

The USDA is currently preparing policy, procedure and software to implement disaster programs authorized under this legislation. USDA has promised to conduct signup and deliver financial assistance to our agriculture producers this fall. By the time these disaster dollars reach individual producers, many will have waited for over two years since first experiencing weather-related losses. Without this legislative fix, unacceptable disaster program implementation delays will occur.

I thank the cosponsors of this legislation who have made another strong stand for America's farm and ranch families. I also thank my colleagues in the Senate for recognizing the urgency of this situation and passing this bill by unanimous consent last night.

Cosponsors of the bill are: Senators NELSON of Nebraska, BAUCUS, TESTER, JOHNSON, CONRAD, HARKIN, LANDRIEU, BARRASSO, ENZI, HAGEL, DORGAN, and INHOFE.

I urge the House of Representatives to quickly pass my bill to ensure that livestock producers are able to qualify for the disaster assistance that was signed into law earlier this year.

#### NOMINATION OF LESLIE SOUTHWICK

Mr. DURBIN. Mr. President, I made remarks yesterday on the Senate floor about the nomination of Judge Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit.

Some of my Republican colleagues then came to the floor and made their own remarks about Judge Southwick. I would like to respond to some of their points and set the record straight.

First, I take issue with the way they described the procedural history of a case involving a White employee in Mississippi who was fired for calling an African-American colleague the "N" word. In this sharply divided 5- to 4- case, Judge Southwick joined the majority, and he voted to reinstate the White employee with full backpay and no punishment whatsoever.

Senator CORNYN came to the Senate floor and said that the Southwick majority "was ultimately upheld by the Mississippi Supreme Court in compliance with appropriate legal standards."

That statement does not accurately describe what actually happened.

Yes, the Mississippi Supreme Court said that termination was too Draconian a punishment, but it also said that the decision to reinstate the White employee with full backpay and with no punishment whatsoever—the decision that Judge Southwick signed onto—was erroneous.

Let me read the last three words of the Mississippi Supreme Court's opinion in this case so the record is clear. The three words are: "reversed and remanded."

The Mississippi Supreme Court concluded: "[W]e remand this matter back to the Employee Appeals Board for the

imposition of a lesser penalty, or to make detailed findings on the record why no penalty should be imposed."

This conclusion is the same one reached by Judge Diaz, who dissented from Judge Southwick and the five-person majority at the appeals court level. Judge Diaz wrote: "I write separately to object to the EAB's failure to impose sanctions upon Bonnie Richmond for using a racial slur in describing another DHS employee. . . . This is not to say that the EAB should have followed the DHS's recommendations to terminate Richmond, but there is a strong presumption that some penalty should have been imposed."

That conclusion, which the Mississippi Supreme Court embraced, undermines Senator CORNYN's assertion that the Southwick majority "was ultimately upheld by the Mississippi Supreme Court."

The bottom line is that Judge Southwick voted to reinstate the White employee with complete impunity—with no punishment whatsoever. The Mississippi Supreme Court said: No, punishment should be considered.

Let me address another aspect of this case that was mentioned by a Republican colleague. In trying to minimize the significance of the case and defend Judge Southwick's position, this Senator stated that the White employee's use of the "N" word was "a one-time comment."

I would dispute that characterization. It is true that the Southwick majority referred to "this one use of a racial epithet." However, according to a letter from the State agency reprinted in the State supreme court opinion, there were at least two instances in which the White employee used the "N" word: once in front of the victim and once at a meeting where the victim was not present.

In addition, as set forth in the State supreme court opinion, the White employee testified that she didn't think her Black colleague would be offended by use of the "N" word because: "You know, I thought that we had used that terminology previously and Varrie [the black employee] didn't seem to have a problem with it, nor anyone else."

So it seems that the use of the "N" word was not an isolated comment in this workplace.

Senator CORNYN tried to defend Judge Southwick's vote in this case, and he said the following: "A judge has no choice but to vote. He voted for the result, for the outcome of the case, but I think it's unfair to attribute the writing of the opinion to Judge Southwick."

I disagree. As I noted yesterday, Judge Southwick had other options in this case. He could have written a concurrence. He could have written a dissent. He could have joined one of two different dissents that were written by other members of his court in this case. He did none of these things.

