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House of Representatives

The House met at 10 a.m.

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, Your prophet Ezekiel envisioned an idealized kingdom. Just as any patriot does for his or her country. As people of faith, the Members of Congress also have ideals for the Nation. And we pray that their visionary hopes will be realized.

Perhaps it is our own longing for equal justice for all within our boundaries and our desire for homeland security along our borders that help us best to understand the prophetic action of Ezekiel setting boundaries for all the tribes of Israel.

Perhaps he teaches us that we need to set boundaries ourselves as the best way for keeping peace and assuring prosperity. Each State, each community, doing its part to make the whole Nation strong and responsible.

In the end, Ezekiel saw You, the all-holy Lord God, dwelling in the midst of it all. From this center all power would flow in and out. From this center where You dwell all else would be measured and all would be held together.

Lord God, dwell in our midst, now and forever. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from New Jersey (Mr. PASCRELL) come forward and lead the House in the Pledge of Allegiance.

Mr. PASCRELL 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.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed without amendment a bill of the House of the following title:

H.R. 4226. An act to amend title 49, United States Code, to make certain conforming changes to provisions governing the registration of aircraft and the recordation of instruments in order to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, known as the ''Cape Town Treaty''.

The message also announced that the Senate has passed a bill and concurrent resolutions of the following titles in which the concurrence of the House is requested:

S. 2249. An act to amend the Stewart B. McKinney Homeless Assistance Act to provide for emergency food and shelter.

S. Con. Res. 125. Concurrent resolution recognizing the 60th anniversary of the Warsaw Uprising during World War II.

S. Con. Res. 130. Concurrent resolution expressing the sense of Congress that the Supreme Court of the United States should act expeditiously to resolve the confusion and inconsistency in the Federal criminal justice system caused by its decision in Blakely v. Washington, and for other purposes.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will entertain 10 one-minute speeches per side.

NO AVERAGE SUIT

(Mr. FOLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FOLEY. Mr. Speaker, I know the photo behind me looks like an average business suit. It is not. It is a weapon of mass destruction. Highly classified documents were removed from the National Archives. The Justice Department is investigating Sandy Berger, having secreted away some misplaced highly classified documents that could be potentially embarrassing to the former administration.

What in heaven's name was he thinking? Why would he risk both his reputation and possible prosecution? What is there to hide in this coat?

At the very least it is gross negligence, and at the most it is a national security crises. With his experience, no one can claim that these are the actions of a bumbling or absent-minded government employee. Sandy Berger knows better.

Since when is taking and misplacing classified documents ever an honest mistake? And we thought it was bad when the last administration was just taking the furniture.

BAD HABITS OF THE WHITE HOUSE

(Mr. CROWLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CROWLEY. Mr. Speaker, the White House read the 9/11 Commission report. They know how damaging it is going to be, so they leaked the Sandy Berger story to distract attention away from this report.

This is a bad habit of this White House. They leak a story to change the subject when they are in deep political trouble. They leaked the identity of a CIA agent whose husband criticized this administration. They leaked Dick Clarke's memo when he criticized them. And they leaked documents to discredit Paul O'Neill after he criticized them.

The timing here, unfortunately, again, is very suspicious. We need some answers here. Can we trust this Justice

Department to investigate fairly and impartially who leaked this? And why is this administration trying to distract the American people again from the 9/11 Commission report, a commission that this White House did not support the creation thereof or the continuation of this commission? And most importantly, does this administration trust the American people with the truth? I think not.

GOOD NEWS FROM THE PRESIDENT

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, I would like to express my appreciation to President Bush for the good news he has given all Americans.

Thanks to his efforts to combat terrorism, terrorists around the world are on the run. Thanks to his economic initiatives, more than one million new jobs have been created in the last several months. Thanks to his education legislation, America's children are doing better in school. Thanks to his Medicare reform, seniors pay less for prescription drugs. Thanks to his tax relief, every taxpayer has more to spend on their family's needs.

Yet, many of the President's opponents, frankly, hate him and the national media is biased against him. Why does the President's good news bring out the worst in others?

Well, I do not know, but I do have a hunch that most Americans will give the President their heartfelt thanks on Election Day.

ONGOING ADMINISTRATION FAILURE

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEFAZIO. Mr. Speaker, well, the Republicans can try and dredge up the ghosts of administrations past, but this commission report released this morning says that both the Clinton and Bush administrations are equally culpable in 9/11. What they say is there is an ongoing failure. The greatest failure is of our intelligence agencies and law enforcement agencies to share information.

They say no matter how much money you dump into the intelligence agencies, they are going to continue to fail because of the culture of keeping their own information. They say we need to establish a new way of sharing information among those agencies.

The gigantic bureaucracy of the Department of Homeland Security, written on the back of a napkin by Karl Rove at the White House, did not get there because it excluded the intelligence agencies who failed the United States of America. Nothing has been done about this ongoing failing to integrate the information. They put out something called the TTIC, the Terrorist Threat Information Center. Guess what? They send low-level people there on short details and they do not share. They are like 3-year-olds about billion dollar budgets.

They have the information to make this country safe. It is time for this Congress and this administration to take the steps we need that are outlined in this report. Forget about Sandy Berger and a bunch of other B.S.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. TERRY). The Members are reminded to avoid profanity.

IRAQ'S RETURN TO NORMALCY

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, there is still a lot to do, but as we speak the Iraqi government is making progress. Iraqi police are rounding up kidnappers. The Kurds have captured 15 foreign militants in Kirkuk, including a key leader and an al-Qaeda affiliate.

The number of Arab and other foreign fighters currently detained in Iraq continues to grow. Iraq's border police have apprehended more than 60,000 foreigners in the past 7 months, most of them Iranians trying to enter Iraq illegally, and there are plenty of signs that the residents of Baghdad are finding a sense of normalcy amidst the transition to democracy.

Five teams participated in the first Iraqi baseball tournament, including two female teams. Nightlife is returning to the banks of the Tigris River, and residents have started frequenting summer cafes.

In Mosul the military is working with Iraqis to dig wells, renew archeological digs, build a laboratory and repair a hospital elevator.

The Iraqi people are making progress despite the ongoing efforts of terrorists to drag them back to the dark ages of Saddam Hussein.

WILL THE PRESIDENT KEEP HIS COMMITMENTS?

(Mr. PASCRELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PASCRELL. Mr. Speaker, every single law enforcement organization, including the Fraternal Order of Police, the National Sheriffs Association, supports our efforts, or lack of them, our efforts to continue the ban on assault weapons. Their only purpose is to kill or maim. The President made a commitment in his campaign in 2000. He said it. I did not. He said he would continue that ban, and now he is gone back on it.

Now, Mayor Bloomberg of New York said something very interesting 2 weeks ago. You folks are going up there for your convention. They had 11 homicides 2 weekends ago. He stood in a press conference and said, there are too many weapons on the street.

I say to Mayor Bloomberg, call your President, remind him of the commitment he made in the 2000 campaign, the presidential campaign, and make sure he keeps those commitments. We do not need another Columbine. We do not need another spraying of people who are innocently lost day in and day out. What we need is keeping our commitment. Will the President?

SLOPPY SOCKS SCANDAL

(Mrs. BLACKBURN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BLACKBURN. Mr. Speaker, I am hearing from my constituents on the Sandy Berger sloppy socks scandal. They are horrified, absolutely horrified that somebody who was trusted with our Nation's security would stoop to such a level of carelessness that now we have the situation where it appears he has stuffed it in his socks, in his pants pocket, in his jacket pocket and has taken frequent, frequent restroom breaks.

What happened with the documents?

They are offended that the former President would make this a laughing matter and talk about how he laughed about the carelessness.

Let me tell you, my constituents want some answers.

Here is an e-mail from one of my constituents. ''I do not care when it was discovered or when it was released, only that it took place. I am very concerned that any government representative would minimize the action or regard it as sloppy, careless or a mistake. It is a crime.''

The people want answers. They expect a full investigation.

□ 1015

THE 9/11 COMMISSION REPORT

(Mr. MCDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, as I got up this morning, I heard on CNN news that the Republican leadership had already decided we cannot do anything about the 9/11 report until next year.

