any mechanism that can change or alter a traffic signal's phase time or sequence.

''(2) UNAUTHORIZED USE.—The term 'unauthorized use' means use of a traffic signal preemption transmitter by a person who is not acting on behalf of a public agency or private corporation authorized by law to provide fire protection, law enforcement, emergency medical services, transit services, maintenance, or other services for a Federal, State, or local government entity. The term 'unauthorized use' does not apply to use of a traffic signal preemption transmitter for classroom or instructional purposes.''.

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 2 of title 18, United States Code, is amended by adding at the end the following:

''39. Traffic signal preemption transmitters.''.

S. 565

*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 ''Traffic Safety Law Enforcement Campaign Act''.

**SEC. 2. TRAFFIC SAFETY LAW ENFORCEMENT CAMPAIGNS.**

(a) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration shall establish a program to conduct at least 3 high-visibility traffic safety law enforcement campaigns each year.

(b) FOCUS.—The campaigns shall focus on—

(1) reducing alcohol-impaired driving;

(2) increasing seat belt use; and

(3) a combination of reducing alcohol-impaired driving and increasing seat belt use.

(c) ADVERTISING.—The Administrator may use, or authorize the use of, funds available to carry out this section for the development, production, and use of broadcast and print media advertising in carry out this section.

(d) EVALUATION AND REPORT.—The Administrator shall evaluate the effectiveness of the campaigns at the end of each year and, not later than 90 days after the end of each year, submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that sets forth the findings, conclusions, and recommendations of the Administrator with respect to the program.

**SEC. 3. FUNDING.**

(a) IN GENERAL.—There are authorized to be appropriated out of the Highway Trust Fund (other than from the Mass Transit Account) to the Administrator to carry out this Act $150,000,000 for each of fiscal years 2006 through 2011, of which—

(1) $48,000,000 shall be used for each fiscal year for nationwide advertising by the Administration;

(2) $48,000,000 shall be made available each fiscal year by the Administrator to States for advertising;

(3) $48,000,000 shall be made available each fiscal year by the Administrator to States for traffic safety law enforcement; and

(4) $6,000,000 shall be available to the Administrator for evaluation of the program under section 2.

(b) PROGRAM STANDARDS.—Within 120 days after the date of enactment of this Act, the Administrator shall promulgate program standards and criteria for the use of funds under subsection (a)(2) and (3) that will ensure the effective and appropriate use of such funds in accordance with this Act, taking into account State efforts, needs, administrative resources, and priorities.

(c) APPORTIONMENT.—The Administrator shall apportion funds under subsection (a)(2) and (3) among the States on the same basis as funds are apportioned among the States under section 402(c) of title 23, United States Code.

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By Mr. ROCKEFELLER (for himself, Mr. KENNEDY, Mr. CORZINE, and Mr. LAUTENBERG):

S. 566. A bill to continue State coverage of medicaid prescription drug coverage to medicare dual eligible beneficiaries for 6 months while still allowing the medicare part D benefit to be implemented as scheduled; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, millions of seniors and disabled Americans are facing a major disruption in their health care when the Medicare prescription drug law goes into effect on January 1, 2006. On that singular date, 6.4 million dual eligibles—individuals who are eligible for both Medicare and full Medicaid benefits—will lose their Medicaid prescription drug coverage regardless of whether they have obtained coverage through a Medicare Part D prescription drug plan and regardless of whether their Part D plan's coverage is as broad as their State's Medicaid coverage. Such a short transition period leaves no time to address the inevitable problems that will occur with a transition of this magnitude.

Dual eligibles should have as smooth a transition as possible to Medicare prescription drug coverage. Unfortunately, a smooth transition is not what will happen under current law. The Medicare prescription drug law only requires a six-week transition period for dual eligibles, from November 15, 2005, to January 1, 2006. This is the largest transition of individuals from one insurance program to another, public or private, and it is unrealistic to believe that such a huge transition can take place in the span of six weeks.

Moving a large number of seniors and people with disabilities to an entirely new system for prescription drug coverage is a major undertaking. Dual eligibles will require adequate outreach, education, and time to adjust to a change of this magnitude. The stakes are extremely high for this population. Over half are limited in activities of daily living. Many live alone or in nursing homes. And, in comparison to other Medicare beneficiaries, dual eligibles are much more likely to have heart disease, pulmonary disease, diabetes, or Alzheimer's. Therefore, it is absolutely critical that we get this transition right the first time.

The Centers for Medicare and Medicaid Services (CMS) has taken several steps to improve the transition of the dual eligibles from Medicaid to Medicare. However, I fear these steps do not go far enough. Automatic enrollment does not guarantee that beneficiaries will know that they have been enrolled in a new Medicare drug plan or know how to access necessary prescription drugs using that drug plan. Once beneficiaries are enrolled, they are likely to experience ongoing confusion about covered drugs, authorized pharmacies, and the Medicare appeals process.

In its June 2004 report to Congress, the Medicare Payment Advisory Commission (MedPAC) suggested that even large, private employers need at least six months to transition their employees' drug coverage from one pharmacy benefit manager to another. The two large employers that MedPAC studied had 25,000 and 75,000 employees, respectively. The states and the federal government are taking on a far more complex task with 6.4 million dual eligibles, and should have at least six months to transition the duals to Medicare in order prevent major disruptions in access to prescription drugs.

I am pleased to be joined today by my distinguished colleagues in the Senate, Senators KENNEDY, CORZINE, and LAUTENBERG, as well my distinguished co-sponsor in the House of Representatives, Congressman TOM ALLEN of Maine, in introducing the Medicare Dual Eligible Prescription Drug Coverage Act of 2005. This important legislation would extend the dual eligible transition period to six months in order to achieve the best possible health outcomes for some of our Nation's most vulnerable citizens. An extended timeframe would give states enough time to carry out comprehensive education and outreach initiatives. It would also give seniors and individuals with disabilities time to explore their options and gradually transition to Medicare Part D.

Specifically, the Medicare Dual Eligible Prescription Drug Coverage Act of 2005 would extend the availability of Medicaid prescription drug coverage for six months while still allowing the Part D benefit to be implemented as scheduled. Since states would be temporarily supplementing Medicare Part D, they would be fully relieved of any ''clawback'' responsibilities during the six-month transition. This legislation would also provide dedicated resources

for education and outreach to the dual eligibles, including additional resources for State Health Insurance Assistance Programs (SHIPs). Finally, the Medicare Dual Eligible Prescription Drug Coverage Act would require CMS to share drug utilization data with state Medicaid programs so that states can appropriately coordinate non-prescription drug coverage for the duals.

This is an issue of fundamental fairness. The Medicare law provides Medicare beneficiaries who are not dually eligible for Medicaid six months to transition to Medicare prescription drug coverage. Dual eligibles should not be treated any differently. Medicare's universality is something I fought hard for during the Medicare debate. I strongly believe low-income seniors and disabled individuals should not be excluded from Medicare benefits because of their income levels. The Medicare law should not merely support the principle of universality in statute. It must also support universality in fact, and that means Medicare beneficiaries who are dually eligible for Medicaid must also be given enough time to make a smooth transition to Medicare.

I look forward to working with my colleagues to pass this important legislation. I ask that the full text of this bill, be printed in the RECORD.

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

S. 566

*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 ''Medicare Dual Eligible Prescription Drug Coverage Act of 2005''.

**SEC. 2. FINDINGS.**

The Senate finds the following:

(1) Individuals who are dually eligible for benefits under the medicare program and full benefits under the medicaid program—

(A) are among the most vulnerable populations in our society; and

(B) require adequate outreach, education, and timing in order to adjust to changes in our health care delivery system.

(2) The transition of 6,400,000 dual eligibles from prescription drug coverage under the medicaid program to prescription drug coverage under part D of the medicare program is the largest transition ever of individuals from one insurance program to another.

(3) In its June 2004 report to Congress, the Medicare Payment Advisory Commission (MedPAC) suggested that large, private employers with 75,000 employees or less need at least 6 months to transition their employees' drug coverage from one pharmacy benefit management company to another such company. The States and the Federal Government are taking on a far more complex task with 6,400,000 dual eligibles having to make the transition described in paragraph (2).

(4) Timely access to prescription drugs leads to higher quality of life and prevents avoidable emergency room visits, hospitalizations, and premature nursing home placements.

(5) Since even a short-term gap in prescription drug coverage could have serious health consequences for dual eligibles, Congress must work to guarantee as smooth a transition as possible for dual eligibles so that no dual eligible is without prescription drug coverage even for one day.

**SEC. 3. CONTINUING STATE COVERAGE OF MEDICAID PRESCRIPTION DRUG COVERAGE TO MEDICARE DUAL ELIGIBLE BENEFICIARIES FOR 6 MONTHS.**

(a) SIX-MONTH TRANSITION.—For prescriptions filled during the period beginning on January 1, 2006, and ending on June 30, 2006, section 1935(d) of the Social Security Act (42 U.S.C. 1396u–5(d)) shall not apply and, notwithstanding any other provision of law, a State (as defined for purposes of title XIX of such Act) shall continue to provide (and receive Federal financial participation for) medical assistance under such title with respect to prescription drugs as if such section 1935(d) had not been enacted.

(b) APPLICATION.—

(1) MEDICARE AS PRIMARY PAYER.—Nothing in subsection (a) shall be construed as changing or affecting the primary payer status of a prescription drug plan or an MA–PD plan under part D of title XVIII of the Social Security Act with respect to prescription drugs furnished to any full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396u–5(c)(6)) during the 6-month period described in such subsection.

(2) THIRD PARTY LIABILITY.—Nothing in subsection (a) shall be construed as limiting the authority or responsibility of a State under section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) to seek reimbursement from a prescription drug plan, an MA–PD plan, or any other third party, of the costs incurred by the State in providing prescription drug coverage described in such subsection.

**SEC. 4. DELAY IN IMPLEMENTATION OF MEDICAID CLAWBACK PAYMENTS.**

Notwithstanding section 1935(c) of the Social Security Act (42 U.S.C. 1396u–5(c)), a State or the District of Columbia shall not be required to provide for a payment under such section to the Secretary of Health and human Services for any month prior to July 1, 2006.

**SEC. 5. EDUCATION AND OUTREACH TO DUAL ELIGIBLES REGARDING PRESCRIPTION DRUG COVERAGE AND MONITORING OF THE TRANSITION OF DUAL ELIGIBLES TO PRESCRIPTION DRUG COVERAGE UNDER MEDICARE.**

(a) MMA AMOUNTS.—Notwithstanding any other provision of law, of the amounts appropriated for the Centers for Medicare & Medicaid Services under section 1015(a)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2446), the following rules shall apply:

(1) EDUCATION AND OUTREACH TO DUALS.—$100,000,000 shall be used to provide education and outreach, including through one-on-one counseling and application assistance, to full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6))) regarding prescription drug coverage under part D of title XVIII of the such Act. Of such amount—

(A) at least $20,000,000 (but in no case more than $50,000,000) shall be used to award grants to States under section 4360 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1395b–4) to provide such education and outreach; and

(B) the remaining amount shall be used to provide funding to community-based organizations that work with full-benefit dual eligible individuals (as so defined) in order to provide such education and outreach.

(2) MONITORING IMPACT ON DUALS.—

(A) IN GENERAL.—$50,000,000 shall be used by the Centers for Medicare & Medicaid Services, in consultation with the Centers for Disease Control and Prevention, the Administration on Aging, and the Social Security Administration, to develop and implement a standardized protocol to collect data from health departments and other sources in 10 representative urban and rural communities on the impact of the transition of full benefit dual eligible individuals (as so defined) from prescription drug coverage under the medicaid program to prescription drug coverage under part D of the medicare program. Such protocol shall be implemented by not later than July 1, 2005.

(B) MONITORING.—The protocol developed under subparagraph (A) shall include for the monitoring of the following information with respect to such full benefit dual eligible individuals:

(i) Emergency room visit rates.

(ii) Hospitalization rates.

(iii) Nursing home placement rates.

(iv) Deaths.

(C) COLLECTION BY PDPS AND MA–PDS.—The protocol developed under subparagraph (A) shall require that such data be collected by the prescription drug plans and the MA–PDs in which the individuals are enrolled and include information on race and ethnicity.

(D) REPORTS.—Not later than January 1, 2006, and July 1, 2006, the Administrator of the Centers for Medicare & Medicaid Services, in consultation with the Centers for Disease Control and Prevention, the Administration on Aging, and the Social Security Administration, shall submit a report to Congress on the implementation of the protocol under subparagraph (A).

(b) NEW AMOUNTS.—There are appropriated to the Secretary of Health and Human Services, to be transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, for fiscal year 2005 and each subsequent fiscal year, an amount not to exceed $50,000,000 (or if greater, an amount equal to $1 multiplied by the number of individuals entitled to benefits under part A of title XVIII of the Social Security Act or enrolled under part B of such title for the year) in order award grants to States under section 4360 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1395b–4).

(c) EXTENSION OF AVAILABILITY OF AMOUNTS APPROPRIATED UNDER MMA.—Section 1015(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2446) is amended by striking ''September 30, 2005'' and inserting ''September 30, 2006''.

**SEC. 6. COLLECTION AND SHARING OF DUAL ELIGIBLE DRUG UTILIZATION DATA.**

(a) IN GENERAL.—Section 1860D–42 of the Social Security Act (42 U.S.C. 1395w–152) is amended by adding at the end the following new subsection:

''(c) COLLECTION AND SHARING OF DUAL ELIGIBLE DRUG UTILIZATION DATA.—

''(1) PLAN REQUIREMENT.—A PDP sponsor of a prescription drug plan and an MA organization offering an MA–PD plan shall submit to the Secretary such information regarding the drug utilization of enrollees in such plans who are full-benefit dual eligible individuals (as defined in section 1935(c)(6)) as the Secretary determines appropriate to carry out paragraph (2).

''(2) COLLECTION AND SHARING OF DATA.—The Secretary shall collect data on the drug utilization of full-benefit dual eligible individuals (as so defined). The Secretary shall share such data with the States and the District of Columbia in as close to a real-time basis as possible.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of section 101(a) of

the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

**SEC. 7. GAO STUDY ON THE CLAWBACK FORMULA.**

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the clawback formula contained in section 1935(c) of the Social Security Act (42 U.S.C. 1396u–5(c)), as added by section 103(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2155).