The "N" word case is not the only case in which Judge Southwick has

demonstrated racial insensitivity. A coalition of four leading civil rights groups—the NAACP, the NAACP Legal Defense and Educational Fund, the National Urban League, and the Rainbow/PUSH Coalition—wrote a letter to the Senate Judiciary Committee and stated:

We are also troubled by Judge Southwick's record in cases involving race discrimination in jury selection. . . . Generally, Southwick has upheld the rejection of claims by defendants that the prosecution was motivated by race discrimination in striking African Americans from juries. However, Southwick appears to have less difficulty finding race discrimination when the prosecution makes 'reverse Batson' claims that defendants have struck white jurors for racial reasons.

The letter discusses several examples of this trend in Judge Southwick's track record.

Let me also say a little more about the case in which Judge Southwick voted to take away an 8-year-old girl from her lesbian mother.

What is troubling about this case is not only the result that Judge Southwick reached but also the fact that he was the only judge in the majority to sign onto a troubling concurring opinion that said sexual orientation is a choice and that losing a child in a custody battle is a consequence of that choice.

Judge Southwick is opposed by the Human Rights Campaign—a prominent gay rights organization—which has said the following about this nominee:

No parent should face the loss of a child simply because of who they are. If he believes that losing a child is an acceptable 'consequence' of being gay, Judge Southwick cannot be given the responsibility to protect the basic rights of gay and lesbian Americans.

As I said yesterday, this nomination isn't just about the "N" word case and the gay custody case. Judge Southwick has a long track record of favoring employers and corporations over employees and consumers. There are two studies that bear this out: One was conducted by the Business and Industrial Political Education Committee, as reported by the Biloxi, Mississippi Sun Herald on March 24, 2004. The other study was undertaken by an organization called the Alliance for Justice and is available on their website.

I would make one final point. One of my Republican colleagues criticized me for opposing Judge Southwick for a seat on the Fifth Circuit while having voted for him last year to be a Federal district court judge.

It is true that Judge Southwick was voted out of the Senate Judiciary Committee last year by voice vote as part of a package of 10 judicial nominees. But we did not know about the "N" word case at that time. It is an unpublished decision and was not brought to our attention until this year.

In any event, the reality is that our circuit courts are more crucial to the protection of our rights and liberties than our district courts. Because the U.S. Supreme Court takes so few cases,

the circuit courts of appeal are the final word in 99 percent of Federal cases that are appealed. That is why most of the judicial nomination battles of the past few years have involved circuit court nominees, not district court nominees.

I know the Senators from Mississippi, and others, feel strongly that Judge Southwick should be confirmed. I respect their beliefs, and I have listened to their arguments. But I hope they will recognize the controversy surrounding this nomination and encourage the White House to put forward a different nominee—someone who can gain bipartisan support in the Senate Judiciary Committee.

**BUDGET SCOREKEEPING REPORT**

Mr. CONRAD. Mr. President, I rise to submit to the Senate the second set of budget scorekeeping reports for the 2008 budget resolution. The reports, which cover fiscal years 2007 and 2008, were prepared by the Congressional Budget Office pursuant to section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended.

The reports show the effects of congressional action through July 24, 2007, and includes legislation that was enacted and or cleared for the President's signature since I filed my first report last month. The new legislation includes: Public Law 110-42, an act to extend the authorities of the Andean

Trade Preference Act until February 29, 2008; Public Law 110-48, a bill to provide for the extension of transitional medical assistance, TMA, and the abstinence education program through the end of fiscal year 2007, and for other purposes; and H.J. Res. 44; pending Presidential action, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes. The estimates of budget authority, outlays, and revenues used in the reports are consistent with the technical and economic assumptions of S. Con Res. 21, the 2008 budget resolution.

For 2007, the estimates show that current level spending equals the budget resolution for both budget authority and outlays while current level revenues exceed the budget resolution by \$4.2 billion. For 2008, the estimates show that current level spending is below the budget resolution by \$928.1 billion for budget authority and \$586.7 billion for outlays while current level revenues exceed the budget resolution level by \$34.6 billion.

I ask unanimous consent that the letters and accompanying tables from CBO be printed in the RECORD.

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, July 26, 2007.  
Hon. KENT CONRAD,  
Chairman, Committee on the Budget, U.S. Senate,  
Washington, DC 20510

DEAR MR. CHAIRMAN: The enclosed report shows the effects of Congressional action on the fiscal year 2007 budget and is current through July 24, 2007. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of S. Con. Res. 21, the Concurrent Resolution on the Budget for Fiscal Year 2008, as approved by the Senate and the House of Representatives.