What we come to this morning is, first, the gentleman from Florida, now the lady from Tennessee, to tell us that the problem is Sandy Berger. Hey, folks, do not pay any attention to that report, just look at Sandy Berger's picture. Come on, look at Sandy Berger's picture. Look at Sandy Berger's picture. That is what you want to do.

This is a distraction by the White House. This is a damning report, and

we can spend all the time we want to blaming people here, but the question is what are we going to do.

The Republicans say they care about terrorism. This here is a report that gives us concrete things to do; and the leadership of the Republican Party says, well, put this up on the shelf, this 9/11 report, just put it up there, and let us go down and talk about Sandy Berger.

Did anything get lost? Did the commission say they could do not their work? Did the Justice Department come to it with any charges against Mr. Berger? No.

Now, we do not want to talk about the White House and Vivian Plame, or whatever her name was, that they outed or the majority leader who seems to be in some difficulty in Texas. We do not want to talk about that stuff. Let us talk about what needs to be done with the terrorism report.

THE DEFENSE DEPARTMENT WASTES A LOT OF MONEY

(Mr. DUNCAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DUNCAN. Mr. Speaker, almost every Member of this Congress wants us to have a strong military, and we all want to support our troops. Yet almost everyone realizes, too, that the Defense Department unfortunately wastes a lot of money.

It seems to me that we have an obligation to the taxpayers to speak out against this waste, or it will get even worse.

Now national news organizations and publications have reported that the Defense Department has paid for 556 breast enlargements and 1,592 liposuctions for soldiers and dependents from 2000 through the first 3 months of 2004. These are very expensive operations.

I realize the Federal bureaucrats can rationalize or justify almost any expense, especially since it is not coming out of their pockets, but soldiers have an obligation to stay in shape and meet physical fitness requirements and should not need liposuction for severe obesity.

Certainly, it does not make any sense to say that breast enlargements will make women better soldiers.

THE NATIONAL DEBT

(Mr. MATHESON asked and was given permission to address the House for 1 minute.)

Mr. MATHESON. Mr. Speaker, since the start of the current administration in January of 2001, the national debt has increased by $1,639,772,884,702.

According to the Web site for the Bureau of the Public Debt at the U.S. Department of the Treasury, yesterday the Nation's total outstanding, privately held debt was $4,228,551,437,783.

Foreign holdings of U.S. privately held debt now total $1.75 trillion. This is an increase of $740 billion since January of 2001, and it is 41 percent of all privately held U.S. debt.

For the sake of our children and our grandchildren, the fiscal health of our country deserves far better care and attention from the White House and from this Congress.

WHAT ARE WE WAITING FOR?

(Mrs. MALONEY asked and was given permission to address the House for 1 minute.)

Mrs. MALONEY. Mr. Speaker, before the ink was even dry on the 9/11 report, before we even had a chance to read it, some were saying we should delay any action on the 9/11 Commission's recommendations.

I have one simple question: What are we waiting for? Did we miss the point of 9/11? Remember, we cannot spell 9/11 without 9–1–1 and 9–1–1 means urgent, emergency, act now, life or death. It does not mean let us table this discussion until after the election.

The bipartisan commission has called for the creation of a national terrorist center with a new Cabinet-level intelligence chief. They call for the creation of a Joint House and Senate Committee on Intelligence with budget power. I say, great, let us do it, let us act now. What are we waiting for? What part of 9/11 does the leadership of this House not understand?

9/11 COMMISSION REPORT

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, today the bipartisan 9/11 Commission gave their report to Members of Congress, and I think it was a solid report.

It pointed out we just did not have the imagination to perceive our enemies hating us so much that they would use airplanes as missiles and attack us in the somewhat cowardly, surprised manner that they did. We did not have the capabilities in our intelligence community because we looked at it through Cold War visions. We should have been looking ahead. Finally, we did have not the right management tools. The CIA, the FBI, and other agencies were not talking to each other.

Therefore, one of their recommendations was to put together a national security czar, one person who would be above the CIA and the FBI to kind of control the 15 different intelligence agencies. I think it is an interesting proposal, one that I think most Members of Congress are going to be receptive to.

They also said that we need to put together a committee, maybe a select joint committee between House and Senate, for more oversight, perhaps giving it the authority to authorize and appropriate. Oversight, Members of Congress are going to be very interested in this, and I am looking forward to a good bipartisan effort to address the issues raised by the 9/11 Commission.

BORROWING MONEY

(Mr. ROTHMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTHMAN. Mr. Speaker, I am not sure that the American people understand what is happening with our fiscal House, our economic well-being.

I wonder if the American people know, Mr. Speaker, that the President of the United States is borrowing money to add to the largest annual deficit in the history of the United States, borrowing money to give tax cuts, tax cuts that will go disproportionately to households making over $300,000 a year.

As the Wall Street Journal said just the other day, a very conservative newspaper, all of these prior trillion dollars of tax cuts have benefited primarily the very rich in our society, not the middle class, not the working class and not the poor; and they give reasons why that is so.

Instead of borrowing money, adding to the deficit for more tax cuts for the rich, who have done very well, thank you very much, why do we not invest that money in our Nation's infrastructure, roads, bridges, sewers, hospitals, school buildings, so that not only do we provide good-paying jobs but at the end of it we have something to show for it and we do not force our local property taxpayers to pick up the tab when the Federal Government should be paying for it, instead of giving it to the very rich who have done extraordinarily well. God bless them, but they do not need the money. America and our taxpayers need the money.

MARRIAGE PROTECTION ACT

(Mr. BLUMENAUER asked and was given permission to address the House for 1 minute.)

Mr. BLUMENAUER. Mr. Speaker, on a day of good news, when we have a report from the 9/11 Commission that has been thorough, bipartisan, with some solid, hard-hitting suggestions to make our country safer, when later this morning I am confident the House is going to take a vote condemning what is going on in Sudan and calling it what it is, genocide, moving us in the right direction. Sadly the House Republican leadership has managed to take the terrible idea of enshrining discrimination in our Constitution against gay and lesbian citizens and trump it, take it one step further.

We are about to debate a rule that for the first time in our history would pass legislation stripping from the Federal courts the ability to rule on constitutionality of Legislation. They want to do it specifically in a case of discrimination against our gay and lesbian citizens.

Never before in our history have we done this. In fact our former colleague, Bob Barr, who authored DOMA, said it is unnecessary and a dangerous precedent. I hope the House will reject it.

TAX CUTS

(Mr. OWENS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OWENS. Mr. Speaker, Democrats like tax cuts, too, but the Democratic Party's tax policies are targeted to do the most good for the majority of Americans. Working families will be the beneficiaries of the Democratic tax policy.

Republicans want tax cuts which give more to the have-mores. Tax cuts for the rich are luxury toys, but tax cuts for working families are absolute necessities.

Working families need more child care tax credits. Working families need tuition tax credits to help their children attend college and rise up the economic ladder.

Let the corporations pay more taxes if we need revenue for the war in Iraq or any other activity. Change the Federal rules for the way we charge for our assets, grazing land, mining rights or the sale and lease of the spectrum above us, which is owned by the American people.

Democrats want tax cuts, but we want tax cuts for working families.

COURT-STRIPPING LEGISLATION

(Mr. PALLONE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PALLONE. Mr. Speaker, today, the House will attempt to do something it has never done before, strip our courts of hearing cases on the Defense of Marriage Act.

Eight years ago, I opposed DOMA because I felt it was a blatant act of discrimination against gays and lesbians. To this day, I believe Republicans forced the issue in 1996 because it was a Presidential year and they wanted to divide the country in a desperate search for votes.

It is 8 years later, and Republicans are at it again. Last week, they were embarrassed in the other body when they could not even muster a majority on a constitutional amendment banning gay marriage. Since that did not work, why not strip the courts of authority to hear cases regarding DOMA?

The court-stripping bill would, for the first time in our Nation's history, take from a group of Americans the right to appeal to our courts. It is also extremely dangerous in that it would lead to the possibility of Congress stripping other issues from judicial review in the future.

It is bad policy; but in an election year, Republicans simply do not care.