(2) REQUIREMENTS.—The study conducted under paragraph (1) shall include a full examination of—

(A) disincentives for States to enroll full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6))) in the medicaid program or part D of title XVIII of the Social Security Act;

(B) the 6-month delay in States receiving rebate data;

(C) the prescription drug cost containment measures implemented by States after 2003; and

(D) issues relating to States having to pay more for prescription drug coverage for full benefit dual eligible individuals (as so defined) than they otherwise would have if the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2066 et seq.) had not been enacted.

(b) REPORT.—Not later than April 1, 2006, the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a) together with such recommendations as the Comptroller General determines appropriate.

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By Mr. LUGAR:

S. 567. A bill to provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage, adoption, or failure to adopt rules of play for athletic competitions and practices; to the Committee on the Judiciary.

Mr. LUGAR. Mr. President. Today I rise to introduce the Nonprofit Athletic Organization Protection Act of 2005. I am pleased to join with my good friend and colleague, Representative MARK SOUDER, in introducing this measure. This legislation is based on a bill that was introduced in the last legislative session.

I believe that this legislation is very important to encouraging health promotion in our country. The United States has invested a tremendous number of resources in providing our children with the ability to promote fitness through sports. In every town in America, you will find boys and girls playing America's most popular sports: baseball, soccer, football, and, of course, basketball. A recent study by the Sporting Goods Manufacturers Association showed that in 2000 at least 36 million American children played on at least one team sport. Of those 36 million, 26 million children between the ages of 6 and 17, played on an organized team in an organized league. A study by Statistical Research, Inc. for the Amateur Athletic Foundation and ESPN found that 94 percent American children play some sport during the year.

The ability for children to participate in sporting events provides our society many benefits that government cannot provide. Studies have shown that these benefits include betterment to a child's health, academic performance, social development and safety. The most obvious benefit of organized sports is physical fitness. The National Institute of Health Care Maintenance has identified physical activity such as sports as a key factor in the maintenance of a healthy body. Lack of physical activity, along with unhealthy eating habits, has been identified as the leading cause of obesity in children. The center notes: ''Physical activity provides numerous mental and physical benefits to health, including reduction in the risk of premature mortality, cardiovascular diseases, hypertension, diabetes, depression, and cancers.'' A Cooper Institute for Aerobics Research study indicated, ''Low fitness outranks fatness as a risk factor for mortality.'' By encouraging our children to participate in organized sports, we increase physical fitness and fight obesity.

A second benefit in the participation of organized sports is an increase in academic performance. The National Institute of Health Care Maintenance has highlighted ''a recent large-scale analysis reported by the California Department of Education [has shown] that the level of physical fitness attained by students was directly related to their performance on standardized achievement measures.'' When we encourage our children to participate in organized sports, we increase the ability for them to achieve academically.

A third benefit for young people who participate in organized sports is that they learn positive social development. Organized sports teach values of teamwork, fair play, and friendly competition. Success in organized sports is also a vital self-esteem builder in many children.

These three benefits have been widely discussed on the floor of the Senate and we have acted to implement several programs designed to reduce obesity and increase fitness, educational standards and the social well-being of our children.

The fourth benefit to participation in organized youth sports, providing a safe place to play, is a topic that has not received as much attention as the first three. Nonetheless, it is no less important. Fewer kids are simply going outside to play, due to the attraction of TV, video games, and the Internet, combined with parents' safety concerns about letting children run around outside unsupervised. As a result, organized sports teams are an increasingly important source of safe physical activity in children. The American Academy of Pediatrics has stated, ''In contrast to unstructured or free play, participation in organized sports provides a greater opportunity to develop rules specifically designed for health and safety.''

One primary reason why organized sports provide such an opportunity for safe play is that non-profit, volunteer organizations establish rules to provide a safe place to play. These organizations are made up of professional people who are in the business of providing children a fun and safe avenue for athletic exercise. Organizations like the Boys and Girls Club, the National Council of Youth Sports, the National Federation of State High School Associations and others exist largely to establish rules in order to minimize the risk of injury our children face while participating in sports. No matter how well these organizations perform their work, however, boys and girls will be injured.

Over the last several years, more and more of these rule making bodies have become targets for lawsuits seeking to prove that the rule maker was negligent in making the rules of play. These lawsuits claim that had a different rule been in place, the injury would not have happened. Indeed, these suits place rule makers into a Catch–22. A child can be injured in almost any situation no matter how a rule is written. The result has been to have more and more lawsuits.

As a consequence, the insurance premiums of these organizations have risen dramatically over the past several years. In his testimony before the House Judiciary Committee last year, Robert Kanaby the Executive Director of the National Federation of State High School Associations testified that:

''Over the last three years, the annual liability insurance premiums for the National High School Federation have increased three-fold to about $1,000,000. We have been advised by experts that given our claims experience and the reluctance of insurers to offer such coverage to an organization 'serving 7,000,000 potential claimants,' the premiums will likely increase significantly in years to come. Since we operate on a total budget of about $9,000,000, such an increase would be, to put it mildly, problematical.''

The costs have increased to the point where it is possible that these organizations will cease from providing age appropriate rules and the safety of youth sports will decline.

Because of this problem, I join, once again, with Representative MARK SOUDER in introducing the Nonprofit Athletic Organization Protection Act of 2005. This legislation will eliminate lawsuits based on claims that a nonprofit rulemaking body is liable for the physical injury when the rules was made by a properly licensed rulemaking body that has acted within the scope of its authority. Lawsuits may be maintained if the rule maker was grossly negligent or engaged in criminal or reckless misconduct. This reasonable legislation will help sports rule makers to do their job. If we do not pass this legislation, it is likely that rule makers will eventually close their doors since they will be unable to afford the insurance needed to provide a safe sporting environment.

No one who has participated in the debate surrounding this problem has disagreed that the current lawsuit culture needs reform. Instead, concerns have arisen that the remedy was overly broad preventing lawsuits against rule makers on other issue.

To remedy these concerns, the legislation introduced today contains a provision that explicitly says that lawsuits involving ''antitrust, labor, environmental, defamation, tortuous interference of contract law or civil rights law, or any other federal, state, or local law providing protection from discrimination'' are not barred by this bill. This provision was worked out between the civil rights groups, including the National Women's Law Center and the National Federation of State High School Associations, in an effort to alleviate this concern.

As many of my colleagues know, I am a runner. I enjoy the activity and the positive effect that running and athletics have played in my life. I would hope that my nine grandchildren will be able to have an opportunity to participate in organized sports and that lawsuits against rule makers for allegedly faulty rules will not prevent these organizations from functioning properly. I look forward to the consideration and passage of the Nonprofit Athletic Organization Protection Act of 2005 during the 109th Congress.

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By Ms. SNOWE (for herself, Ms. MIKULSKI, Mr. HARKIN, Mr. CORZINE, and Mrs. BOXER):

S. 569. A bill to improve the health of women through the establishment of Offices of Women's Health within the Department of Health and Human Services, to the Committee on Health, Education, Labor, and Pensions.

Ms. SNOWE. Mr. President, I rise today, on International Women's Day, to introduce the Women's Health Office Act with my colleague, Senator BARBARA MIKULSKI.

Historically, women's health care needs have been ignored or poorly understood, and women have been systematically excluded from important health research. We heard just this week about a landmark example. One federally-funded study examined the ability of aspirin to prevent heart attacks in 20,000 medical doctors, all of whom were men, despite the fact that heart disease is the leading cause of death among women. When a benefit was found in men, many physicians assumed that the same protective effect applied to women. Just this week, after research on women was finally conducted, we learned that the effect of aspirin on women appear to be quite different. We are simply not protected in the same way men are protected. It is tragic that so much of our medicine has been based on such assumptions.

Today we recognize that both genders should benefit equally from medical research and health care services. Yet equity does not yet exist in health care, and we have a long way to go. Knowledge about differences in women—in symptoms of disease, and in appropriate measures for prevention and treatment—frequently lags far behind our knowledge of men's health.

We must also recognize that some diseases—such as ovarian cancer and endometriosis—affect only women. Other diseases affect women disproportionately—such as osteoporosis. We also see differences in health care access between men and women. These simply must be reflected in our health policy.

It is for these reasons that we are again introducing the Women's Health Office Act. This legislation provides permanent authorization for offices of women's health in five federal agencies: the Department of Health and Human Services; the Centers for Disease Control and Prevention, the Agency for Healthcare Research and Quality; the Health Resources and Services Administration; and the Food and Drug Administration. Currently only two women's health offices in the Federal Government have statutory authorization; the Office of Research on Women's Health at the National Institutes of Health and the Office for Women's Services within the Substance Abuse and Mental Health Services Administration.

With some offices established, but not authorized, the needs of women could be compromised without the consent of Congress. We must create statutory authority for these offices, to ensure that health policy flows from fact, not assumption. Improving the health of American women requires a far greater understanding of women's health needs and conditions, and ongoing evaluation in the areas of research, education, prevention, treatment and the delivery of services—and this bill will ensure that.

I must also note today, on International Women's Day, that of all the disease threats to women, few rival the threat of AIDS. Increasingly, the face of the individual with HIV-infection is a woman's. Tragically, it is often the woman's husband who places her at risk, yet in many societies, the status of women makes her use of prevention difficult. One promising way to counter the risk of HIV infection is the development of an effective microbicide—a typical product which women could use to reduce their risk of contracting HIV. A number of scientists are working to develop such a product. If successful, this could prevent millions of infections, and would be a practical means of prevention in much of the world where options for women are so few. For this reason I again join Senator CORZINE today in introducing the Microbicides Development Act. This legislation will establish a coordination of this development at the NIH to reduce the toll of AIDS. Just today we read of a promising new microbicide which appears to show great promise. We must ensure that the promise of microbicides become reality for millions of women. This research is spread over multiple Institutes at NIH, and definitely will benefit from the coordination and integration which this Act will instill.

Today, on a day when we recognize both the achievements and contributions of women, it is fitting, that we provide the support and opportunity to facilitate the continued progress of women, I call on my colleagues to join me in supporting this legislation, which will ensure better health for our mothers, our sisters, our daughters, both here and abroad.

Ms. MIKULSKI. I rise to introduce the Women's Health Office Act with my colleague, Senator OLYMPIA SNOWE. The Women's Health Office Act authorizes and strengthens women's health offices or officers at Federal health agencies in the Department of Health and Human Services. This legislation will make sure that men and women get equal benefit from Federal investments in medical research and health care services.

Today, doctors, scientists, Members of Congress, and the American public know that women and men have different bodies and different health care needs. Diseases like ovarian cancer and endometriosis affect only women. Women are four times more likely to develop osteoporosis than men and according to some estimates, half of all women over 50 will fracture a bone because of osteoporosis in her lifetime.

Despite these differences, men's health needs have set the standard for our health care system and our health care research agenda. Women have been systematically excluded from medical research because decision-makers said that our hormone cycles complicated the results. One study on heart disease risk factors was conducted on 13,000 men—and not one women. But the results of studies like these were applied to both men and women. This neglect puts women's health and lives at risk.

That's why my colleagues and I took action. More than a decade ago, I worked with OLYMPIA SNOWE, TED KENNEDY, TOM HARKIN, and other women in the House to get an Office of Research on Women's Health at the National Institutes of Health, NIH. In 1993, I worked with these same women and Galahads in Congress to make sure that the women's health office would stay at NIH by putting it into law.

This office at NIH has made a real difference in how women are treated for certain illnesses. We now know that men and women often have different symptoms before a heart attack. Women's symptoms are more subtle, like nausea and back pain. Knowing these symptoms means women can get to the hospital sooner and can be treated earlier. That's turning women's health research into life-saving information.

I am proud that there are now women's health offices or officers at nearly every federal health agency at the Department of Health and Human Services. Like the one at NIH, women's

health offices mean that women's health needs are always at the table. These offices at the Food and Drug Administration, FDA, the Centers for Disease Control and Prevention, CDC, and the Health Resources and Services Administration, HRSA, make sure women are included in clinical drug trials, reach out to low-income and minority women to make sure they are getting vaccines and cancer screenings, and work with health care providers to put research on women's health into practice. Recent questions about the risks and benefits of mammography and hormone replacement therapy remind us that women's health offices are as important as ever.

Right now, many of these offices—and the important work they do—could be eliminated or cut back without the consent of Congress. That is why this bill is so important. This bill would put women's health offices into our nation's lawbooks.

The Women's Health Office Act does more than protect the status quo. It keeps us moving forward on women's health. It gives women's health offices a clear, consistent framework throughout the department. By writing them into law, it gives women's health offices the stature they need to be strong, effective advocates for women's health within the Federal Government. This legislation coordinates women's health activities within each agency, to identify needs and set goals. The Women's Health Office Act centralizes overall coordination throughout the Department of Health and Human Services, to clarify lines of accountability and chart a clear course on women's health. Finally, it authorizes funding for these women's health offices or officers, to make sure that we put our nation's priorities in the federal checkbook as well as the Federal lawbooks.

I would like to thank Senator OLYMPIA SNOWE for leading the way on this important legislation. As Dean of the Senate women, I will continue to fight to get this bill signed into law and to make progress to improve the health of American women.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 73—HONORING THE LIFE OF ENRIQUE ''KIKI'' CAMARENA

Mr. BIDEN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 73

Whereas Enrique ''Kiki'' Camarena, a Special Agent of the Drug Enforcement Administration for 11 years, was abducted and brutally murdered by drug barons in 1985;

Whereas Enrique Camarena dedicated his life to serving the law enforcement community and the Nation as a whole and was the devoted husband of Geneva Alvarado and loving father of Enrique, Daniel, and Eric;

Whereas Enrique Camarena received 2 Sustained Superior Performance Awards and a Special Achievement Award while serving the Drug Enforcement Administration;

Whereas Enrique Camarena's dedication to reducing the scourge of drugs eventually cost him his life;

Whereas ''Camarena Clubs'' to combat drug abuse have been created in high schools across the Nation to honor his memory;

Whereas Enrique Camarena is honored each year during National Red Ribbon Week; and

Whereas the 20th Anniversary of Enrique Camarena's death will be specially honored on March 9, 2005, at the Drug Enforcement Administration headquarters: Now, therefore, be it

*Resolved*, That the Senate—

(1) mourns the loss of Enrique ''Kiki'' Camarena;

(2) recognizes the contributions of Enrique Camarena to our National efforts to combat drug abuse;

(3) admires the courage and dedication of Enrique Camarena in his work as a Special Agent of the Drug Enforcement Administration;

(4) expresses gratitude for the legacy left by Enrique Camarena; and

(5) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the family of Enrique Camarena.