Pursuant to section 204(a) of S. Con. Res. 21, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the enclosed current level report excludes these amounts (see footnote 1 of Table 2 of the report).

Since my last letter, dated June 27, 2007, the Congress has cleared and the President has signed:

An act to extend the authorities of the Andean Trade Preference Act until February 29, 2008 (Public Law 110-42); and

A bill to provide for the extension of Transitional Medical Assistance (TMA) and the Abstinence Education Program through the end of the fiscal year 2007, and for other purposes (Public Law 110-48).

The effects of those actions are detailed on Table 2.

Sincerely,  
ROBERT A. SUNSHINE,  
For Peter R. Orszag, Director.

TABLE 1.—SENATE CURRENT LEVEL REPORT FOR SPENDING AND REVENUES FOR FISCAL YEAR 2007, AS OF JULY 24, 2007

(In billions of dollars)

	Budget Resolution <sup>1</sup>	Current Level <sup>2</sup>	Current Level Over/Under (-) Resolution
<b>ON-BUDGET</b>			
Budget Authority .....	2,255.6	2,255.6	0.0
Outlays .....	2,268.6	2,268.6	0.0
Revenues .....	1,900.3	1,904.5	4.2
<b>OFF-BUDGET</b>			
Social Security Outlays <sup>3</sup> .....	441.7	441.7	0.0
Social Security Revenues .....	637.6	637.6	0.0

SOURCE: Congressional Budget Office.

<sup>1</sup>S. Con. Res. 21, the Concurrent Resolution on the Budget for Fiscal Year 2008, as adjusted pursuant to section 207(f), assumed approximately \$120.8 billion in budget authority and \$31.1 billion in outlays from emergency supplemental appropriations. Such emergency amounts are exempt from the enforcement of the budget resolution. Since current level totals exclude the emergency requirements enacted in P.L. 110-28 (see footnote 1 of table 2), budget authority and outlay totals specified in the budget resolution have also been reduced (by the amounts assumed for emergency supplemental appropriations) for purposes of comparison.

<sup>2</sup>Current level is the estimated effect on revenue and spending of all legislation that the Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations, even if the appropriations have not been made.

<sup>3</sup>Excludes administrative expenses of the Social Security Administration, which are off-budget, but are appropriated annually.

TABLE 2.—SUPPORTING DETAIL FOR THE CURRENT LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES FOR FISCAL YEAR 2007, AS OF JULY 24, 2007

(In millions of dollars)

	Budget authority	Outlays	Revenues
<b>Enacted in previous session:</b>			
Revenues:			
Permanents and other spending legislation .....	n.a.	n.a.	1,904,706
Appropriation legislation .....	1,347,423	1,297,059	n.a.
.....	1,480,453	1,543,072	n.a.
Offsetting receipts .....	-571,507	-571,507	n.a.
<b>Total, enacted in previous session .....</b>	<b>2,256,369</b>	<b>2,268,624</b>	<b>1,904,706</b>
<b>Enacted this session:</b>			
Appropriation Acts:			
U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110-28) 1/ .....	-794	9	-166
An act to extend the authorities of the Andean Trade Preference Act until February 29, 2008 (P.L. 110-42) .....	0	0	-24
A bill to provide for the extension of Transitional Medical Assistance (TMA) and the Abstinence Education Program through the end of fiscal year 2007, and for other purposes (P.L. 110-48) .....	12	3	0
<b>Total, enacted this session .....</b>	<b>-782</b>	<b>12</b>	<b>-190</b>
<b>Entitlements and mandatories:</b>			
Budget resolution estimates of appropriated entitlements and other mandatory programs .....	-30	0	0
<b>Total Current Level 1, 2/ .....</b>	<b>2,255,557</b>	<b>2,268,636</b>	<b>1,904,516</b>
<b>Total Budget Resolution .....</b>	<b>2,376,360</b>	<b>2,299,752</b>	<b>1,900,340</b>
Adjustment to the budget resolution for emergency requirements 3/ .....	-120,803	-31,116	0
<b>Adjusted Budget Resolution .....</b>	<b>2,255,557</b>	<b>2,268,636</b>	<b>1,900,340</b>
<b>Current Level Over Adjusted Budget Resolution .....</b>	<b>0</b>	<b>0</b>	<b>4,176</b>
<b>Current Level Under Adjusted Budget Resolution .....</b>	<b>0</b>	<b>0</b>	<b>n.a.</b>

SOURCE: Congressional Budget Office