PROVIDING FOR CONSIDERATION OF H.R. 3313, MARRIAGE PROTECTION ACT OF 2004

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 734 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 734

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 3313) to amend title 28, United States Code, to limit Federal court jurisdiction over questions under the Defense of Marriage Act. The bill shall be considered as read for amendment. The amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as adopted. The previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except: (1) 90 minutes of debate on the bill, as amended, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; and (2) one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. TERRY). The gentlewoman from North Carolina (Mrs. MYRICK) is recognized for 1 hour.

Mrs. MYRICK. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

On Wednesday, the Committee on Rules did meet and grant a closed rule for H.R. 3313, the Marriage Protection Act of 2004. The rule provides 90 minutes of debate, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

□ 1030

This bill seeks to utilize the constitutional authority of Congress to limit the jurisdiction of the Federal judiciary to hear cases which may arise as a result of the 1996 Defense of Marriage Act, otherwise known as DOMA. The bill reserves that authority to the States. The bill provides that no Federal court will have the jurisdiction to hear a case arising under DOMA's full faith and credit provision.

This provision in DOMA codified that no State would be required to give full faith and credit to a marriage license issued by another State if that relationship is between two people of the same sex. Long-standing Supreme Court precedent recognizes the power of Congress to limit the jurisdiction of courts that it creates.

In essence, the bill says no Federal court will have the opportunity to strike down DOMA's full faith and credit provision. The result of such a decision by the Federal courts would in effect invalidate the numerous Defense of Marriage Acts which have passed in at least 38 States. This would mean that the citizens of States such as Michigan, California, Virginia, Texas, and Florida, who have their own statutes to define marriage as between one man and one woman, would have to recognize the marriage licenses issued to same sex couples by other States that allow that practice.

I believe the people of these States as well as the people of my home State of North Carolina should be able to defend and preserve the institution of marriage and that we today should support their efforts. This is the way it has been throughout civilization. It is our job to prevent unelected lifetime appointed Federal judges from striking down DOMA's protection for the States. To that end, I urge my colleagues to support the rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield myself 6 minutes.

Mr. Speaker, I thank the gentlewoman for yielding me the customary 30 minutes, and I rise in strong opposition to this rule and to the underlying bill. The Marriage Protection Act of 2004 is quite simply a mean-spirited, discriminatory and misguided distraction. It does not belong on the floor of the House of Representatives, not when there are so many important issues facing Congress and the American people.

Nearly 900 American soldiers have now been killed in Iraq, but the House is not talking about that today. Today the bipartisan 9/11 Commission issues its report on what happened and how to prevent it from happening again, but we are not talking about that on the House floor today.

This Republican leadership has failed to pass a budget, but we are not talking about that. Today we learn that, according to the GAO, the Pentagon has spent most of the $65 billion that Congress approved for fighting the wars in Iraq and Afghanistan and is trying to find $12.3 billion more from within the Department of Defense to make it through the end of the fiscal year. We should be talking about that.

We still do not have a transportation bill. The minimum wage has not been increased in years. Millions of Americans are unemployed and without health insurance. Homeland security needs are going unmet, but we are not talking about any of that in the House of Representatives today.

According to the New York Times, conservative activist and Republican adviser Paul Weyrich's solution to the bad news coming out of Iraq was to ''change the subject'' to gay marriage. I quote, ''Ninety-nine percent of the President's base will unite behind him if he pushed the amendment,'' Mr. Weyrich said. ''It will cause Mr. KERRY no end of problems.'' As for gay Republicans whose votes Mr. Bush might lose, Mr. Weyrich wrote, ''Good riddance.''

So instead of addressing the real concerns facing American families, the leadership of this House has decided to throw their political base some red meat because we all know exactly what is going on here.

Mr. Speaker, we can at least be honest about it. Last week the Republican leadership got beat badly in the other body. Not only did they not pass the Federal Marriage Amendment, Senate Republicans could not even agree among themselves what to vote on. So the Republican leadership, including the White House, decided they needed a win on something that beats up on gay people and they needed to do it fast, so here we are. They could not amend the Constitution last week so they are trying to desecrate and circumvent the Constitution this week.

The intent of this bill is quite clear, to close the door to the Federal courthouse for an entire group of American citizens simply because of their sexual orientation. It is enough to take my breath away. One of the most fundamental, sacred principles of our system is that every single American should have access to equal justice under the law, not some Americans, not most Americans, not just straight Americans, but all Americans. But not any more. Not under this bill.

Under this bill for the first time in our long history, a person can be denied access to the Federal courts when that person claims that a Federal statute violates the Constitution.

Further, this bill takes 200 years of jurisprudence based on the separation of powers and throws it in the trash.

Why? Because of the latest craze in Republican fund-raising appeals, the dreaded ''activist judges.'' To all of those listening to the debate today, I would encourage you to count how many times the phrase ''activist judges'' is thrown around. Make sure you have your calculator.

The problem is that the Republican leadership only goes after the so-called activist judges they disagree with. They had no problem in activist judges in Bush v. Gore. And make no mistake about it, if this bill passes its proponents will be back for more. Every time there is a court decision they do not like, they will attempt to prohibit the courts from exercising their constitutional oversight. Other issues will be on the table, civil rights and civil liberties, voting rights, choice, environmental protection, worker protections, all will be at risk if a political majority in Congress disagrees with a Federal court decision. This bill would set a dangerous, dangerous precedent.

Finally, we hear a lot of rhetoric today from supporters of this bill protesting that they are not anti-gay, just pro-marriage. Well, the supporters of this bill have even named it the Marriage Protection Act. Mr. Speaker, I thank the other side, but my marriage does not need protection, and certainly not from the Republican leadership of this House.

This bill seeks to solve a problem that does not exist. There is no urgency, no credible court case challenging DOMA.

So let us work on the issues that matter most to our constituents. Let us tackle health care and education and homeland security and jobs, let us not change the subject for political reasons, let us not desecrate the Constitution.

Mr. Speaker, I urge my colleagues to do the right thing. Cast your vote with an eye toward being on the right side of history. Look further than tomorrow's headlines, think about more than 30 minutes from now, think about 30 years from now. Remember that Members of Congress opposed the 1964 Civil Rights Act and the Voting Rights Act. Remember that Members of Congress denounced a decision in Brown v. Board of Education in part because of activist judges. History has not been kind to them.

Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield myself such time as I may consume.

I would like to clarify the actual wording of what this bill does. It does not favor or disfavor any particular result or any group of people. It is motivated by a desire to preserve for the States the authority to decide whether the shield Congress enacted to protect them from having to accept same sex marriage licenses issued out of State will hold. There is no ill will here toward anyone. It does not dictate the results, either. It only places final authority over whether the States must accept same sex marriage licenses granted in other States in the hands of the States themselves.

This bill should be supported, I believe, by any Member who supports the proposition that lifetime appointed Federal judges must not be allowed to rewrite marriage policies for the States.

Mr. Speaker, I yield 4 minutes to the gentleman from Tennessee (Mr. DUNCAN).

Mr. DUNCAN. Mr. Speaker, I thank the gentlewoman for yielding me this time and bringing this rule to the floor. She is one of the great leaders in this Congress.

Mr. Speaker, I rise in support of this rule and the underlying bill that was originally authored by the gentleman from Indiana (Mr. HOSTETTLER).

For 7½ years before I came to Congress I served as a circuit court judge in Tennessee. For many years, I have heard Federal judges complain about the Congress expanding Federal jurisdiction too much, so they are greatly overworked. This is a very reasonable, minimal limitation of their jurisdiction and I am sure that even if this legislation passes, the Federal judges will still claim that they are very much overworked.

On July 12, 1996, the House passed and on September 10, 1996, the Senate passed the Defense of Marriage Act. That act said the word ''marriage'' means only a legal union between one man and one woman as husband and wife, and the word ''spouse'' refers only to a person of the opposite sex who is a husband or wife. I repeat that. That legislation said the word ''marriage'' means only a legal union between one man and one woman.

That legislation further said no State shall be required to give effect to any public act, record or judicial proceeding of any other State respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, Territory and so forth.