Mr. BIDEN. Mr. President, I rise today to submit a resolution to commemorate the outstanding life and tragic but courageous death of Enrique ''Kiki'' Camarena, a Special Agent of the Drug Enforcement Administration.

Enrique grew from a boy in the small town of Mexicali in Baja California, Mexico to a man as a United States Marine. During his two year tour as a Legal Clerk with the Marine Corps in San Diego, Enrique received the National Defense Service Medal. It was during this time that Enrique first demonstrated his dedication to the United States.

Following his honorable discharge from the Marine Corps in 1970, Enrique demonstrated his courage as a fireman for the City of Calexico while demonstrating his intelligence as a student at Imperial Valley College, where he earned an Associates degree in 1972. It was also in 1970 that Enrique Camarena first showed his interest in law enforcement by joining the Calexico, CA Police Department. In May 1973, he began what would be his life-long fight against drug abuse when he was assigned to El Centro, CA, where he served for 13 months as a Narcotics Investigator for Imperial County.

Those 13 months as a Narcotics Investigator proved to be a life-altering time for Enrique. In June 1974, he took his determination to dismantle drug organizations to the Federal level, as a Special Agent of the Drug Enforcement Administration. During his time with DEA, Special Agent Camarena returned to his hometown in California for several years prior to his assignment in Guadalajara, Mexico, which began in July 1981.

During his 11 years with DEA, Special Agent Enrique Camarena received two Sustained Superior Performance Awards and a Special Achievement Award. Each award recognized Enrique's dedication to the fight against drug abuse and determination to scourge our country of illegal drugs.

His frustration with the drug trade was perhaps most evident by a statement that would later prove to be prophetic: He asked, ''What's gonna have to happen? Does somebody have to die before anything is done? Is somebody going to have to get killed?''

On Thursday, February 7, 1985, at 2:00 p.m., Special Agent Camarena left the American Consulate in Guadalajara to meet his wife for lunch. Having come dangerously close to unlocking a multi-billion drug pipeline, Enrique was awaiting a reassignment, which was just three weeks away. Enrique never met his wife for lunch that day and he never received his reassignment.

As he neared his truck that afternoon, five men approached him and shoved him into a car. By February 10, DEA Administrator Francis ''Bud'' Mullen had flown to Guadalajara and to help begin the search for Enrique.

On March 5, Enrique's body was found on a ranch outside of the town of Zamora, Mexico, approximately 60 miles outside of Guadalajara. Autopsy reports indicated that Special Agent Camarena had been tortured and beaten. Three days after his body was discovered, twenty years ago today, he was returned to the United States for burial.

Following the death of Special Agent Enrique Camarena and the press attention that the killing generated, ''Camarena Clubs'' started throughout the El Cajon, CA area. These ''Camarena Clubs'' were formed to create a united front against drug abuse among students, teachers and others in the community.

The summer of 1985 saw a surge in national interest in Enrique's memory and the problems of drug abuse. The Virginia Federation of Parents and the Illinois Drug Education Alliance called on every American to wear red ribbons to symbolize their commitment to help reduce the demand for drugs in their communities. Since then, the Red Ribbon campaign has taken on national significance.

Red Ribbon Week is celebrated annually in cities across the country. The DEA and many other drug abuse prevention organizations around America help to sponsor this annual event. In Delaware, the Substance Abuse Awareness Committee sponsors Red Ribbon Week each October to take a visible stand against drugs through the symbol of the Red Ribbon.

Special Agent Enrique Camarena was a devoted husband to Geneva ''Mika'' Alvarado and a loving father to three sons, Enrique, Daniel and Eric. Today, I ask that the United States Senate formally recognize the life and death of Kiki, as his family lovingly calls him, to place official emphasis on the impact he made on America.

## SENATE RESOLUTION 74—DESIGNATING MARCH 8, 2005, AS ''INTERNATIONAL WOMEN'S DAY''

Mr. BIDEN (for himself, Mrs. CLINTON, Mr. LUGAR, Mr. KOHL, Mrs. MURRAY, Mr. LAUTENBERG, Ms. STABENOW, Mrs. BOXER, Mr. BAYH, Ms. LANDRIEU, Mr. JOHNSON, Mr. JEFFORDS, Mr. LEVIN, Mr. FEINGOLD, Mr. DODD, Mr. SARBANES, Mr. CORZINE, Mr. KERRY, Mr. OBAMA, Mr. SALAZAR, Mr. KENNEDY, Ms. MIKULSKI, Mrs. LINCOLN, Mr. HATCH, Mrs. FEINSTEIN, and Mr. REID) submitted the following resolution; which was considered and agreed to:

S. RES. 74

Whereas all over the world, women are contributing to the growth of economies, participating in the world of diplomacy and politics, and improving the quality of the lives of their families, communities, and nations;

Whereas discrimination continues to deny women full political and economic equality and is often the basis for violations of women's basic human rights;

Whereas worldwide, the lives and health of women and girls continue to be endangered by violence that is directed at them simply because they are female;

Whereas worldwide, violence against women includes rape, genital mutilation, sexual assault, domestic violence, dating violence, honor killings, human trafficking, dowry-related violence, female infanticide, sex-selection abortion, forced pregnancy, forced sterilization, and forced abortion;

Whereas the World Health Organization asserts that domestic violence causes more deaths and disability among women aged 15 to 44 than cancer, malaria, traffic accidents, and war;

Whereas worldwide, 130,000,000 girls and young women have been subjected to female genital mutilation;

Whereas worldwide, at least 1 in 3 females has been beaten or sexually abused in her lifetime;

Whereas worldwide, 20 to 50 percent of women experience some degree of domestic violence during marriage;

Whereas 1 in 4 women in the United States have been raped or physically assaulted by an intimate partner at some point in their lives;

Whereas somewhere in the United States, a woman is battered, usually by her partner, every 15 seconds;

Whereas more than 3 women are murdered by their husbands or boyfriends in the United States every day;

Whereas battering is the leading cause of injury to women aged 15 to 44 in the United States;

Whereas it is estimated that 1 in 5 adolescent girls in the United States becomes a victim of physical or sexual abuse, or both, in a dating relationship;

Whereas worldwide, women account for ½ of all cases of HIV/AIDS, and in Africa, young women are 3 times more likely to contract the virus than men;

Whereas worldwide, sexual violence, including marital rape, has been denounced as a major cause of the rapid spread of HIV/AIDS among women;

Whereas between 75 and 80 percent of the world's millions of refugees are women and children;

Whereas illegal trafficking worldwide for forced labor, domestic servitude, and sexual exploitation involves between 1,000,000 and 2,000,000 women and children each year, of whom approximately 50,000 are transported to the United States;

Whereas ⅔ of the world's nearly 1,000,000,000 illiterate individuals are women;

Whereas ⅔ of the children denied primary education are girls;

Whereas these educational failures have serious consequences for the global economy and the United States national security, as well as for tens of millions of girls who are losing the chance to discover their worth and importance as global citizens;

Whereas girls who are educated are more likely to have healthy and stable families, lower mortality rates, higher nutrition levels, and delayed sexual activity, and have less chance of contracting HIV/AIDS or having unwanted pregnancies;

Whereas in most countries, women work approximately 2 times more unpaid time than men do;

Whereas women work ⅔ of the world's working hours and produce ½ of the world's food, yet earn only 10 percent of the world's income and own less than 1 percent of the world's property;

Whereas 3 in 10 households are maintained by women with no husband present;

Whereas rural women produce more than 55 percent of all food grown in developing countries;

Whereas it is estimated that women and girls make up more than 70 percent of the poorest people in the world;

Whereas worldwide, women earn less, own less property, and have less access to education, employment, and health care than do men;

Whereas microcredit is a stunningly simple, inexpensive tool that can forever alter the economic landscape for the better;

Whereas women now make up 80 percent of the world's 70,000,000 microcredit borrowers, and from India to Nicaragua to South Africa to Costa Rica, women are proving that small loans can transform individual lives, families, and entire communities;

Whereas nations should take steps to ensure the full participation and representation of women in political conferences, committees, plenaries, and parliaments;

Whereas social investment, particularly investments in women and girls, should be an integral part of foreign policy;

Whereas despite extraordinary advances, women still comprise the majority of the world's poor, illiterate, and uneducated, remain under-compensated for the work they do, still do not have adequate access to medical care in too many countries, are underrepresented in leadership positions in government and business, and continue to be targeted for unspeakable atrocities in war and conflict;

Whereas March 8 has become known as International Women's Day for the last century, and is a day on which people, who are often divided by ethnicity, language, culture, and income, come together to celebrate a common struggle for women's equality, justice, and peace;

Whereas the dedication and successes of those working all over the world to end violence against women and girls and fighting for equality should be recognized; and

Whereas the people of the United States should be encouraged to participate in International Women's Day: Now, therefore be it

*Resolved*, That the Senate—

(1) designates March 8, 2005, as International Women's Day;

(2) reaffirms its commitment to—

(A) improve women's access to quality health care, including HIV/AIDS prevention and treatment;

(B) end and prevent violence against women, including the trafficking of women and girls worldwide, and ensure that the criminals who engage in these activities are brought to justice;

(C) end discrimination and increase the participation of women in decisionmaking positions in government and the private sector;

(D) extend full economic opportunities to women, including access to microfinance and microenterprise; and

(E) strengthen the role of women as agents of peace because women are among the best emissaries for easing religious, racial, and ethnic tensions, crossing cultural divides, and reducing violence in areas of war and conflict; and

(3) encourages the people of the United States to observe ''International Women's Day'' with appropriate programs and activities.

## SENATE RESOLUTION 75—DESIGNATING MARCH 25, 2005, AS ''GREEK INDEPENDENCE DAY: A NATIONAL DAY OF CELEBRATION OF GREEK AND AMERICAN DEMOCRACY''

Mr. SPECTER (for himself, Mr. SARBANES, Mr. ALLEN, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. CARPER, Mr. CHAFEE, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COBURN, Mr. COCHRAN, Mr. CORZINE, Mr. CRAIG, Mr. DEWINE, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. INHOFE, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mr. LOTT, Mr. LUGAR, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. OBAMA, Mr. REED, Mr. REID, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SANTORUM, Mr. SCHUMER, Mr. SMITH, Ms. SNOWE, Ms. STABENOW, Mr. STEVENS, Mr. SUNUNU, Mr. THOMAS, Mr. VOINOVICH, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 75

Whereas the ancient Greeks developed the concept of democracy, in which the supreme power to govern was vested in the people;

Whereas the Founding Fathers of the United States drew heavily on the political experience and philosophy of ancient Greece in forming our representative democracy;

Whereas Greek Commander in Chief Petros Mavromichalis, a founder of the modern Greek state, said to the citizens of the United States in 1821, ''it is in your land that liberty has fixed her abode and . . . in imitating you, we shall imitate our ancestors and be thought worthy of them if we succeed in resembling you'';

Whereas Greece played a major role in the World War II struggle to protect freedom and democracy through such bravery as was shown in the historic Battle of Crete that presented the Axis land war with its first major setback, setting off a chain of events that significantly affected the outcome of World War II;

Whereas the price for Greece in holding our common values in their region was high, as hundreds of thousands of civilians were killed in Greece during the World War II period;

Whereas, throughout the 20th century, Greece was 1 of only 3 nations in the world, beyond the former British Empire, that was allied with the United States in every major international conflict;

Whereas President George W. Bush, in recognizing Greek Independence Day, said, ''Greece and America have been firm allies in the great struggles for liberty. Americans will always remember Greek heroism and Greek sacrifice for the sake of freedom . . . [and] as the 21st Century dawns, Greece and America once again stand united; this time in the fight against terrorism. The United States deeply appreciates the role Greece is playing in the war against terror. . . . America and Greece are strong allies, and we're strategic partners.'';

Whereas Greece is a stabilizing force by virtue of its political and economic power in the volatile Balkan region and is one of the fastest growing economies in Europe;

Whereas Greece, through excellent work and cooperation with United States and international law enforcement agencies, arrested and convicted key members of the November 17 terrorist organization;

Whereas President Bush stated that Greece's successful ''law enforcement operations against a terrorist organization [November 17] responsible for three decades of terrorist attacks underscore the important contributions Greece is making to the global war on terrorism'';

Whereas Greece was extraordinarily responsive to United States requests during the war with Iraq, as Greece immediately granted unlimited access to its airspace and the base in Souda Bay, and many United States ships delivering troops, cargo, and supplies to Iraq were refueled in Greece;

Whereas the Olympic Games came home in August 2004 to Athens, Greece, the land of their ancient birthplace 2,500 years ago and the city of their modern revival in 1896;

Whereas Greece received world-wide praise for its extraordinary handling of over 14,000 athletes from 202 countries and over 2,000,000 spectators and journalists and did so efficiently, securely, and with its famous Greek hospitality;

Whereas the unprecedented Olympic security effort in Greece for the first post-9/11 Olympics included a record-setting expenditure of over $1,390,000,000 and assignment of over 70,000 security personnel, as well as the utilization of an 8-country Olympic Security Advisory Group which included the United States;

Whereas Greece, geographically located in a region where Christianity meets Islam and Judaism, maintains excellent relations with Muslim nations and Israel;

Whereas Greece has had extraordinary success in recent years in furthering cross-cultural understanding and reducing tensions between Greece and Turkey;

Whereas Greece and the United States are at the forefront of the effort for freedom, democracy, peace, stability, and human rights;

Whereas those and other ideals have forged a close bond between our 2 nations and their peoples;

Whereas March 25, 2005, marks the 184th anniversary of the beginning of the revolution that freed the Greek people from the Ottoman Empire; and

Whereas it is proper and desirable to celebrate with the Greek people and to reaffirm the democratic principles from which our 2 great nations were born: Now, therefore, be it

*Resolved,* That the Senate—

(1) designates March 25, 2005, as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy''; and

(2) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

## SENATE CONCURRENT RESOLUTION 15—ENCOURAGING ALL AMERICANS TO INCREASE THEIR CHARITABLE GIVING, WITH THE GOAL OF INCREASING THE ANNUAL AMOUNT OF CHARITABLE GIVING IN THE UNITED STATES BY 1 PERCENT

Mr. SANTORUM submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 15

Whereas individual charitable giving rates among Americans have stagnated at 1.5 to 2.2 percent of aggregate individual income for the past 50 years;

Whereas a 1 percent increase (from 2 percent to 3 percent) in charitable giving will generate over $90,000,000,000 to charity;

Whereas charitable giving is a significant source of funding for health, education, and welfare programs; and

Whereas a 1 percent increase in charitable giving may reduce the Federal deficit, reduce the call for tax increases, and provide funds to benefit our national health, education, and welfare goals: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That Congress encourages all Americans to increase their charitable giving, with the goal of increasing the annual amount of charitable giving in the United States by 1 percent.