That legislation, Mr. Speaker, passed by the overwhelming margin of 342 to 67 in this House, and by the even more overwhelming margin of 85 to 14 in the Senate. That is 85 Senators voted for that legislation. Further, it went to the President, President Clinton at that time, and he signed that legislation into law.

This legislation, authored by the gentleman from Indiana (Mr. HOSTETTLER), is a reasonable expansion of that legislation limiting the jurisdiction because it is true that many, many people in this country have been upset that unelected judges have assumed so much super-legislative power in this country in recent years. The overwhelming majority of the American people do believe that the only true marriage is that between one adult man and one adult woman. There are other limitations on marriage such as prohibitions against marriages by family members or bigamist marriages, and I think the overwhelming majority of the American people feel that our society, our families, and especially our children would be better off if we defined marriage, the only true marriage, legal marriage, as that of being between one man and one woman.

Mr. Speaker, I know that many outstanding people come from broken homes, but I also know that the greatest advantage that we can give to any child is a loving mother and father. That is so important to the future of this country. That is a greater advantage than unbelievable amounts of money.

Senator Daniel Patrick Moynihan, a man who was one of the most respected Members of the Senate, a Senator from the other party, said several years ago that we have been, unfortunately, defining deviancy down, accepting as a part of life what we once found repugnant. We should stand behind traditional marriage. We should stand behind this legislation and support it as strongly as we possibly can.

Mr. MCGOVERN. Mr. Speaker, I yield 2½ minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), a strong defender of the United States Constitution.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I would not be standing here

today had it not been for the courts of America, and particularly our Federal jurisdiction. I would not have the opportunity to speak in this august body, to have achieved an education that some might call equal in an unequal system if we did not have Brown v. Topeka Board of Education that broke the chains of segregation on America. I would argue that was a high moment in America's history. We do not have the time in the moments I have to speak to chronicle that history of the courts providing opportunities for the minority.

Today I want to explain to America that this is not a constitutional amendment that will address the question of their fears and apprehensions about loving individuals being together. This is a poor fix and this is a collapse of government as we know it.

Mr. Speaker, might I say that this is an undermining and barring of Americans from the courthouse door. I give Members an example. Just suppose that farming policies of the State of Texas, my Texas, had been ill-conceived and some poor farmer that Willie Nelson sings for every year went to the Federal courthouse in Texas and asked that those policies be declared unconstitutional or illegal. This amendment sets the precedent for slamming the courthouse door to that farmer.

□ 1045

Or maybe someone in Ohio, a consumer who wants to challenge the ill-conceived consumer laws that causes thousands of injuries to our children on the playgrounds of America, and that poor person goes to the Federal courthouse and wants to go to the Supreme Court, that door is slammed in their face.

I asked the Committee on Rules in their wisdom to send this out with an unfavorable response. Unfortunately, they did not. So today we debate an ill-conceived precedent that will deny the citizens of America judicial review, due process, and equal protection under the law.

I close by simply saying, we see in the Washington Post today that the Pentagon needs billions of more dollars this year in Iraq and Afghanistan. Today we do not debate that. We have the 9/11 report, and today we do not have a Homeland Security authorization markup.

I ask my Republican friends, and I ask them with sincerity, why can we not do the people's business and do it in the right way?

Mr. Speaker, I close by saying I was and still stand as a minority in America. I cannot stand for having minority rights denied by this amendment being passed today. I ask for a ''no'' vote.

Mr. Speaker, I rise in opposition to H. Res. 374, the rule issued for the base bill, H.R. 3313, the Marriage Protection Act (MPA). The very fact that the bill itself has been brought to the floor of the Committee of the Whole is obnoxious and indicative of a diminished respect for the Constitution—with which many of us on this side of the aisle would rather not be associated.

In addition to the contravention of and the disregard for the public policy that has been established by statutory law, caselaw decided in the highest court in the Nation, and most importantly the intent of the Framers of our Constitution, the base bill, as my colleagues from Florida so eloquently stated in the Rules Committee hearing yesterday, ''attempts to legislate morality'' for an entire nation.

In debating this very important issue, I would ask that my colleagues put aside their personal biases and fears and examine this bill for what it is—a threat to the framework of our democracy that is facially unconstitutional. As legislators, we all take an oath to uphold the integrity of the Constitution and to protect the citizens of America from overbroad and invidious acts of the legislative and executive branches.

H.R. 3313 is inconsistent with the Equal Protection clauses of the Constitution and its Bill of Rights. It singles out one group of people—lesbian and gay Americans—for different and inferior treatment. This unequal treatment of one group is the very essence of classifications that run afoul of the principle of Equal Protection.

The bill is with the separation of powers. The principle of judicial review, part of the bedrock of our political system since Marbury v. Madison, protects citizens from overreaching by the legislative and executive branches. Our system of government relies on its ''checks and balances'' and an independent judiciary to ensure that all legislation complies with the Constitution. We in Congress lack the power to exempt legislative branch actions from judicial review and we should not attempt to reverse this process now.

The proposed Marriage Protection Amendment is inconsistent with Due Process. Removing access to Federal courts on a question of Federal law, such as the constitutionality of MPA, could deprive an individual challenging such a law of due process, which is guaranteed by the Fifth Amendment's Due Process Clause.

The proposed Marriage Protection Act is a major departure from our constitutional and legal tradition. Despite many efforts over recent decades to adopt restrictions on Federal courts in controversial areas (such as abortion rights and school prayer), no bill instituting a broad ban on a subject matter class or cases has passed, much less one that disadvantages only a discrete group of people.

In Congress, our views differ on many things, but we can unite in the fact that we believe in the constitution and we are here to serve the public. This bill will do neither, it goes against our founding document and it only alienates a group of people and denies them basic rights.

I would ask that my colleagues defeat this bill and protect our fundamental rights.

Mrs. MYRICK. Mr. Speaker, I reserve the balance of my time at this point.

Mr. MCGOVERN. Mr. Speaker, I yield 2½ minutes to the gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Speaker, as a nonlawyer and observing that there are many young people in the gallery today, this is actually an instructive debate that we are having for the second time in 2 weeks. Last week, with the sponsorship of Republicans and Democrats alike, we paid tribute to John Marshall.

John Marshall was perhaps the most important jurist in the history of the United States, because despite what many people think, in the Constitution of the United States nowhere does it say who will settle disputes between the legislature, the executive, and the courts. What if each of the three branches come to a different conclusion?

Well, John Marshall, in 1803, 201 years ago, said the courts are going to decide. The courts are going to be the final arbiter of what is constitutional and what is not.

For 200 years, that has served as the way that we have operated, virtually unquestioned. It was even unquestioned in the year 2000 when, in the Constitution of the United States, it clearly says that Congress has the right to choose electors, and the Supreme Court took that upon itself. We Democrats, although we were very concerned about it, jurists, scholars of jurisprudence said it was a terrible decision, but no one says it should not be the courts to make that decision.

I would say to the gentlewoman or anyone who supports this bill, if not the courts then who? Who is going to make the decision about the constitutionality of this law?

We are left with essentially three choices. One, we can say the State courts will make that final determination. But what if we have two State courts that are in conflict? Who is going to resolve that dispute?

Two, we can say that it will be the legislature that will always decide these things, and we have 50 different legislative interpretations, or the legislature will change every 2 years, changing interpretation of the law.

And the third choice is just anyone can choose whatever interpretation that they like.

Before we choose anything but the courts, before we support this, let us remember something here. The courts are where the minority goes to have their views heard. That one person who is standing outside a movie theater; the courts are where that one person goes who wants to protect his right to bear arms against a legislature that is overzealous, where the one person goes who has burnt a flag and wants to go to find out if what he has done is constitutional.

There are dozens and dozens of places in society where the majority rules. The court is the only place we go to protect our constitutional rights.

So to the sponsors of the bill, to the sponsors of the rule, I ask them, if not John Marshall's way, if not judicial review, if not the Supreme Court of the United States of America, then who will it be who will decide what is constitutional and what is not?

Mrs. MYRICK. Mr. Speaker, I yield myself such time as I may consume for just a clarification.