Mr. SANTORUM. Mr. President, I rise today to submit a resolution that encourages all Americans to increase their charitable giving with the goal of increasing charitable giving in the United States by 1 percent.

I am proud to be a citizen of such a charitable nation. However, individual charitable giving rates among Americans have stagnated over the past 50 years. On average, Americans donate 2 percent of their aggregate income to charitable causes. A 1-percent increase to 3 percent could generate up to $90 billion annually. Further, a 1-percent increase in charitable giving has the potential to reduce the Federal deficit, reduce the call for tax increases, and provide our national health, education, and welfare programs with much needed assistance in performing their duties.

I also realize the Government's role to make it easier for Americans to be charitable. As legislators, we must provide incentives for charitable giving, opportunities for low-income families to build individual assets, and support faith-based and secular organizations as they provide charitable social services. I remain committed to promoting increased opportunities for the less fortunate to obtain help through faith-based and community organizations.

There are people all around the country waiting to give more to charity—they just need a little push. The CARE Act gives that in the form of a series of targeted tax incentives. The bill provides $2 billion in food-donation incentives that would allow farmers, restaurants and corporations to give more of their surplus food to local food banks and soup kitchens. America's Second Harvest estimates this provision translates into an additional 878 million meals for the hungry over the next 10 years.

In addition, the CARE Act removes the tax penalties that are preventing larger-dollar donors from rolling over their IRA account funds to assist a wide range of charities, including foundations, colleges and universities. If the CARE Act passes, individuals will be able to give 30 percent more in tax-free IRA contributions than would otherwise be possible.

The spirit of giving is part of what makes America great. I submit this resolution to remind us all that more can be done to assist the needy. I encourage my colleagues to support this resolution.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 130. Mr. TALENT submitted an amendment intended to be proposed to amendment SA 121 submitted by Mr. TALENT to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table.

SA 131. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 50 proposed by Mr. REID (for Mr. BAUCUS) to the bill S. 256, supra; which was ordered to lie on the table.

SA 132. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 133. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 134. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 115 submitted by Mr. BIDEN and intended to be proposed to the bill S. 256, supra; which was ordered to lie on the table.

SA 135. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 117 submitted by Mr. BIDEN and intended to be proposed to the bill S. 256, supra; which was ordered to lie on the table.

SA 136. Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 54 submitted by Mr. BENNETT and intended to be proposed to the bill S. 256, supra; which was ordered to lie on the table.

SA 137. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

## TEXT OF AMENDMENTS

**SA 130.** Mr. TALENT submitted an amendment intended to be proposed to amendment SA 121 submitted by Mr. TALENT to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

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

(4) by adding at the end the following:

''(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

''(A) such transfer was made to a self-settled trust or similar device;

''(B) such transfer was by the debtor;

''(C) the debtor is a beneficiary of such trust or similar device; and

''(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

''(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by—

''(A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or

''(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 781 and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).

''(3) This subsection shall take effect 1 day after the date of enactment of this subsection.''.

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**SA 131.** Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 50 proposed by Mr. REID (for Mr. BAUCUS) to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

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

**SEC. 202. EFFECT OF DISCHARGE.**

(a) INJUNCTION AFTER CONFIRMATION OF BANKRUPTCY PLAN OF REORGANIZATION.—

(1) IN GENERAL.—Section 524(g)(2)(B)(ii)(IV)(bb) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: '', or, if such a vote is not obtained with respect to any such class of claimants so established, the plan satisfies the requirements for confirmation of a plan under section 1129(b) that would apply to such class if the class did not accept the plan for purposes of section 1129(a)(8) (whether or not the class has accepted the plan)''.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply with respect to cases under title 11 of the United States Code, which were commenced before, on, or after such date.

(b) VIOLATION OF INJUNCTION; EXCEPTION.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

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**SA 132.** Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. 202. EFFECT OF DISCHARGE.**

(a) INJUNCTION AFTER CONFIRMATION OF BANKRUPTCY PLAN OF REORGANIZATION.—

(1) IN GENERAL.—Section 524(g)(2)(B)(ii)(IV)(bb) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: '', or, if such a vote is not obtained with respect to any such class of claimants so established, the plan satisfies the requirements for confirmation of a plan under section 1129(b) that would apply to such class if the class did not accept the plan for purposes of section 1129(a)(8) (whether or not the class has accepted the plan)''.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply with respect to cases under title 11 of the United States Code, which were commenced before, on, or after such date.

(b) VIOLATION OF INJUNCTION; EXCEPTION.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

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**SA 133.** Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

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

**SEC. 202. EFFECT OF DISCHARGE.**

(a) INJUNCTION AFTER CONFIRMATION OF BANKRUPTCY PLAN OF REORGANIZATION.—

(1) IN GENERAL.—Section 524(g)(2)(B)(ii)(IV)(bb) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: '', or, if such a vote is not obtained with respect to any such class of claimants so established, the plan satisfies the requirements for confirmation of a plan under section 1129(b) that would apply to such class if the class did not accept the plan for purposes of section 1129(a)(8) (whether or not the class has accepted the plan)''.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply with respect to cases under title 11 of the United States Code, which were commenced before, on, or after such date.

(b) VIOLATION OF INJUNCTION; EXCEPTION.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

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**SA 134.** Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 115 submitted by Mr. BIDEN and intended to be proposed to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 6, between lines 16 and 17, insert the following:

(3) SOUTHERN DISTRICT OF ILLINOIS.—

(A) IN GENERAL.—The temporary bankruptcy judgeship authorized for the southern district of Illinois under section 3(a)(4) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(B) TECHNICAL AMENDMENT.—The item relating to the southern district of Illinois in section 152(a)(2) of title 28, United States Code, is amended by striking ''1'' and inserting ''2''.

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**SA 135.** Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 117 submitted by Mr. BIDEN and intended to be proposed to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 4, strike lines 1 through 14, and insert the following:

(U) in the item relating to the northern district of Alabama, by striking ''5'' and inserting ''6'';

(V) in the item relating to the eastern district of Tennessee, by striking ''3'' and inserting ''4''; and

(W) in the item relating to the southern district of Illinois, by striking ''1'' and inserting ''2''.

(c) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—The temporary bankruptcy judgeships authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, the eastern district of Tennessee, and the southern district of Illinois under paragraphs (1), (3), (4), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to permanent bankruptcy judgeships.

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**SA 136.** Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 54 submitted by Mr. BENNETT and intended to be proposed to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted by amendment (No. 54), insert the following:

**TITLE IX—FINANCIAL CONTRACT PROVISIONS**

**SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.**

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(A) by striking ''subsection—'' and inserting ''subsection, the following definitions shall apply:''; and

(B) in clause (i), by inserting '', resolution, or order'' after ''any similar agreement that the Corporation determines by regulation''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended—

(A) by striking ''subsection—'' and inserting ''subsection, the following definitions shall apply:''; and

(B) in clause (i), by inserting '', resolution, or order'' after ''any similar agreement that the Board determines by regulation''.

(b) DEFINITION OF SECURITIES CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a repurchase agreement as defined in section 11(e)(8)(D)(v));

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation,

resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), (X), or (XI));

''(V) means any margin loan;

''(VI) means any extension of credit for the clearance or settlement of securities transactions;

''(VII) means any collar/loan transaction related to securities, prepaid forward transaction related to securities, or sale/total return swap transaction related to securities;

''(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(IX) means any combination of the agreements or transactions referred to in this clause;

''(X) means any option to enter into any agreement or transaction referred to in this clause;

''(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

''(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(ii) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(ii)) is amended to read as follows:

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement' as defined in section 207(c)(8)(D)(v));

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), (X), or (XI));

''(V) means any margin loan;

''(VI) means any extension of credit for the clearance or settlement of securities transactions;

''(VII) means any collar/loan transaction related to securities, prepaid forward transaction related to securities, or sale/total return swap transaction related to securities;

''(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(IX) means any combination of the agreements or transactions referred to in this clause;

''(X) means any option to enter into any agreement or transaction referred to in this clause;

''(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

''(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(c) DEFINITION OF COMMODITY CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iii) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(iii)) is amended to read as follows:

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(d) DEFINITION OF FORWARD CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C.

1821(e)(8)(D)(iv)) is amended to read as follows:

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a repurchase agreement as defined in section 11(e)(8)(D)(v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iv) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(iv)) is amended to read as follows:

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.''.

(e) DEFINITION OF REPURCHASE AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(v) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).''.

(f) DEFINITION OF SWAP AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity

swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by adding at the end the following new clause:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.''.

(g) DEFINITION OF TRANSFER.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) (as amended by subsection (f) of this section) is amended by adding at the end the following new clause:

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.''.

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(A) in subparagraph (A)—

(i) by striking ''paragraph (10)'' and inserting ''paragraphs (9) and (10)'';

(ii) in clause (i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration''; and

(iii) by striking clause (ii) and inserting the following new clause:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''; and

(B) in subparagraph (E), by striking clause (ii) and inserting the following:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended—

(A) in subparagraph (A)—

(i) by striking ''paragraph (12)'' and inserting ''paragraphs (9) and (10)'';

(ii) in clause (i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration''; and

(iii) by striking clause (ii) and inserting the following new clause:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''; and

(B) in subparagraph (E), by striking clause (ii) and inserting the following new clause:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''.

(i) AVOIDANCE OF TRANSFERS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Corporation''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(C)(i) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Board''.

**SEC. 902. AUTHORITY OF THE FDIC AND NCUAB WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.**

(a) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(A) in subparagraph (E), by striking ''other than paragraph (12) of this subsection, subsection (d)(9)'' and inserting ''other than subsections (d)(9) and (e)(10)''; and

(B) by adding at the end the following new subparagraphs:

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting ''or the exercise of rights or powers by'' after ''the appointment of''.

(b) NATIONAL CREDIT UNION ADMINISTRATION BOARD.—

(1) IN GENERAL.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended—

(A) in subparagraph (E) (as amended by section 901(h)), by striking ''other than paragraph (12) of this subsection, subsection (b)(9)'' and inserting ''other than subsections (b)(9) and (c)(10)''; and

(B) by adding at the end the following new subparagraphs:

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Board, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Board to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured credit union in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 207(c)(12)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(12)(A)) is amended by inserting ''or the exercise of rights or powers by'' after ''the appointment of''.

**SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.**

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

(1) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

''(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

''(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

''(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

''(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

''(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

''(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

''(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

''(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

''(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

''(D) DEFINITIONS.—For purposes of this paragraph, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.''.

(2) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking ''the conservator'' and all that follows through the period and inserting the following: ''the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.''.

(3) RIGHTS AGAINST RECEIVER AND CONSERVATOR AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D); and

(B) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

''(i) A bridge bank.

''(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

''(I) immediately upon the organization of the institution; or

''(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.''.

(b) INSURED CREDIT UNIONS.—

(1) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 207(c)(9) of the Federal Credit Union Act (12 U.S.C. 1787(c)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

''(A) IN GENERAL.—In making any transfer of assets or liabilities of a credit union in default which includes any qualified financial contract, the conservator or liquidating agent for such credit union shall either—

''(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

''(I) all qualified financial contracts between any person or any affiliate of such person and the credit union in default;

''(II) all claims of such person or any affiliate of such person against such credit union under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such credit union);

''(III) all claims of such credit union against such person or any affiliate of such person under any such contract; and

''(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

''(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

''(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or liquidating agent for the credit union shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

''(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or liquidating agent transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

''(D) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, a credit union, or any other institution, as determined by the Board by regulation to be a financial institution; and

''(ii) the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.''.

(2) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 207(c)(10)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(10)(A)) is amended in the material immediately following clause (ii) by striking ''the conservator'' and all that follows through the period and inserting the following: ''the conservator or liquidating agent shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent in the case of a liquidation, or the business day following such transfer in the case of a conservatorship.''.

(3) RIGHTS AGAINST LIQUIDATING AGENT AND CONSERVATOR AND TREATMENT OF BRIDGE BANKS.—Section 207(c)(10) of the Federal Credit Union Act (12 U.S.C. 1787(c)(10)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D); and

(B) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) LIQUIDATION.—A person who is a party to a qualified financial contract with an insured credit union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a liquidating agent for the credit union institution (or the insolvency or financial condition of the credit union for which the liquidating agent has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured credit union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the credit union or the insolvency or financial condition of the credit union for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Board as conservator or liquidating agent of an insured credit union shall be deemed to have notified a person who is a party to a qualified financial contract with such credit union if the Board has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

''(i) A bridge bank.

''(ii) A credit union organized by the Board, for which a conservator is appointed either—

''(I) immediately upon the organization of the credit union; or

''(II) at the time of a purchase and assumption transaction between the credit union and the Board as receiver for a credit union in default.''.

**SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.**

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively;

(2) by inserting after paragraph (10) the following new paragraph:

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the depository institution in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).''; and

(3) by adding at the end the following new paragraph:

''(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''.

(b) INSURED CREDIT UNIONS.—Section 207(c) of the Federal Credit Union Act (12 U.S.C. 1787(c)) is amended—

(1) by redesignating paragraphs (11), (12), and (13) as paragraphs (12), (13), and (14), respectively;

(2) by inserting after paragraph (10) the following new paragraph:

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or liquidating agent with respect to any qualified financial contract to which an insured credit union is a party, the conservator or liquidating agent for such credit union shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the credit union in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).''; and

(3) by adding at the end the following new paragraph:

''(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section (a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''.

**SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS AND DEFINITION OF PERSON.**

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

(1) MASTER AGREEMENT.—Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

''(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.''.

(2) PERSON.—Section 11(e)(8)(D)of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended by adding at the end the following:

''(ix) For purposes of this subsection, 'person' shall include any governmental entity and any entity set forth in the definition of 'person' in section 1 of title 1, United States Code.''.

(b) INSURED CREDIT UNIONS.—

(1) MASTER AGREEMENT.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by inserting after clause (vi) (as added by section 901(f)) the following new clause:

''(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.''.

(2) PERSON.—Section 207(c) of the Federal Credit Union Act (12 U.S.C. 1787(c)) is amended by adding at the end the following:

''(ix) For purposes of this subsection, 'person' shall include any governmental entity and any entity set forth in the definition of 'person' in section 1 of title 1, United States Code.''.

**SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.**

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon '', or is exempt from such registration by order of the Securities and Exchange Commission''; and

(B) in subparagraph (B), by inserting before the period '', that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act, or that is a multilateral clearing organization (as defined in section 408 of this Act)'';

(2) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

''(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;''; and

(C) by amending subparagraph (C), so redesignated, to read as follows:

''(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;'';

(3) in paragraph (11), by inserting before the period ''and any other clearing organization with which such clearing organization has a netting contract'';

(4) by amending paragraph (14)(A)(i) to read as follows:

''(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or close out values relating to such obligations or entitlements) among the parties to the agreement; and''; and

(5) by adding at the end the following new paragraph:

''(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.''.

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than section 11(e) of the Federal Deposit Insurance Act, section 207(c) of the Federal Credit Union Act, or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be terminated, liquidated, accelerated, and netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 11(e) of the Federal Deposit Insurance Act, section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than section 11(e) of the Federal Deposit Insurance Act, section 207(c) of the Federal Credit Union Act, and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be terminated, liquidated, accelerated, and netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 11(e) of the Federal Deposit Insurance Act, section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as section 407A; and

(2) by inserting after section 406 the following new section:

**"SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.**

''(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, except that for such purpose—

''(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank;

''(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank; and

''(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured

State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act.

''(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

''(c) REGULATORY AUTHORITY.—

''(1) IN GENERAL.—The Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency and the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

''(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

''(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meanings as in section 1(b) of the International Banking Act of 1978.''.

**SEC. 907. BANKRUPTCY LAW AMENDMENTS.**

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking ''means a contract'' and inserting ''means—

''(A) a contract'';

(ii) by inserting ''as defined in section 761 of this title'' after ''commodity contract'';

(iii) by striking '', or any combination thereof or option thereon;'' and inserting '', or any other similar agreement;'';

(iv) by striking ''repurchase transaction, reverse repurchase transaction,'' and inserting ''repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a repurchase agreement as defined in this section)''; and

(v) by adding at the end the following:

''(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

''(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

''(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

''(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;'';

(B) in paragraph (46), by striking ''on any day during the period beginning 90 days before the date of'' and inserting ''at any time before'';

(C) by amending paragraph (47) to read as follows:

''(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(A) means—

''(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

''(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

''(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

''(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

''(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

''(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;'';

(D) in paragraph (48), by inserting '', or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission,'' after ''1934''; and

(E) by amending paragraph (53B) to read as follows:

''(53B) 'swap agreement'—

''(A) means—

''(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

''(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

''(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement;

''(III) a currency swap, option, future, or forward agreement;

''(IV) an equity index or equity swap, option, future, or forward agreement;

''(V) a debt index or debt swap, option, future, or forward agreement;

''(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

''(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

''(VIII) a weather swap, option, future, or forward agreement;

''(IX) an emissions swap, option, future, or forward agreement; or

''(X) an inflation swap, option, future, or forward agreement;

''(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

''(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference therein); and

''(II) is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(iii) any combination of agreements or transactions referred to in this subparagraph;

''(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

''(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

''(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

''(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap

agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000;'';

(2) in section 741(7), by striking paragraph (7) and inserting the following:

''(7) 'securities contract'—

''(A) means—

''(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a ''repurchase agreement'' as defined in section 101);

''(ii) any option entered into on a national securities exchange relating to foreign currencies;

''(iii) the guarantee (including by novation) by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x));

''(iv) any margin loan;

''(v) any extension of credit for the clearance or settlement of securities transactions;

''(vi) any collar/loan transaction related to securities, prepaid forward transaction related to securities, or sale/total return swap transaction related to securities;

''(vii) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

''(viii) any combination of the agreements or transactions referred to in this subparagraph;

''(ix) any option to enter into any agreement or transaction referred to in this subparagraph;

''(x) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), or (ix), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), or (ix); or

''(xi) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial participant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

''(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan;''; and

(3) in section 761(4)—

(A) by striking ''or'' at the end of subparagraph (D); and

(B) by adding at the end the following:

''(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

''(G) any combination of the agreements or transactions referred to in this paragraph;

''(H) any option to enter into an agreement or transaction referred to in this paragraph;

''(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

''(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, including any guarantee or reimbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;''.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, FORWARD CONTRACT MERCHANT, COMMODITY BROKER, CORPORATION, REPO PARTICIPANT, STOCKBROCKER, AND SWAP PARTICIPANT.—Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (22) and inserting the following:

''(22) 'financial institution' means—

''(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, conservator or entity is acting as agent or custodian for a customer (whether or not a 'customer' as defined in section 741) in connection with a securities contract (as defined in section 741) such customer; or

''(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940;'';

(2) by inserting after paragraph (22) the following:

''(22A) 'financial participant' means—

''(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding at such time or on any day during the 15-month period prior to the date of the filing of the petition, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) at such time or on any day during the 15-month period prior to the date of the filing of the petition; or

''(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991);'';

(3) by striking paragraph (26) and inserting the following:

''(26) 'forward contract merchant' means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;''; and

(4) by striking in paragraph (53A) ''person'' and replacing it with ''entity'' and striking ''person's'' and replacing it with ''entity's''.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

''(38A) 'master netting agreement'—

''(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

''(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a);

''(38B) 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;''.

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, 401, and 718, is amended—

(A) in paragraph (6), by inserting '', pledged to, under the control of,'' after ''held by'';

(B) in paragraph (7), by inserting '', pledged to, under the control of,'' after ''held by'';

(C) by striking paragraph (17) and inserting the following:

''(17) under subsection (a), of the setoff by a swap participant or financial participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant or financial participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, under the control of, or due from such swap participant or financial participant to margin, guarantee, secure, or settle any swap agreement;''; and

(D) by inserting after paragraph (26) the following:

''(27) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and''.

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by sections 106, 305, 311, and 441, is amended by adding at the end the following:

''(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.''.

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (e), by inserting ''(or for the benefit of)'' before ''a commodity broker'';

(2) in subsection (f), by inserting ''(or for the benefit of)'' before ''repo participant'';

(3) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement'';

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement'';

(C) by inserting ''or financial participant'' after ''swap participant''; and

(D) by inserting ''(or for the benefit of)'' before ''a swap participant''; and

(4) by adding at the end the following:

''(j) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to (or for the benefit of) a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.''.

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.''.

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**''§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract''**;

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**''§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract''**;

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''; and

(3) in the second sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**''§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement''**;

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''; and

(3) in the third sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**''§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement''**;

(2) in the first sentence, by striking ''termination of a swap agreement'' and inserting ''liquidation, termination, or acceleration of one or more swap agreements'';

(3) by striking ''in connection with any swap agreement'' and inserting ''in connection with the termination, liquidation, or acceleration of one or more swap agreements''; and

(4) in the second sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—

(1) IN GENERAL.—Title 11, United States Code, is amended by inserting after section 560 the following:

**''§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15**

''(a) Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

''(1) securities contracts, as defined in section 741(7);

''(2) commodity contracts, as defined in section 761(4);

''(3) forward contracts;

''(4) repurchase agreements;

''(5) swap agreements; or

''(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

''(b)(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

''(2) If a debtor is a commodity broker subject to subchapter IV of chapter 7—

''(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under such subchapter; and

''(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor and traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

''(3) No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

''(A) a cross-margining agreement or similar arrangement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under paragraph (1) or (2) of section 5c(c) of the Commodity Exchange Act and has not been abrogated or rendered ineffective by the Commodity Futures Trading Commission; or

''(B) any other netting agreement between a clearing organization (as defined in section 761) and another entity that has been approved by the Commodity Futures Trading Commission.

''(c) As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

''(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under chapter 15, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

''561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15.''.

(l) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

**''§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(m) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

**''§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(B)(ii), by inserting before the semicolon the following: ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)'';

(2) in subsection (a)(3)(C), by inserting before the period the following: ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)''; and

(3) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 362(b)(27), 555, 556, 559, 560, 561,''.

(o) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking ''financial institutions,'' each place such term appears and inserting ''financial institution, financial participant,'';

(2) in sections 362(b)(7) and 546(f), by inserting ''or financial participant'' after ''repo participant'' each place such term appears;

(3) in section 546(e), by inserting ''financial participant,'' after ''financial institution,'';

(4) in section 548(d)(2)(B), by inserting ''financial participant,'' after ''financial institution,'';

(5) in section 548(d)(2)(C), by inserting ''or financial participant'' after ''repo participant'';

(6) in section 548(d)(2)(D), by inserting ''or financial participant'' after ''swap participant'';

(7) in section 555—

(A) by inserting ''financial participant,'' after ''financial institution,''; and

(B) by striking the second sentence and inserting the following: ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.'';

(8) in section 556, by inserting '', financial participant,'' after ''commodity broker'';

(9) in section 559, by inserting ''or financial participant'' after ''repo participant'' each place such term appears; and

(10) in section 560, by inserting ''or financial participant'' after ''swap participant''.

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

''555. Contractual right to liquidate, terminate, or accelerate a securities contract.

''556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.'';

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

''559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

''560. Contractual right to liquidate, terminate, or accelerate a swap agreement.'';

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following:

''767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.'';

and

(B) by inserting after the item relating to section 752 the following:

''753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''.

**SEC. 908. RECORDKEEPING REQUIREMENTS.**

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

''(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).''.

(b) INSURED CREDIT UNIONS.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended by adding at the end the following new subparagraph:

''(H) RECORDKEEPING REQUIREMENTS.—The Board, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured credit union with respect to qualified financial contracts (including market valuations) only if such insured credit union is in a troubled condition (as such term is defined by the Board pursuant to section 212).''.

**SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.**

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

''(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

''(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

''(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

''(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

''(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.''.

**SEC. 910. DAMAGE MEASURE.**

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by section 907, the following:

**''§ 562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements**

''(a) If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

''(1) the date of such rejection; or

''(2) the date or dates of such liquidation, termination, or acceleration.

''(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

''(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

''(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

''(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates.''; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by section 907) the following new item:

''562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.''.

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(g)''; and

(2) by adding at the end the following:

''(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.''.

**SEC. 911. SIPC STAY.**

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FROM STAY.—

''(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

''(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

''(iii) As used in this subparagraph, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.''.

**SEC. 912. EFFECTIVE DATE.**

(a) EFFECTIVE DATE.—This title and the amendments made by this title shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall not apply with respect to cases commenced or appointments made under any Federal or State law before the effective date of this Act.

**SEC. 913. SAVINGS CLAUSE.**

The meanings of terms used in this title are applicable for the purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

**SA 137**. Mr. LEAHY submitted an amendment to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes, which was ordered to lie on the table; as follows:

On page 156, line 18, insert '', unless the debtor certifies under penalty of perjury that the debtor is a victim of domestic violence whose physical well-being or whose children's physical well-being would be threatened if relief from the stay is granted'' before the semicolon.

## NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. CHAMBLISS. Mr. President, I would like to announce that the Committee on Agriculture, Nutrition, and Forestry will hold a hearing to discuss school nutrition programs. The hearing will be held on Tuesday, March 15, 2005, at 10 a.m. in SH–216, Hart Senate Office Building. Senator SAXBY CHAMBLISS will preside.

For further information, please contact the Committee at 224–2035.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition and Forestry be authorized to conduct a hearing during the session of the Senate on Tuesday, March 8, 2005. The purpose of this hearing will be to consider the reauthorization of the Commodity Futures Trading Commission.

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

COMMITTEE ON ARMED SERVICES

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 8, 2005, at 9:30 a.m., in open and closed session to receive testimony from unified and regional commanders on their military strategy and operational requirements, in review of the defense authorization request for fiscal year 2006.

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

COMMITTEE ON ARMED SERVICES

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 8, 2005, at 5 p.m., in closed session to receive a classified briefing regarding current operations in Iraq.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, March 8 at 2:30 p.m.

The purpose of the hearing, entitled Power Generation Resource Incentives & Diversity Standards, is to receive testimony regarding ways to encourage the diversification of power generation resources. Issues to be discussed include: Renewable Portfolio Standards (RPS) efforts among states and the cost and benefits of a federal RPS program. New approaches to promoting a variety of clean power resources, such as wind, solar, clean coal technology and nuclear power, will also be considered.

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

COMMITTEE ON FINANCE

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Tuesday, March 8, 2005, at 10 a.m., to hear testimony on ''Physician-Owned Specialty Hospitals: In the Interest of Patients of a Conflict of Interest?''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 8, 2005, at 2:30 p.m. to hold a hearing on the Black Sea Strategy.

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

COMMITTEE ON THE JUDICIARY

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, March 8, 2005 at 9:30 a.m. on ''Judicial Nominations.'' The hearing will take place in the Dirksen Senate Office Building Room 226. The tentative witness is attached.

Agenda:

PANEL I: Senators.

PANEL II: Thomas B. Griffith, of Utah, to be United States Circuit Judge for the District of Columbia Circuit.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Tuesday, March 8, 2005, at 9:30 a.m., to conduct a hearing to examine and discuss S. 271, a bill which reforms the regulatory and reporting structure of organizations registered under Sections 527 of the Internal Revenue Code.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on March 8, 2005 at 2:30 p.m. to hold a closed hearing.

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

SUBCOMMITTEE ON PUBLIC LANDS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests be authorized to meet during the session of the Senate on Tuesday, March 8 at 10 a.m.