Marbury v. Madison is entirely consistent with H.R. 3313. It established the principle of judicial review and stands for the proposition that the Supreme Court has the final say on the issues it decides, provided either the issues it decides are within its original jurisdiction or Congress by statute has granted the Supreme Court the authority to hear the issue. It is that simple. If a case does not fall within the jurisdiction of the Federal courts because Congress has not granted the required jurisdiction, Federal courts simply cannot hear the case.

The author of Marbury v. Madison was Chief Justice John Marshall, as was stated, and Chief Justice Marshall himself, after he decided that case, dismissed cases when the Federal courts had not been granted jurisdiction by Congress to hear them under the Judiciary Act of 1789.

Mr. Speaker, I yield 4½ minutes to the gentleman from New Mexico (Mr. PEARCE).

Mr. PEARCE. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, I rise to support this rule, because this debate must be removed from the courts who are filled with unelected, lifetime judges, and the debate should be moved from those courts back into the court of the people, back into the courthouse square instead of in the courthouse.

Mr. Speaker, Congress has the constitutional right to be involved in this process, and I can tell that the debate has already covered that, so I am going to limit my comments. But the Constitution declares that Congress will be involved in making these sorts of decisions in determining what the Federal courts will and will not hear. It was, in fact, that judicial review process that Judge Marshall made in Marbury v. Madison that began the process of judicial review that is not even called for in the Constitution, and judicial review which has extended the power of the courts beyond, beyond, and beyond where the original Framers of the Constitution intended for the courts to have power and, in doing so, have eroded the power of the legislative branch.

Mr. Speaker, we have encountered in our history a very clear, similar case, exactly paralleling what we are doing today. We had a time in our history when there were definitions that the courts began to give, such as the definition of slavery.

It was the Supreme Court that decided in the Dred Scott decision that the issue of slavery involved the will of the minority and said that the will of the minority could not be subjected to the will of the majority. Of course, the courts at that time did a small sleight of hand because the minority that they were talking about was really the minority slave holders, the owners of slaves, and they overlooked the rights of the minority of the slaves themselves. We fought a Civil War over the Supreme Court's definitions at that point.

Instead of really understanding that the will of the people had spoken and the ensuing constitutional amendments, the courts later, in the Plessy v. Ferguson case, established the Separate but Equal Doctrine that again was offensive to the multitudes of people in this country.

Right now we have a Supreme Court that is willing to declare its will on the people no matter what the people say, and I think that the rule is extremely important here, because it begins to take that right back from the Supreme Court and put the discussion in this body who represents and can be elected and unelected by the people. The Supreme Court cannot be unelected, ever, and it is a very critical element of this argument.

But to those people who say this is an emotional issue, they are exactly correct. Our office spent over 20 hours discussing the issue, and we have people inside our office who were on both sides of the issue. But at the end of the day, nature has described what a marriage is. Law only fundamentally defines what nature has already defined: that a man and a woman come together, they create life, and it is the only life-creating institution and the only life-creating relationship in the world, and then the bonding process of that keeps them together in order to nurture and to grow the children and the offspring.

Mr. Speaker, that is the relationship that people are asking about, and it is a good question. Should gays be allowed to marry? Well, yes, they can, and they should be allowed to marry. But marriage, by definition of nature, is between a man and a woman, and if they are going to marry, they have to marry a man or a woman. The discussion is absolutely centered around this question, and it is not a matter of right and it is not a matter of discrimination.

But what the other side of the aisle wants to do is to redefine marriage for all people. It is the redefinition that is wrong, because there is no civil rights abridgement here. Many black leaders are speaking in favor of this. This is the will of the people saying we must have a discussion among the people as to what is marriage and how it is defined.

For these reasons, I support the rule, Mr. Speaker.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, I thought I heard everything here, but citing the Dred Scott decision in support of this amendment is like citing the Ku Klux Klan in support of civil rights legislation. This amendment is a Soviet style attack on American freedom, and the reason requires a little look at history.

The former Soviet Union had a Constitution, like we do. The former Soviet Union had a Bill of Rights, like we do; very similar to our Bill of Rights. But the former Soviet Union had another little trick. Their little trick was that the executive and legislative branches prohibited the judicial system of the former Soviet Union from enforcing their Bill of Rights, and what did they get? Tyranny.

The instructive lesson of the Soviet Union is that we should not go down the path of getting rid of, yes, frustrating, nonunderstandable courts that sometimes do not agree with Congress. But I guess the authors of this amendment feel that they are smarter than Thomas Jefferson and smarter than any court that ever lived.

This is not the only right that is going to be on the chopping block. Once we do away with the independence of the American judicial system, which has never been done in American history, ever; this Chamber has never, ever cut the knees out of the American Bill of Rights in American history, and this is not like the first time we have a controversial issue that may end up in the courts. Civil rights was controversial. Gun rights are controversial. It may be controversial if this Congress passes a gun rights bill like the Brady Bill and then it goes to the U.S. judicial system to see if it is constitutional, that is controversial. But where will this stop?

I may ask the drafters, why did you stop here? Why, if you believe the PATRIOT Act is constitutional, why do you not just do away with the Supreme Court and not let them review that as well?

This is a first step to tyranny. It ought to be rejected.

Mrs. MYRICK. Mr. Speaker, I yield myself such time as I may consume.

I would like to read a couple of quotes from Thomas Jefferson that he made, of course, a long time ago. He lamented that ''the germ of dissolution of our Federal Government is in the Constitution of the federal judiciary; . . . working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief over the field of jurisdiction, until all shall be usurped. . . .''

In Jefferson's view, leaving the protection of individual rights to fellow judges employed for life was a very serious error. Responding to the argument that Federal judges are the final interpreters of the Constitution, Jefferson wrote, ''You seem . . . to consider the [federal] judges as the ultimate arbiters of all constitutional questions, a very dangerous doctrine indeed and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men and not more so.''

□ 1100

They have with others the same passions for party, for power, and the privileges of their core. Their power is the more dangerous, as they are in office for life and not responsible as the

other functionaries are to the elective control.

The Constitution has elected no such single tribunal, knowing that to whatever hands confided with the corruptions of time and party, its members would become despots.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield 30 seconds to the gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Speaker, I continue to hear concerns about an overreaching judiciary, and I asked a simple question. I will gladly yield to an answer. If not the judiciary interpreting the laws of Congress, then who does?

Mr. Speaker, does the gentlewoman have a response?

Mrs. MYRICK. Mr. Speaker, will the gentleman yield?

Mr. WEINER. I yield to the gentlewoman from North Carolina.

Mrs. MYRICK. Well, in this particular case, it is the State courts, the right to be left to the State courts.

Mr. WEINER. Certainly. Well, in that case, who is to interpret conflicts between the two State courts or 50 State courts?

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I think it is important that we do listen carefully to this debate. Why are we here today if it is not just a sad grab for votes after the embarrassing meltdown in the Senate last week dealing with the constitutional amendment that would have banned same-sex marriage?

Listen to the rationale. The overworked judiciary? That certainly has not stopped our Republican colleagues from trying to shift the burden when it fits their ideology. They want the States to have the final authority only in this area, not for consumer protections or environmental policy.

The Republican leadership do not like unelected lifetime judges making these difficult decisions.

Well, frankly, looking at their efforts to pack the Federal judiciary with unqualified right-wing ideologues, I can understand why they are a little nervous about it; but, that is our system. Now they are afraid of their own conservative-leaning Supreme Court. This is so unnecessary, that the author of DOMA, our former colleague Bob Barr, has issued an edict. This is not needed; and Mr. Barr points out, to his credit, that this is a terrible precedent.

Ten years from now the American public, especially our young people, are going to wonder why we tied ourselves in knots politically trying to discriminate against citizens based on their sexual orientation; but if we pass this dangerous legislation today, while the controversy surrounding rights for gay and lesbian citizens will be gone, this dangerous, tragic, ill-conceived precedent will linger and will be dusted off every time people want to extend their political influence at the expense of issues that may be controversial but demand attention from our Federal courts.

Mrs. MYRICK. Mr. Speaker, I yield 2 minutes to the gentleman from New Mexico (Mr. PEARCE).