The purpose of the hearing is to receive testimony on S. 179, to provide for the exchange of land within the Sierra National Forest, California, and for other purposes; S. 213, to direct the Secretary of the Interior to convey certain federal land to Rio Arriba County, New Mexico; S. 267, to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes; and S. 305, to authorize the Secretary of the Interior to recruit volunteers to assist with or facilitate the activities of various agencies and offices of the Department of the Interior; S. 476, to authorize the Boy Scouts of America to exchange certain land in the state of Utah acquired under the Recreation and Public Purposes Act; and S. 485, to reauthorize and amend the National Geologic Mapping Act of 1992.

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

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary Subcommittee on Terrorism, Technology, and Homeland Security be authorized to meet to conduct a hearing on ''Terrorism and the EMP Threat to Homeland Security,'' on Tuesday, March 8, 2005, at 2:30 p.m. in Room 226 of the Dirksen Senate Office Building.

Panel I: Dr. Lowell Wood, Commissioner, Congressional EMP Commission, Livermore, CA; Dr. Peter Pry, Senior Staff, Congressional EMP Commission, Washington, DC; Dr. Peter Fonash, National Communications System Deputy Manager (Acting), Department of Homeland Security, Washington, DC.

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

## PRIVILEGE OF THE FLOOR

Mr. BROWNBACK. Mr. President, I ask unanimous consent Alison Thompson, a Marine fellow on Senator DOLE's staff, be granted privileges of the floor for the duration of today's session.

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

## MEASURE PLACED ON THE CALENDAR—S. 539

Mr. GRASSLEY. Mr. President, I understand there is a bill at the desk that is due for its second reading.

The PRESIDING OFFICER. The Senator is correct. The clerk will read the title of the bill for the second time.

The assistant legislative clerk read as follows:

A bill (S. 539) to amend title 28, United States Code, to provide the protections of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

Mr. GRASSLEY. Mr. President, in order to place the bill on the calendar under the provisions of rule XIV, I object to further proceedings.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

## APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President of the Senate, and after consultation with the Majority Leader, pursuant to Public Law 106–286, appoints the following Members to serve on the Congressional-Executive Commission on the People's Republic of China: The Senator from Nebraska, Mr. HAGEL, Chairman; the Senator from Kansas, Mr. BROWNBACK; the Senator from Oregon, Mr. SMITH; the Senator from South Carolina, Mr. DEMINT; and the Senator from Florida, Mr. MARTINEZ.

## INTERNATIONAL WOMEN'S DAY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 74, submitted earlier today by Senators BIDEN, CLINTON, LUGAR, KOHL, and others.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 74) designating March 8, 2005, as ''International Women's Day.''

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

Mr. DURBIN. Today, March 8, is International Women's Day. This day provides a special opportunity for us to reflect on the status of women throughout the world and to think about what we can do to improve the health and well-being of some of the world's most vulnerable women.

Today, I would like us to think about Uganda, where I sat on a porch with mothers who were HIV-positive. These mothers were gathering scrapbooks, photos, notes, and little memorabilia of their lives to leave to their children. Their children, playing in the yard, had already lost one parent, and were now about to lose a second.

I would like us to think about South Africa, where I saw women waiting for hours on wooden benches, inside a clinic made from old rail cars, in the hope that they might be sick enough to qualify for antiretroviral treatment for HIV.

And, I would like us to think about Bangladesh, where I saw women who had known nothing but poverty, but who, thanks to a tiny loan, had become entrepreneurs. They were offering cell phone service to their villages, made possible by their ownership of a single, solar-powered cell phone.

The stories of women like these from around the world are often stories of great sadness, but also stories of hope. The health and economic well-being of these women and their families are deeply intertwined. If we can improve one, we may be able to improve the other as well.

The connection between health and economic well-being is clearly apparent in two areas of international assistance: fighting HIV/AIDS, and providing family planning.

Women are now the face of AIDS in many parts of the world. In sub-Saharan Africa, 57 percent of those infected with HIV are women. Younger women are at particular risk. They are three times more likely than young men to be infected. This striking statistic, according to Stephen Lewis, the United Nations Secretary General's Special Envoy for HIV/AIDS in Africa, ''is unprecedented in the history of the pandemic and . . . perhaps the most ominous warning of what is yet to come.''

HIV/AIDS exploits and widens the inequities that make women more vulnerable. Women may have fewer economic opportunities, making them dependent on others for simple survival. When a family's resources are limited, any available money may go first for care and treatment for the men. Where women do not have rights to property, a husband's death can leave a widow and her children with literally nothing except infection with HIV. Women are also too often at risk for sexual violence and coercion.

The list of problems is long. It is clear that to win the fight against HIV/AIDS, we must address the many and wide-ranging impacts of the disease on women. Our strategies to fight HIV/AIDS should include approaches such as microcredit programs that provide women with small loans. These loans, often as small as $10, enable women to start businesses to sustain themselves and their families. We should also support efforts to keep girls in school, using education's effectiveness as a ''social vaccine'' against HIV infection. We should work to make prevention, care, and treatment accessible to women. We must address the problem of gender-based violence and intimidation.

And, as part of our strategy, we should also support promising women-centered technologies such as microbicides. This is why I am a cosponsor of the Microbicides Development Act being introduced today. This bill calls on the Federal Government to accelerate and coordinate research and development of microbicides.

Family planning is another area that can have important benefits for women's health and economic well being. The World Bank has called family planning ''a development success story'' because it contributes so greatly not just to women's health and opportunities, but also to the social and economic development of entire societies. Family planning improves economic and educational opportunities for women and their families. It also has a direct effect on health.

Worldwide, over half a million women die each year from pregnancy or delivery. Family planning makes pregnancy safer by reducing unintended pregnancies and by allowing couples to space births, giving mothers' bodies more time to recover between pregnancies. Spacing births 3 to 5 years apart can prevent the deaths of women and children. It decreases a mother's risk of dying from childbirth by 2.5 times, and also decreases by 2.5 times the baby's risk of dying before the age of five.

Unfortunately, many couples still lack access to family planning care. Worldwide, an estimated 200 million women want to delay the birth of their next child or stop childbearing altogether, but lack access to effective contraceptive methods.

Fully funding this unmet need for contraceptives could reduce abortions by 22 million, infant deaths by 1.4 million, and pregnancy-related deaths by 142,000. Improving access to family planning care is also a wise economic investment. Studies from Mexico, Thailand, Egypt, and Vietnam have found that every dollar spent on family planning saves $8 to $31 in government expenditures.

The United States has been a leading supporter of family planning programs since the 1960s. For family planning's many benefits to women's health and lives, I hope we will continue our leadership in this area.

Today, on International Women's Day, we have an opportunity to recognize the progress that has been made in advancing the health and economic well-being of women. We also have an obligation to renew our commitment to providing the care that is needed to help some of the world's most vulnerable women and their families.

When we face challenges, we must not be deterred. When we experience success, we ought not to become complacent. Winston Churchill reminds us, ''Success is not final, failure is not fatal: it is the courage to continue that counts.'' The women that I have met in Uganda, South Africa, and Bangladesh have all had the courage to continue. We too must continue our efforts to improve the health and lives of women around the world.

Mrs. CLINTON. Mr. President, today we commemorate International Women's Day. Discussions that will take place this week in celebration of International Women's Day allow women leaders, policy makers and experts from governments around the world to take stock of our progress and recommend concrete steps for future action.

I commend U.N. Secretary General Kofi Annan for using his platform at the United Nations to advocate on behalf of women's rights. More than most, the Secretary General knows firsthand that global progress depends on securing the rights of women worldwide. I am grateful to him for raising his voice on behalf of women and for the pivotal role the U.N. continues to play in advancing women's rights on every continent.

About 2 weeks ago, I had the privilege of traveling to Iraq, Afghanistan and Pakistan with some of my colleagues on the Senate Armed Services Committee. I visited U.S. troops and had a chance to see the extraordinary work these dedicated men and women are doing under extremely trying circumstances.

I also spent a few very valuable moments with Iraqi and Afghan women, just as I had done on a previous visit to Iraq and Afghanistan during Thanksgiving in 2003. What I saw, and what I heard from these women, was both inspiring and unnerving. In many ways the experiences of Iraqi women, and their counterparts in Afghanistan, underscore the opportunities unfolding for women all over the globe. But they also represent an enduring truth—that no matter how far we have come and how much hope is on the horizon, women must continue to work, struggle, and fight for every ounce of progress we make. Even then there are no guarantees.

Ten years ago, women from 189 countries came together for the United Nations Fourth World Conference on Women in Beijing. It was a gathering that lasted only a few days, but it changed the world.

We were women of all colors, races, ethnicities, languages, and religious backgrounds. Yet we knew that, as women, we shared common aspirations and dreams, as well as concerns and worries about the futures of our families and our communities.

In Beijing, after years, decades, indeed centuries, we broke our silence. Together we spoke up and we spoke out.

We spoke out on behalf of women and their daughters, mothers and sisters; women who were underpaid, under-educated and undervalued; women who were deprived of the right to go to school, earn a living, see a doctor, own property, get a loan, cast a vote or run for office; women who were persecuted, abused, violated, even killed because there were no laws to protect them or no enforcement of the laws that were supposed to protect them.

Although some governments and officials doubted that a United Nations conference on women would have an impact, what transpired in Beijing was the beginning of a global movement. It was a global movement focusing attention on the issues that matter most in the lives of women and their families: access to education, health care, jobs and credit, and the opportunity to enjoy the full range of political, legal and human rights.

We called on governments around the world to promote and protect women's rights unequivocally and to act on the ideal that ''women's rights are human

rights and human rights are women's rights.''

We made our case that global progress depends on the progress of women; that democratic institutions cannot thrive and survive without the participation of women; that market economies cannot grow and prosper without the inclusion of women; that societies are not truly free and just without legal protections and rights for women; that a nation cannot advance into the 21st century and in the Information Age without educated, literate women.

Today, as we face new and daunting enemies—from stateless terrorism to the global pandemic of HIV/AIDS to the scourge of human trafficking—we are learning that our Nation and our world cannot be secure or at peace if women are denied the right to fulfill their God-given potential at home, at school, at work, at the ballot box, in the courthouse and in the board room.

The Beijing Conference got us going. Governments, working with NGOs, used the Beijing Platform for Action as a road map. In the 10 years since, many have taken significant steps in the right direction.

From Mongolia to Indonesia to Tajikistan, we are seeing more equitable laws protecting women from discrimination, abuse and violence. From Gambia to Chile more women are getting elected or appointed to leadership roles in government. Our global movement is having a profound impact around the world.

Turkey recently passed sweeping legislative reforms to protect the rights of women with regard to rape and honor killings.

In Ethiopia, a center funded by the U.S. Agency for International Development opened last summer to offer medical assistance and counseling to women and girls who are victims of human trafficking.

Morocco instituted new family law that gives women equal rights to make decisions about marriage, divorce custody and alimony.

In Afghanistan, for the first time, a woman, Dr. Masooda Jalal, ran for the presidency. And Habiba Sarobi was just appointed governor of one of Afghanistan's central provinces. She is the first woman to hold a provincial government post in Afghanistan.

In Mexico, Amalia Garcia became the third women ever to be elected governor of a state in her country.

In Iran, Dr. Shirin Ebadi, a woman lawyer, judge, and human rights activist, was awarded the Nobel Peace Prize in 2003.

The following year in Kenya, Wangari Maathai, the deputy minister of the environment, won the Nobel Peace prize for her efforts to protect the environment and advance opportunities for poor women.

In the United States, the Clinton administration launched the Vital Voices democracy initiative to help women around the globe build democratic institutions and market economies in their own countries. During my husband's administration, I was honorary chair of the President's Interagency Council on Women, whose job was to follow up on Beijing and make sure that policies and programs relating to women and girls were a priority in every federal agency.

President Clinton's administration was the first ever to understand that social investment particularly investments in women and girls should be an integral part of foreign policy. Secretary Madeleine Albright led the charge, and I am grateful for her energy and vision.

These achievements might not have been possible without the galvanizing effects of Beijing. We should all be very proud of the work we have done here in the United States, as well as around the world, to advance the Beijing agenda and ensure that we continue to make progress on all of these fronts.

But where do we go from here?

Despite our advances, women still comprise the majority of the world's poor, illiterate and uneducated. Women remain undercompensated for the work they do in every country on Earth. Women in too many countries still do not have adequate access to medical care or the fundamental right to plan their own families. Women are underrepresented in leadership positions in government and business. Women continue to be targeted for unspeakable atrocities in war and conflict.

At this very moment, women and girls in some parts of the world are being forced into marriages they do not want. They are dying of HIV/AIDS in disproportionate numbers. They are getting trapped in the bondage of international trafficking rings. They are being subjected to rape, mutilation and murder as a tactic or prize of war. They are left diseased, destitute and dying in refugee camps.

In too many instances, the march to globalization has also meant the marginalization of women and girls. That has to change.

This week's events offer an opportunity not just to assess our progress and pat ourselves on the back. We also must reaffirm the goals laid out in the Beijing platform for action and adopt our strategies to meet the new and complex challenges of the 21st century.

Specifically:

One, we must continue to improve access to quality health care, including reproductive and sexual health and HIV/AIDS prevention and treatment.

When women and girls are healthy, we all benefit from lower rates of maternal and child mortality, improved public health, a decline in population growth, a more productive work force and more stable families.

Among the most serious health crises facing women today is HIV/AIDS. About half of those infected worldwide are women. In Africa, young women are three times more likely to contract the virus than men. A vicious cycle of poverty, inadequate health care, illiteracy, sexual coercion and gender-based violence make this a daunting problem with implications well beyond the developing world.

That is why Senator BOXER and I proposed an amendment to the Global AIDS bill that would provide assistance to foreign countries to combat HIV/AIDS, tuberculosis and malaria.

We also have to ensure that women enjoy the fundamental right to plan their own families and that they have access to family planning services.

This is not an easy issue. There are people with equally strong passions and convictions on both sides. But we should all be able to agree that we want every child born in this country and around the world to be wanted, cherished and loved. And the best way to achieve that is to educate the public about reproductive health and how to prevent unsafe and unwanted pregnancies.

Research shows that the primary reason that teenage girls abstain is because of their religious and moral values. We should embrace this and support programs that reinforce the idea that abstinence at a young age is not just the smart thing to do; it is the right thing to do. But we should also recognize what works and what does not work and the jury is still out on the effectiveness of abstinence-only programs. I do not think this debate should be about ideology, it should be about facts. We have to deal with the choices young people make and not only the choices we want them to make. We should use all the resources at our disposal to ensure teens are getting the information they need to make the right decisions.

Today, roughly 20 million women worldwide risk unsafe abortions every year. About 68,000, most of them in developing countries, die in the process. Many more suffer horrific injuries. The World Health Organization estimates that about 600,000 women die each year from pregnancy-related causes. Many times that number suffer grievous injury. Many of these deaths could be prevented by providing women with the information and means to choose the size and spacing of their families.

Yet, the Bush administration is making it more difficult for women in these situations to receive safe medical care. Under the global gag rule, none of our foreign aid dollars can go to foreign NGOs that provide abortions beyond cases of rape, incest or endangerment to the mother. Or provide abortion counseling or advocate the legalization of abortion in their countries.

In places such as Nepal and Afghanistan, which suffer from some of the highest maternal mortality rates in the world, clinics funded by our government provided a full range of health services to women and girls. But with the Bush administration's reinstatement of the global gag rule, those funds have dried up; the doors to the clinics are closed. When I visited Afghanistan two years ago and recently,

Afghan women asked that the U.S. renew women's health assistance for that country.

Practically speaking, making it harder for women to get information, counseling and family planning services is a counterproductive policy. It does nothing to reduce abortion; in fact, it may do quite the opposite. Without access to contraception and family planning services, there will be more unwanted pregnancies. Without access to adequate medical care, many pregnant women will die undergoing unsafe abortions.

There is no reason why governments cannot help educate women and assist girls and women with their health care needs. It is the most effective way to reduce abortions and improve the health and well-being of women and their families.

Two, we must prevent violence against women, and that includes the trafficking of women and girls worldwide, and we must make sure that the criminals who engage in these activities are brought to justice and not allowed to go free.

For all the benefits of globalization, modern technology and instant communications, there are dark sides. One of the most insidious is the crime and heinous human rights violation of human trafficking.

As many as 800,000 men, women and children are trafficked across international borders each year, lured by the promise of jobs or a better life, only to find themselves trapped in prostitution, forced labor and debt bondage.

I will never forget visiting a school in northern Thailand that took in young girls whose lives were ruined by prostitution and taught them vocational skills. Many of the girls had contracted HIV/AIDS. I remember crouching in front of a teenage girl in a wheelchair who was so ill that she could barely raise her hands to greet me. The girl had been sold into prostitution by her family because they were desperate for money. She had escaped her brothel, returned home, and was sold again. She died a few days after my visit.

I also met with women leaders from Eastern and Central Europe and our government launched campaigns in Lviv, Ukraine, and in Istanbul to combat trafficking. I am proud that in March of 1998, President Clinton condemned human trafficking as a violation of human rights and outlined the prevention, protection and prosecution framework and strategy which led to the first anti-trafficking bill, which he signed into law in 2000.

Now the Senate must ratify the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. Our government played a major role in developing this Protocol that has led many countries around the world to enact new antitrafficking legislation and we and other member states must ratify it. So far 79 countries have ratified it and I believe that it is past time for our country to provide clearer leadership to other countries who have not yet ratified this landmark instrument of international cooperation.

But more is needed. I am heartened that since we initially helped bring global attention to this issue that our work continues to grow. But I am equally concerned that current efforts have not yet achieved the concrete results desperately needed by the victims of trafficking like the girls I visited whose lives were ravaged by their servitude. We have a deep responsibility to all of trafficking's victims to do better and I am committed to continue to work on their behalf.

In a related area, the U.S. and other nations must, for moral and economic reasons, support efforts to curb all forms of violence against women, be it mass rapes in Bosnia and Darfur or battered women suffering in the silence of their own homes in America.

Three, we must continue to increase participation of women in decision-making positions in government and the private sector.

Women are on the front lines when it comes to issues involving their children, their families and their communities. But too often their voices are not part of the political dialogue. We need to make sure that women have every opportunity to make their voices heard, to be part of civic life and to contribute to the formation of policies and programs that will affect their lives and the lives of those around them.

NGOs have been a critical element of promoting women's human rights. They were the voice for women in Afghanistan during the dark days of the Taliban. Thanks to organizations such as the Vital Voices Global Partnership, more and more women around the world are learning the skills necessary to run political organizations and campaigns, build political networks and win elective office. As more women enter the political arena, research shows that their presence raises the standards of ethical behavior, lowers corruption and makes political institutions more responsive to constituents.

We have seen women in Rwanda win nearly half the seats in their parliament during the 2003 elections. Their active participation makes Rwanda stronger.

We have seen Afghan women refuse to sell their voter registration cards to tribal warlords and defy expectations by voting. Their active participation makes Afghanistan stronger.

We just saw Iraqi women refuse to run away from polling stations in January despite the enormous risk and sometimes flying bullets. Their active participation will make Iraq stronger.

We were all moved by photos of women and men on Election Day in Iraq holding up their ink-stained fingers, showing their courage and determination to vote freely in their country's first democratic elections. We were encouraged that a significant number of women were candidates and won.

The wide participation in this election gives us good reason to be cautiously optimistic that Iraq is on the path to building a stable and secure democratic government. But there are also troubling signs: Women have been targeted for retribution, with tragic consequences. Women have been attacked for wearing Western dress or promoting progressive ideas. I have been told that fear of violence has kept some women confined to their homes.

And so it is important that we recognize and applaud the progress that has been made, and that we remain vigilant for the future. We cannot become complacent and see women freed from one tyranny only to be imprisoned by another: the tyranny of violence or of extremism.

Decisions are being considered right now in Iraq that will determine the role that women have in governance, under the law and in society.

To ensure that Iraqi women are not marginalized under their new government, their rights must be ensured, their personal security guaranteed and their access to opportunity protected.

Four, we must extend full economic opportunities to women, including access to microfinance and microenterprise.

It seems obvious that, with women making up more than half of the world's population, global prosperity depends on women having the right to education, jobs, property ownership and credit. Yet it is only relatively recently that this fact became more widely accepted. Over the past several decades we have seen the enormous benefits accrued when women are given even a small slice of the economic pie.

Microcredit is one of those stunningly simple, inexpensive tools that can forever alter the economic landscape for the better. Women now make up 80 percent of the world's 70 million microcredit borrowers. From India to Nicaragua to South Africa to Costa Rica, women are proving that small loans can transform individual lives, families and entire communities.

Five, we must ensure that the doors of primary education are open to every girl—and boy—in every country and on every continent.

If there is a domino effect at work here, it begins with primary education. Today, 55 percent of girls in sub-Saharan Africa do not complete primary school. This failure has real consequences for our global economy and our national security, not to mention for tens of millions of children with limitless potential who are losing the chance to discover their worth and importance as global citizens.

Girls who are educated are more likely to have healthy and stable families, lower mortality rates, higher nutrition levels, delayed sexual activity and less chance of contracting HIV/AIDS or

having unwanted pregnancies. Educated children also correlate to increases in the GDP.

Equally important today, the education of children in the developing world is one of our best weapons against terror. We cannot just win the military battles; we have to win the hearts and minds of hundreds of millions of people around the world, many of them between the ages of 15 and 24. We have to educate them, and we have to engage them in discussions about our future.

I am pleased to have introduced the Education For All Act last year, which calls for a clear, global strategy to achieve universal global education by 2015. By dramatically increasing our investment in global education, the legislation would make educating children, including girls, a top priority of U.S. foreign policy.

No country can do this alone. We need other reform-minded countries to step up to the plate. We need to leverage the strength and resources of private voluntary organizations. We have to work together to achieve this goal.

Six, we must strengthen the role of women as agents of peace because we know that women are among our best emissaries when it comes to easing religious, racial and ethnic tensions, crossing cultural divides, and reducing violence in areas of war and conflict.

War and conflict disproportionately impact women, yet women are rarely included in peace negotiations or the peace process. Too many societies continue to view women's roles narrowly, thus losing the chance to benefit from the special wisdom and insights that women offer.

In Rwanda, Sierra Leone and Colombia, women have formed groups to support orphans and widows left in the wake of genocide and have advocated for peace.

The 2004 U.N. Report of the High Level Panel on Threats, Challenges and Change recommends that in order to more capably resolve conflicts between states, the U.N. should engage in greater consultation with important voices from civil society, especially those of women, who are often neglected during peace talks.

The report goes on to say that in order to protect civilians, the Security Council, U.N. agencies and Member States should fully implement Resolution 1325 on women, peace and security, which passed unanimously in 2000; it is the first resolution ever passed by the Security Council that specifically addresses the impact of war on women, and women's contributions to conflict resolution and sustainable peace.

From my own experiences, I know that women can serve as tremendously courageous and effective peace brokers. I have listened to women from Central America talk about combating domestic violence after helping end real combat in deadly civil war. I have seen Catholic and Protestant women meet over tea, finding common ground amidst the conflict of Northern Ireland. I have seen Bosnian, Croat, and Serbian women bridge their differences by working together, eating together and learning side by side.

Finally, it is time to ensure that women have equal opportunity for meaningful representation in all areas of decision-making. Not just token positions. We need to be partners in developing budgets, writing laws, serving in security forces, dispensing justice, conducting business and serving in government.

Doing all of these things is not just the right thing to do. It is the smart thing to do. Stronger, healthier, fulfilled and productive women are the key to building stronger societies.

Ten years after Beijing, politicians and policymakers around the globe have become increasingly sophisticated at talking about gender equality and the important role women play in society. Political speeches, election outreach and advertisements all suggest a growing acceptance of women's rights. But listen carefully to the words, match them to their deeds and you will see that we still have a lot of work to do.

It is not enough to enshrine equal rights in a constitution. It is a critical first step, but nations have to interpret and actively enforce equal rights for women. We are working with women in Iraq to make sure this happens and that their rights are not eroded under a new government.

It is not enough to say women deserve a voice in politics. Nations have to take steps to ensure the full participation and representation of women in their conferences and committees, their plenaries and parliaments. Our sisters in Nigeria are struggling with this as we speak. Although the constitution guarantees equal rights, Nigerian women have been virtually excluded from the political process.

It is not enough to say we want to educate our girls and give women economic opportunities. Women must be able to safely conduct business, have access to loans and participate fully in economic activities. They must have a say in how society allocates its resources.

It is not enough to say violence targeted against women is wrong. Nor is it acceptable to excuse violence against women as a cultural norm. Violence against women is not cultural. It is criminal, and laws must be written and enforced to punish perpetrators of any and all forms of violence against women.

During this week, women on all continents, who are often divided by national boundaries and by ethnic, linguistic, cultural, economic and political differences, come together to celebrate International Women's Day. It is a time to reflect on our commitment to the ideals of equality, justice, peace and development for women around the world.

Let us use this occasion to redouble our efforts on behalf of the hundreds of millions of women worldwide who rely on us to speak up and speak out for them because they cannot speak up for themselves.

Let us keep women's rights on the world's agenda. Let us continue to mobilize and galvanize until every woman and every girl is able to exercise her human rights and achieve her full potential.

Women represent our best hope for democracy, stability, prosperity, peace and security as we look forward into this new century,

Mrs. FEINSTEIN. Mr. President, gender equality is critical to peace and prosperity around the world. As we become more interconnected, it is crucial that the rights of women are recognized by all countries as fundamental human rights because countries which value women's rights are more stable, freer, and more prosperous. Therefore, it is befitting that I rise today to commemorate, March 8, 2005, International Women's Day.

The genesis of International Women's Day comes from a number of provocative moments in history. On March 8, 1857, women working in the textile and clothing industry in New York City staged a protest demanding better working conditions and higher wages. More than 50 years later on March 8, 1908, 15,000 women marched through New York City in support of voting rights, shorter work hours, and an end to child labor.

It is because of these strong and courageous women that we recognize today as International Women's Day. They lit the torch for gender equality and passed it down through the generations to us. We have a duty and a responsibility to continue their noble work and I am ready to do so by ensuring that the voices of women from around the world are heard loud and clear.

Mohandas K. Gandhi once said, ''There is no occasion for women to consider themselves subordinate to men.'' Yet, even today, there are places around the world where this is not the case. If the United States aims to be a great champion of the rights of women and girls for the rest of the world, we must do more to promote respect for women as well as increase their participation in every aspect of a country's civic, political, and economic life. Today, I would like to highlight several issues related to women that require decisive leadership: the role of women in Iraq and Afghanistan, international family planning programs, and the Convention to Eliminate All Forms of Discrimination Against Women.

We all know that Iraq can only complete a peaceful transition to a country based on the rule of law, human rights, and democracy with the full participation of women. One year ago today, the United States sought to assist Iraq on this path when the Department of State established the Iraqi Women's Democracy Initiative along with the

U.S. Iraqi Women's Network. Through these grants, the U.S. reached out to Iraqi women and informed them of the importance of their vote and role in the new Iraq.

On January 30, 2005, the world watched as 58 percent of Iraqi voters turned out for an election in which 25 percent of the candidates running were women. In the months following the elections, special training will focus on constitution drafting, legal reform, and the legislative process, so that women may ensure their rights are enshrined in the new constitution. While I am encouraged by recent positive events, we must remain vigilant and encourage our Iraqi friends to put the active and meaningful participation of women in the new Iraq at the top of their agenda.

Last year, Women for Women International commissioned a survey of Iraqi women and found that despite ethnic educational, religious, and economic differences, an overwhelming majority of women in Iraq support a strong role for themselves in the new Iraq. Of the women surveyed, 94 percent want to secure legal rights for women, 84 percent want the right to vote on the final Constitution, and 95 percent think there should be no restrictions on education. It is the duty of the United States to assist Iraqi women in realizing these goals and I encourage my colleagues to continue to support funding for women's initiatives in Iraq.

One of the great success stories of our campaign against terrorism is the liberation of the women and girls of Afghanistan from the brutal oppression of the Taliban regime. Under the Taliban, women in public were forced to cloak themselves in shroud-like burkas while being accompanied by a male relative or else risk being beaten mercilessly. Most Afghan women were restricted by the Taliban from working, receiving an education, from visiting doctors, and from receiving humanitarian aid.