Mr. PEARCE. Mr. Speaker, again, I thank the gentlewoman for yielding me this time and support the rule.

The comments about conservative-leaning courts just fly in the face of actual fact. This court in Lawrence v. Texas was not exactly right-leaning, and that is a fairly recent decision. In fact, the case of the Congress over being willing to declare what the courts can and cannot look at is a very recent occurrence, as our friends on the other side of the aisle seem to have forgotten that Mr. DASCHLE himself wrote into the legislation that the court cannot even oversee the removal of shrubbery and scrub brush from the national forest in South Dakota.

And certainly if the Supreme Court and the courts can be held back from considering anything in the management of those forests, it might just reach the threshold that the American people should have the right to say that the Federal courts would not be the last point of reference there.

I would go back again to my friend's comment that quoting the Dred Scott decision is like quoting from the Ku Klux Klan civil rights manual. I think that the mixing of conversations there was certainly not based on fact. The Dred Scott decision was a decision by not a Republican court to establish slavery as the legitimate form of activity in this country. The Dred Scott decision was the one that authorized and made slavery legal, and it was against the will of the people that that was done. And it is similar to the case now where the courts would operate against the will of the people.

Mr. MCGOVERN. Mr. Speaker, after the gentleman's comments, in his concern for activist Federal judges, I just want to state for the record that seven of the Supreme Court justices right now have been appointed by Republican Presidents, and pretty conservative Republican Presidents at that.

I yield 30 seconds to the gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Speaker, this Member of the other body was in violation of the rules referenced on the floor. Let me just clarify the record there. It is perfectly legal to write into a piece of legislation that one goes to a certain place for a point of review but not another place. Nowhere in the Daschle legislation did it say one has no right to the courts or no right to the Supreme Court of the land. That is simply misstating the facts.

Mr. MCGOVERN. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Speaker, I thank the gentleman for yielding me this time.

I think it is important to understand the essence of this bill, because it is truly very simple. What it does is it says that the Defense of Marriage Act that was passed by this body in 1996, obviously it is a Federal statute, cannot be reviewed by the Federal courts. That is what it says, and it includes even the United States Supreme Court.

So for the first time in our constitutional history since the decision in Marbury v. Madison, this body would strip from the United States Supreme Court its essential function in our democracy, which is the review, particularly of Federal statutes, for the determination as to its constitutionality. That is what this debate is about today. It is not about the defense of marriage. We did that in 1996; and by the way, if you took a look at the recent data in terms of divorce, it has not been very effective, I would suggest; but as the gentleman from Oregon indicated, the author of the Defense of Marriage Act, former Representative Robert Barr, urges a ''no'' vote on this particular bill because of what it does. It establishes a dangerous precedent. It is clearly unconstitutional.

Let me conclude with this statement. This bill does not defend marriage. What it does do, however, it diminishes our democracy; and we ought not to be about that as an institution. We should encourage our democracy and our values.

Mrs. MYRICK. Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma (Mr. SULLIVAN).

Mr. SULLIVAN. Mr. Speaker, I rise in strong support of the rule considering H.R. 3313, the Marriage Protection Act of 2004. This is a critical piece of legislation that will prevent unelected, lifetime appointed Federal judges from arbitrarily determining the definition of marriage for the American people.

In 1996, Congress passed the Defense of Marriage Act by an overwhelming bipartisan margin. Defense of marriage firmly states that no State shall be required to accept the same-sex marriage licenses granted by other States. To this day, 38 States have passed similar defense of marriage laws, demonstrating the overwhelming consensus for the protection of the institution of marriage.

The role of Congress has always been clear on the limitation of jurisdiction of the lower Federal courts. The Marriage Protection Act is an exercise of Congress's authority and is an appropriate remedy to address the abuses of Federal judges on this issue. States with defense of marriage statutes or constitutional amendments on same-sex marriage should not be forced to accept same-sex marriages from other States.

Today the Federal courts are being used by activist judges to redefine marriage for the American people, completely apart from public debate upon those that the American people have elected to represent them.

More than 200 years of American law and thousands of years of human experience should not be arbitrarily changed by a handful of unelected judges. The issue of marriage is too important to be decided by judicial fiat. The American people must have a voice on this important issue.

Mr. Speaker, I urge passage of H.R. 3313.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY. Mr. Speaker, I rise in strong opposition to this rule and the underlying bill; and if enacted, this would establish a tremendously dangerous precedent by denying the Federal judiciary the ability to review actions of the legislative and executive branches. It would eliminate the checks and balances that the Founding Fathers of our Nation so wisely established in our Constitution. Such a reckless move would cause lasting and permanent damage to our democracy.

Since John Marshall, the Constitution has had superiority over the legislature. The Constitution gave us the right to speech and privacy, and even if we vote for 435 to 0, certain rights are protected in our Constitution. But if this bill were to become law, it would deny jurisdiction to the Supreme Court and all Federal courts over any cases related to the Defense of Marriage Act.

This bill goes beyond merely preventing same-sex couples from seeking legal redress in our courts. It would deny judicial review to an entire class of citizens because of passing partisan passions, and it is willing to trample on our Constitution in order to do so. No issue is worth paying such a price. This is a low moment in the history of this House. I urge a ''no'' vote on the rule and the underlying bill. The Republican leadership is trying to use a wedge issue to appeal to right-wing constituencies in a highly charged election year, and they are willing to trample on our Constitution. No issue is ever worth such a price. I urge a ''no'' vote.

Mrs. MYRICK. Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, we here in America are fortunate indeed for our history and our law. We have a written Constitution that protects our liberties, and we have a system of checks and balances that makes sure that we do not fall prey to totalitarianism. 201 years ago, a case was decided, Marbury v. Madison, and in that famous case, Justice Marshall pointed out that we were at a cusp. Either the Constitution is a superior, paramount law, unchangeable by ordinary means, he said, or it is on a level with ordinary legislative acts and like other acts is alterable when the legislature shall please to alter it.

He said then, and for the last 200 years we have agreed, that it is indefatigably the province and the duty of the judicial department to say what the law is. Make no mistake about it, this proposal, whatever you think about gay marriage, whatever you think about DOMA, this proposal today is a radical one. It proposes to change the system of government that we have enjoyed here in America for over 200 years, a system of checks and balances, where the Constitution is the paramount authority, and the executive and the legislative branches must live within the Constitution.

This road leads to totalitarianism; and so whatever you think on the hot issue, the political issue of gay marriage, I urge you to reject this first step down the road to a system of government that is markedly different from what Americans have enjoyed for the last 200 years.

□ 1115

I have never seen a debate of this sort in the Committee on the Judiciary, and again today on the floor, such a serious misunderstanding of the system of government that we have here today. Do not let it happen here.

Mrs. MYRICK. Mr. Speaker, I yield 1 minute to the gentleman from New Mexico (Mr. PEARCE).

Mr. PEARCE. Mr. Speaker, I thank the gentlewoman for yielding me time.

I rise to support the rule and the underlying bill. We have got several comments from our friends on the other side of the aisle that definitely demand a closer look. First, the statement that this side of the aisle is bringing this highly charged issue up right now as an electionary issue. I am sorry, but it was not this side of the body that began to cause people to go down in acts of defiance of the law, began to get licenses and get marriages approved that were currently against the law. It was not this side of the aisle that brought those up. We are simply responding that now that the issue has come up, we need to deal with it.

Also, there was a comment that we are diminishing democracy, and absolutely the opposite thing is occurring. We are empowering the democracy and we are empowering the people. But the other side is working under the very knowledge and the very truth that if they can find one court and four judges they can create law in this country. That is not empowering democracy. This bill and this rule empower democracy.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, oil prices at $40 a barrel, nearly 1,000 young American men and women dead in Iraq, 6,000 wounded.

What are we debating here on the floor of Congress? We are taking up a bill to strip the Federal courts of the power to hear cases challenging the constitutionality of the Defense of Marriage Act. Apparently, the Republican Congress is so concerned that a gay or lesbian couple might someday have their marriage in one State recognized in another that they are prepared to take the extreme measure of preventing judges from interpreting the law.