The women of Afghanistan have the opportunity to build a better life for themselves and their families. More and more women in Afghanistan are getting an education, earning a living, receiving medical attention, and participating in public life.

In fact, I was pleased to hear that Hamid Karzai made history last week when he appointed Habiba Sarabi as Afghanistan's first female provincial governor.

During the Taliban regime, Ms. Sarabi fled from Kabul to Pakistan. Following the removal of the Taliban from power in 2001, she was selected for Mr. Karzai's cabinet and instantly became a hero not just for women and girls, but for all Afghans. Her story is truly a testament to the remarkable turnaround taking place in Afghanistan.

Nevertheless, obstacles still remain that prevent women and girls from reaching their full potential.

A recent U.N. report from UN Secretary General Kofi Annan to the Economic and Social Council's Commission on the Status of Women states:

> while the status of women and girls has improved, overall progress has been uneven. The volatile security situation and traditional social and cultural norms continue to limit women's and girls' role in public life and deny them the full enjoyment of their rights. The massive needs in terms of reconstruction of infrastructure and strengthening of human capacity, including in the fields of education and health care, will require the sustained attention and support of national actors and the international community for many years to come.

Our victory in Afghanistan will be lost if women and girls are not afforded basic human rights and equal opportunity. The United States must not forget our commitment to provide a better future for Afghan women of all ages, and I urge my colleagues to stay the course and support additional assistance for education, health care, and democracy training for women and girls in the years ahead.

Once again, as we commemorate International Women's Day, I regret to point out that the Senate has still not acted on the Convention to Eliminate All Forms of Discrimination Against Women. The Convention, which was adopted by the UN General Assembly in 1979, has been ratified by 179 countries to date, including every other democracy in the world.

By ratifying the Convention, states commit themselves to take appropriate steps to eliminate discrimination against women in political and public life, law, education, employment, health care, commercial transactions, and domestic relations.

I am shocked and disappointed that the United States has failed to ratify this Convention. Every year we fail to ratify this important Convention, we compromise our ability to lead the world as the torchbearer for women's rights. Not only would signing the Convention reaffirm our Nation's leadership role on these issues, it would bring us closer with our friends and allies who have already ratified the pact. I urge the Senate to act on the Convention this year.

The United Nations Population Fund UNFPA is the single largest global source for maternal health and family planning programs, working in over 140 countries.

Nevertheless, since 2002, the Bush administration has withheld over $90 million in vital U.S. contributions to UNFPA because of its perceived ties with China's family planning program and policies. The administration has taken these actions despite a report from a State Department fact finding team that the UNFPA in no way supported or was involved in coercive abortions or involuntary sterilization. As a result of administration actions, millions of poor women and families have been deprived of desperately needed care.

The work of UNFPA benefits women in need around the world. In the wake of the horrific tsunami that struck South Asia, UNFPA has been working to ensure that women and girls in this area are receiving the care they need. UNFPA's priorities are reproductive health, including safe childbirth, prevention of violence against women and girls, and psychosocial counseling for those affected by the 26 December tsunami.

In early January, UNFPA asked for $28 million to support its tsunami-related work in Indonesia, Sri Lanka, and Maldives as part of the United Nations interagency Flash Appeal. A month later, over 70 per cent of the requested funding had been received or pledged from various donors, including Germany, Japan, the Netherlands, China, Norway, and New Zealand. The United States is absent from this list.

No women should be prevented from receiving the assistance she deserves to plan and care for healthy families. We need to ensure that women have access to the educational and medical resources they need to control their reproductive destinies and their health so they will be able to better their own lives and the lives of their families.

Women are the backbone of our global society. They are our mothers, our sisters, our daughters, and our grandmothers. They nurture us and teach us the lessons of life and how to be a better person. As such, I am proud to commemorate March 8, 2005, as International Women's Day.

There are many great issues facing women and the United States. However, I am confident and optimistic we can address problems such as family planning, the burgeoning roles of women in Iraq and Afghanistan, and eliminating all forms of discrimination against women.

As a United States Senator, I truly believe it is our duty as the leader of the free world to address and seek workable solutions to every problem that women face around the world. We can—and we must.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, en bloc, the motion to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 74) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 74

Whereas all over the world, women are contributing to the growth of economies, participating in the world of diplomacy and politics, and improving the quality of the lives of their families, communities, and nations;

Whereas discrimination continues to deny women full political and economic equality and is often the basis for violations of women's basic human rights;

Whereas worldwide, the lives and health of women and girls continue to be endangered

by violence that is directed at them simply because they are female;

Whereas worldwide, violence against women includes rape, genital mutilation, sexual assault, domestic violence, dating violence, honor killings, human trafficking, dowry-related violence, female infanticide, sex-selection abortion, forced pregnancy, forced sterilization, and forced abortion;

Whereas the World Health Organization asserts that domestic violence causes more deaths and disability among women aged 15 to 44 than cancer, malaria, traffic accidents, and war;

Whereas worldwide, 130,000,000 girls and young women have been subjected to female genital mutilation;

Whereas worldwide, at least 1 in 3 females has been beaten or sexually abused in her lifetime;

Whereas worldwide, 20 to 50 percent of women experience some degree of domestic violence during marriage;

Whereas 1 in 4 women in the United States have been raped or physically assaulted by an intimate partner at some point in their lives;

Whereas somewhere in the United States, a woman is battered, usually by her partner, every 15 seconds;

Whereas more than 3 women are murdered by their husbands or boyfriends in the United States every day;

Whereas battering is the leading cause of injury to women aged 15 to 44 in the United States;

Whereas it is estimated that 1 in 5 adolescent girls in the United States becomes a victim of physical or sexual abuse, or both, in a dating relationship;

Whereas worldwide, women account for ½ of all cases of HIV/AIDS, and in Africa, young women are 3 times more likely to contract the virus than men;

Whereas worldwide, sexual violence, including marital rape, has been denounced as a major cause of the rapid spread of HIV/AIDS among women;

Whereas between 75 and 80 percent of the world's millions of refugees are women and children;

Whereas illegal trafficking worldwide for forced labor, domestic servitude, and sexual exploitation involves between 1,000,000 and 2,000,000 women and children each year, of whom approximately 50,000 are transported to the United States;

Whereas ⅔ of the world's nearly 1,000,000,000 illiterate individuals are women;

Whereas ⅔ of the children denied primary education are girls;

Whereas these educational failures have serious consequences for the global economy and the United States national security, as well as for tens of millions of girls who are losing the chance to discover their worth and importance as global citizens;

Whereas girls who are educated are more likely to have healthy and stable families, lower mortality rates, higher nutrition levels, and delayed sexual activity, and have less chance of contracting HIV/AIDS or having unwanted pregnancies;

Whereas in most countries, women work approximately 2 times more unpaid time than men do;

Whereas women work ⅔ of the world's working hours and produce ½ of the world's food, yet earn only 10 percent of the world's income and own less than 1 percent of the world's property;

Whereas 3 in 10 households are maintained by women with no husband present;

Whereas rural women produce more than 55 percent of all food grown in developing countries;

Whereas it is estimated that women and girls make up more than 70 percent of the poorest people in the world;

Whereas worldwide, women earn less, own less property, and have less access to education, employment, and health care than do men;

Whereas microcredit is a stunningly simple, inexpensive tool that can forever alter the economic landscape for the better;

Whereas women now make up 80 percent of the world's 70,000,000 microcredit borrowers, and from India to Nicaragua to South Africa to Costa Rica, women are proving that small loans can transform individual lives, families, and entire communities;

Whereas nations should take steps to ensure the full participation and representation of women in political conferences, committees, plenaries, and parliaments;

Whereas social investment, particularly investments in women and girls, should be an integral part of foreign policy;

Whereas despite extraordinary advances, women still comprise the majority of the world's poor, illiterate, and uneducated, remain under-compensated for the work they do, still do not have adequate access to medical care in too many countries, are underrepresented in leadership positions in government and business, and continue to be targeted for unspeakable atrocities in war and conflict;

Whereas March 8 has become known as International Women's Day for the last century, and is a day on which people, who are often divided by ethnicity, language, culture, and income, come together to celebrate a common struggle for women's equality, justice, and peace;

Whereas the dedication and successes of those working all over the world to end violence against women and girls and fighting for equality should be recognized; and

Whereas the people of the United States should be encouraged to participate in International Women's Day: Now, therefore be it

*Resolved,* That the Senate—

(1) designates March 8, 2005, as International Women's Day;

(2) reaffirms its commitment to—

(A) improve women's access to quality health care, including HIV/AIDS prevention and treatment;

(B) end and prevent violence against women, including the trafficking of women and girls worldwide, and ensure that the criminals who engage in these activities are brought to justice;

(C) end discrimination and increase the participation of women in decisionmaking positions in government and the private sector;

(D) extend full economic opportunities to women, including access to microfinance and microenterprise; and

(E) strengthen the role of women as agents of peace because women are among the best emissaries for easing religious, racial, and ethnic tensions, crossing cultural divides, and reducing violence in areas of war and conflict; and

(3) encourages the people of the United States to observe "International Women's Day" with appropriate programs and activities.

## GREEK INDEPENDENCE DAY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 75, which was submitted earlier today.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 75) designating March 25, 2005, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy."

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 75) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 75

Whereas the ancient Greeks developed the concept of democracy, in which the supreme power to govern was vested in the people;

Whereas the Founding Fathers of the United States drew heavily on the political experience and philosophy of ancient Greece in forming our representative democracy;

Whereas Greek Commander in Chief Petros Mavromichalis, a founder of the modern Greek state, said to the citizens of the United States in 1821, "it is in your land that liberty has fixed her abode and . . . in imitating you, we shall imitate our ancestors and be thought worthy of them if we succeed in resembling you";

Whereas Greece played a major role in the World War II struggle to protect freedom and democracy through such bravery as was shown in the historic Battle of Crete that presented the Axis land war with its first major setback, setting off a chain of events that significantly affected the outcome of World War II;

Whereas the price for Greece in holding our common values in their region was high, as hundreds of thousands of civilians were killed in Greece during the World War II period;

Whereas, throughout the 20th century, Greece was 1 of only 3 nations in the world, beyond the former British Empire, that was allied with the United States in every major international conflict;

Whereas President George W. Bush, in recognizing Greek Independence Day, said, "Greece and America have been firm allies in the great struggles for liberty. Americans will always remember Greek heroism and Greek sacrifice for the sake of freedom . . . [and] as the 21st Century dawns, Greece and America once again stand united; this time in the fight against terrorism. The United States deeply appreciates the role Greece is playing in the war against terror. . . . America and Greece are strong allies, and we're strategic partners.";

Whereas Greece is a stabilizing force by virtue of its political and economic power in the volatile Balkan region and is one of the fastest growing economies in Europe;

Whereas Greece, through excellent work and cooperation with United States and international law enforcement agencies, arrested and convicted key members of the November 17 terrorist organization;

Whereas President Bush stated that Greece's successful "law enforcement operations against a terrorist organization [November 17] responsible for three decades of terrorist attacks underscore the important contributions Greece is making to the global war on terrorism";

Whereas Greece was extraordinarily responsive to United States requests during

the war with Iraq, as Greece immediately granted unlimited access to its airspace and the base in Souda Bay, and many United States ships delivering troops, cargo, and supplies to Iraq were refueled in Greece;

Whereas the Olympic Games came home in August 2004 to Athens, Greece, the land of their ancient birthplace 2,500 years ago and the city of their modern revival in 1896;

Whereas Greece received world-wide praise for its extraordinary handling of over 14,000 athletes from 202 countries and over 2,000,000 spectators and journalists and did so efficiently, securely, and with its famous Greek hospitality;

Whereas the unprecedented Olympic security effort in Greece for the first post-9/11 Olympics included a record-setting expenditure of over $1,390,000,000 and assignment of over 70,000 security personnel, as well as the utilization of an 8-country Olympic Security Advisory Group which included the United States;

Whereas Greece, geographically located in a region where Christianity meets Islam and Judaism, maintains excellent relations with Muslim nations and Israel;

Whereas Greece has had extraordinary success in recent years in furthering cross-cultural understanding and reducing tensions between Greece and Turkey;

Whereas Greece and the United States are at the forefront of the effort for freedom, democracy, peace, stability, and human rights;

Whereas those and other ideals have forged a close bond between our 2 nations and their peoples;

Whereas March 25, 2005, marks the 184th anniversary of the beginning of the revolution that freed the Greek people from the Ottoman Empire; and

Whereas it is proper and desirable to celebrate with the Greek people and to reaffirm the democratic principles from which our 2 great nations were born: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates March 25, 2005, as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy''; and

(2) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

## ORDERS FOR WEDNESDAY, MARCH 9, 2005

Mr. GRASSLEY. Mr. President, I ask unanimous consent that when the Senate completes its business today, the Senate adjourn until 9:30 a.m. on Wednesday, March 9. I further ask that following the prayer and the 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 begin a period of morning business for up to 60 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 resume consideration of S. 256, the Bankruptcy Reform Act, as provided under the previous order.

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

## PROGRAM

Mr. GRASSLEY. Tomorrow, following morning business, the Senate will continue its consideration of the bankruptcy bill. Under the agreement reached tonight, we will have up to 40 minutes of debate on a series of amendments, which will be followed by four stacked rollcall votes. That will be on these amendments. The first vote will be in relation to the Durbin paperwork amendment, and that vote will begin at approximately 11:30 tomorrow morning. For the remainder of the day, we will continue working through the amendments to the bankruptcy bill. There are a number of amendments pending, and it is my hope that most of them will not require rollcall votes.

Earlier today, cloture was invoked on the bill by an overwhelming margin. It is the leadership's intention to complete action on the bill during Wednesday's session.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. GRASSLEY. If there is no further business to come before the Senate, I ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:18 p.m., adjourned until Wednesday, March 9, 2005, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate March 8, 2005:

### DEPARTMENT OF STATE

DANIEL FRIED, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AN ASSISTANT SECRETARY OF STATE (EUROPEAN AFFAIRS), VICE A. ELIZABETH JONES, RESIGNED.

### IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be brigadier general*

COL. JAMES J. DOUGHERTY III, 0000
COL. PATRICIA C. LEWIS, 0000

### IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be admiral*

VICE ADM. GARY ROUGHEAD, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be vice admiral*

REAR ADM. BARRY M. COSTELLO, 0000