While every other American will continue to enjoy the checks and balances that come from three branches of government, the Republicans have decided that if you are gay you should be able to get along with just two branches of government. Why are they doing this?

Conservative activist Paul Weyrich shed some light on the current thinking in Republican circles which explains why this bill is really on the floor today. Here is what Mr. Weyrich had to say: ''The President has bet the farm on Iraq. Right or wrong, he has done it. Even if you disagree with the decision, you have to admire the President for putting it on the line and staying the course despite overwhelmingly bad news for months now.

''Therefore, Iraq will be an unavoidable topic of discussion in this campaign. The problem is that events in Iraq are out of the control of the President.''

Mr. Weyrich writes, ''There is only one alternative to this situation: Change the subject.'' He dismisses the option of taking up oil prices or the economy. Apparently, even he does not think those are winners for the President.

''No,'' he concludes, ''what I have in mind to change the subject is a winner for the President. The Federal Marriage Amendment.'' The gay marriage issue, he gleefully advises, ''will cause Senator KERRY no end of problems.''

So that is what it is really all about. Republican leaders in Washington are running scared. They look at the polls on Iraq, on the economy, on jobs and they fear that the voters are going do rise up in November, and as a result they bring an unconstitutional act out on the floor that will strip gays and lesbians of their rights to be able to go to the Federal courts.

Vote ''no'' on this bill. It is a disgrace against the United States Constitution.

Mrs. MYRICK. Mr. Speaker, I yield 7½ minutes to the gentleman from Indiana (Mr. HOSTETTLER), the sponsor of this bill.

(Mr. HOSTETTLER asked and was given permission to revise and extend his remarks.)

Mr. HOSTETTLER. Mr. Speaker, I rise in strong support of the rule and, obviously, in strong support of the underlying legislation.

I would like to bring us back to a discussion of the actual legislation that is being considered and a discussion initially of the constitutionality of that legislation.

We have heard lots of folks that have suggested that this legislation is in fact unconstitutional, and I think at the outset we need to remember the wisdom of a law school professor that testified before the United States Subcommittee on Courts, the Internet, and

Intellectual Property of the Committee of the Judiciary in 1997, that reminded us as Members of Congress and the country that when it comes to the teaching of constitutional law in our law schools, which we will hear a few of those folks who graduated from those law schools today on this very issue, the thing that you need to understand about constitutional law is it has virtually nothing to do with the Constitution.

And with that in mind, we will talk today about the constitutional law and what is ''constitutional or unconstitutional'' and then we will be talking about the Constitution.

I will be erring on the side of the actual Constitution and try to inform my colleagues of what the Constitution actually says with regards to, for example, separation of powers.

The notion of separation of powers is this: That the legislature has its powers limited and enumerated in the Constitution; the Article II branch, the executive has their powers, his powers in this particular case, limited and enumerated in the Constitution; and in Article III you have the very limited and enumerated powers of the judiciary in Article III, a much smaller article in text than Article II and Article I; and so you have that separation of powers.

It is interesting to note that in Article III, for example, it talks a lot about the powers vested in the Congress. Well, we will talk about that in just a moment but let us look at Article IV, Section 1 that talks about the power of Congress with regards to the Defense of Marriage Act that was passed in 1996.

This bill, the Marriage Protection Act, seeks to remove from the Federal courts jurisdiction concerning the Defense of Marriage Act. Now, why would we take that step? One reason is because we can and another reason is because we should. I will tell you why we can in a moment, and part of that is the fact that this power granted to Congress that is not granted to the judiciary, that is not granted to the executive, is so explicitly expounded in the Constitution in Article IV, Section 1.

It says, ''Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof.''

So in Article IV, Section 1 we see a power of the Congress. We do not see anything about the Supreme Court. We do not see anything about the President. That is power explicit and exclusive to Congress. And so in employment of that power, we passed the Defense of Marriage Act that said no State would have to give full faith and credit to a marriage license issued by another State if that marriage license was issued to a same sex couple.

We exercised the explicit and exclusive authority of Congress to, by general laws, prescribe the manner in which the effects of a marriage license and, for example, the State of Massachusetts, was to be felt in the State of, for example, Indiana, my home State. So we have that power.

Once again, nothing here says the courts, nothing here says the executive branch, and then when we move to the idea of can Congress take from the courts certain jurisdictions we have to ask ourselves, well, how does the Constitution grant the authority to create the courts? Well, we turn to Article I, Section 8 and it says, ''The Congress shall have power to constitute tribunals inferior to the Supreme Court,'' and those are today known as the district courts and appeals courts. We have the power to constitute them, to make them up.

Then it goes on to say in Article I, Section 8 that the Congress shall have power to make all laws which shall be necessary and proper for caring into execution the foregoing powers, such as constituting the inferior tribunals, and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof.''

So we can create the Federal courts, we can by definition abolish the Federal courts. We do not seek to do that today, but we seek to make a law that will carry into execution that power of creating the courts, and that is to limit the jurisdiction.

We then turn to Article III, Section 1, and we hear once again in Article III, which is generally referred to as the judicial branch creation, and what does it say in Article III? It says, ''The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.'' Then it goes on to talk about the Supreme Court and the judicial capacity and jurisdiction of the court system.

It says in Article III, Section 2, ''In all cases affecting ambassadors, other public ministers and councils, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned,'' and that is previous in Article III, Section 2, all those other cases, ''the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.''

So the United States Constitution is very clear. Congress has the authority to create the inferior Federal courts. Congress has the authority to make exceptions and regulations with regard to all of the appellate cases that come before the Supreme Court. Anyone that actually reads the Constitution and has a basic understanding of grammar and the English language in general can find that in fact the Constitution grants Congress the authority.

Now, the question is, so we can do this, the question remaining before us is this: Should Congress do this? That question was answered on Tuesday.

On Tuesday of this week a couple from Massachusetts, a lesbian couple who had been married in Massachusetts, removed themselves to the State of Florida and they entered into the Federal courts a complaint that Florida would not recognize their same sex marriage license conferred upon them.

This battle has been engaged. In fact, the attorney for the lesbian couple that wishes to demand an overturn of the Defense of Marriage Act said this, ''With the filing of this historic lawsuit today in the Federal court, Florida has become a battleground.''

Well, we want to snuff that battleground out today in Congress by claiming that the people of Florida should be able to determine the marriage laws of the people of Florida and not the State of Massachusetts.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I know what it means to be excluded from your own Constitution, and after the experience of African Americans in this country and a Civil War, I never thought I would see a civil war in law where we would try to exclude any other group of Americans from the Constitution of the United States, and that is exactly what we are trying to do here today. We are trying to change the constitutional system that the framers put in place over one constitutional issue.

Now, every time there is an issue like this which raises the hackles of the country, people rush forward to try to do exactly this, to strip the courts. They did it during the era of desegregation. They have done it with school prayer. The fact is that the issue has been settled for 200 years in Marbury v. Madison, and the issue is quite simply this: That the Supreme Court is the final arbiter of constitutional matters.

Now, if that were not the case, if that is wrong, then the framers were wrong, because the framers were still sitting, some of them in the court itself, some of them in the Congress when Marbury was passed, and under accepted principles of constitutional interpretation somebody could have come to the floor and said the court has got it wrong and we are going to assert ourselves. Instead they accepted Marbury v. Madison and we must accept it.

The Supreme Court has constitutional standing in our system, and the words are ''The judicial power of the United States shall be vested in one Supreme Court.'' Otherwise, we would have chaos in our system without any separations of powers. Congress would never have to account for unconstitutional laws. All it would have to do is to put court-stripping language in every bill and we would be a Constitution unto ourselves because there would be no review of our unconstitutional laws.

□ 1130

That is unconstitutional. I think it is certainly un-American.

Mrs. MYRICK. Mr. Speaker, I yield 1 minute to the gentleman from North Carolina (Mr. HAYES).

Mr. HAYES. Mr. Speaker, I thank my friend, the gentlewoman from North Carolina (Mrs. MYRICK), for yielding me the time, and I rise in strong support of this rule.

It pains me today to think that we are even at this place in our Nation's history when we have to debate the importance of maintaining the bedrock of our country, the American family.

As a fairly new grandfather myself, I have watched my children as new parents, and I am reminded that their children are each blessed to have a mother and father. They are uniquely suited, male and female, to invest in their lives.

The legislation and the rule before us is not about discrimination or civil rights as some might claim. This is about the bedrock of our society, our community and our future. This is a big deal.

Mr. Speaker, we need to rise in strong support across the board, both sides of the aisle, in bipartisan fashion. We support the American family.

Mr. MCGOVERN. Mr. Speaker, can I inquire of the time on both sides.

The SPEAKER pro tempore (Mr. TERRY). The gentleman from Massachusetts (Mr. MCGOVERN) has 4 minutes remaining. The gentlewoman from North Carolina (Mrs. MYRICK) has 1 minute remaining.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, this is not just about gays and lesbians. I have been here 24 years. We never do anything only once. When you have developed a particular procedure to use in defense of your views, that gets used again and again. Today, I was going to say you set a precedent if you pass this bill, but you do not set a precedent. You go back in history to the Articles of Confederation.

Passage of this bill will mean that the United States Constitution, in this particular area, will have different meanings in different States because States will then be the ultimate decider of the Constitution, and anyone who thinks that if we do it in this case that is the only time we will ever do it does not follow things closely.

I am the ranking member on the minority side in the Committee on Financial Services. There is not an area in our jurisdiction with respect to the business community of America where the financial community does not come to us and say we need one uniform law.

Do you not understand, Mr. Speaker, that if you set this precedent, it will apply in other areas? Indeed, it will become boilerplate. If you are passing legislation dealing with the second amendment and gun rights; and environmental land takings under the fifth amendment; the commerce clause, financial regulation, it will be a matter of course to add this language that says, and by the way, we believe so strongly in what we have done, it will be none of the business of the courts.

There will be different views in different States. Forget the Uniform Commercial Code. We will have the ''multiple commercial code,'' the multiple choice commercial code. We will have the ''Multiple Choice Constitution.''

I guess I am regretful, maybe I can apologize, that the sight of two lesbians falling in love and wanting to formalize that has so traumatized the majority that they are prepared to make the biggest hole in the United States Constitution that we have seen since we became one Nation. You are saying there will be no more uniformity in the Constitution, and you say it is only here.

By the way, I know a few scholars who think you will lose on full faith and credit. You make a terrible mistake to set a precedent that will be followed time and again. It will become truth that you really care about an issue that you say that the United States Constitution will no longer be a uniform document, but will be subject to dozens of separate State interpretations.

Mrs. MYRICK. Mr. Speaker, I yield 30 seconds to the gentleman from New Mexico (Mr. PEARCE).

Mr. PEARCE. Mr. Speaker, wrapping up my comments for this part of the debate, I again rise to support the rule and the underlying bill.

This bill does not favor or disfavor any particular result or any group of people. It is motivated by the desire to preserve for the States the authority to decide whether the shield Congress enacted to protect them from having to accept same-sex marriage licenses out of State will hold.

This bill does not eliminate any group from the Constitution, but instead, recognizes the 10th amendment of the Constitution which declares that all rights are reserved for the States except those which are specifically given to the Federal Government.

I would comment that the observations of the last gentleman are completely contrary to the 10th amendment of the Constitution.

Mr. MCGOVERN. Mr. Speaker, can I inquire of the gentlewoman how many more speakers she has on her side.

Mrs. MYRICK. I have no more speakers.

Mr. MCGOVERN. Mr. Speaker, I yield myself the remaining time.

Mr. Speaker, let me reiterate what this bill is all about. It is a mean-spirited, unconstitutional, dangerous distraction. No matter what Members may think about gay marriage, the issue here today is whether or not we will take away people's fundamental constitutional rights.

Gay men and women pay taxes, serve in the United States Congress and in legislatures across the country, serve in our military, raise families that participate in the political process. The idea that they should be treated as second-class citizens and stripped of their constitutional rights is not only wrong, it is appalling.

Now, I am from Massachusetts and my colleagues will hear supporters of this bill talking today about the alleged catastrophe that has occurred in my State in the last few months; but you know what, Mr. Speaker, the world did not come to an end in Massachusetts when the State Supreme Court made its ruling. People got up and went to work and took their kids to school and paid their bills and lived their lives. The world kept spinning on its axis.

In the end, I think that is what is driving the supporters of this bill crazy. The outrage, the mass hysteria, the political momentum they expected from this issue just have not materialized. The American people are a lot smarter and a lot more tolerant and a lot more reasonable than the Republican leadership gives them credit for, which is why, Mr. Speaker, even if this bill passes today, I still have hope.

Mr. Speaker, every Member of this House took an oath that they would uphold and defend the Constitution of the United States. I hope we will do that today. I urge all my colleagues to vote ''no'' on this bill.

Mr. Speaker, I yield back the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 4842, UNITED STATES-MOROCCO FREE TRADE AGREEMENT IMPLEMENTATION ACT

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 738 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 738

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 4842) to implement the United States-Morocco Free Trade Agreement. The bill shall be considered as read for amendment. The bill shall be debatable for two hours equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. Pursuant to section 151(f)(2) of the Trade Act of 1974, the previous question shall be considered as ordered on the bill to final passage without intervening motion.

SEC. 2. During consideration of H.R. 4842 pursuant to this resolution, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

The SPEAKER pro tempore. The gentleman from Florida (Mr. LINCOLN DIAZ-BALART) is recognized for 1 hour.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the distinguished gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. LINCOLN DIAZ-BALART of Florida asked and was given permission to revise and extend his remarks.)

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, House Resolution 738 is a standard, closed resolution for consideration of the underlying trade legislation that provides for fair and extensive debate on H.R. 4842, the United States-Morocco Free Trade Agreement Implementation Act.

The rule provides 2 hours of general debate evenly divided and controlled by the chairman and the ranking minority member of the Committee on Ways and Means.

Mr. Speaker, the relationship between the Kingdom of Morocco and the United States of America has existed throughout the history of the United States. In December of 1777, when war raged between the American colonies and Britain, Sultan Sidi Mohammed boldly recognized our young, and not yet free, Republic. That magnanimous act of recognition was cemented in a Treaty of Peace and Friendship between our countries, ratified in July of 1878. That enduring document remains the oldest unbroken treaty in the history of the foreign relations of the United States. Quite simply, the Kingdom of Morocco is our most permanent and enduring friend.

The gentleman from Pennsylvania (Mr. ENGLISH), the gentleman from Tennessee (Mr. TANNER), the gentleman from Louisiana (Mr. JOHN), and I came together to form the Morocco Caucus in Congress to highlight and to further deepen the truly magnificent and critically important relationship between the United States and the Kingdom of Morocco. The United States has no better friend and ally in the Maghreb, in North Africa and in the Arab world than Morocco.

We are cognizant of, and grateful for, the help Morocco provided during the reign of the great statesman King Hassan II in the dangerous and prolonged struggle known as the Cold War and in the initial and ultimately delicate stages of the peace process between Israel and her neighbors.

We are cognizant of, and grateful for, the unequivocal and decisive help Morocco has provided during the reign of another great statesman, King Mohammed VI, in our common war against the forces of international terrorism. Both our peoples have been victims of the scourge of cowardly attacks upon unarmed civilians, and both nations have answered the challenge of this difficult time with strong leadership and decisive action.

The United States must be cognizant and supportive of the wisdom and experience of Morocco, that great influence for stability in North Africa, in the Middle East, regarding issues related to international terrorism. We must understand that Morocco's insistence upon its territorial integrity and its refusal to accept a terrorist state in the Western Sahara is critically important, not only for the national security of Morocco, but also for the security of the United States and of our European allies.

Today, Mr. Speaker, we celebrate another milestone in the wonderful relationship between the United States and Morocco as we prepare to consider H.R. 4842, legislation to implement the United States-Morocco Free Trade Agreement. This agreement will benefit both our peoples as it facilitates and encourages ever-growing commerce between our countries and the creation of many new jobs in Morocco and in the United States. This agreement will help turn an already solid relationship into an even greater friendship.

Mr. Speaker, I would like to take this opportunity to publicly thank a few distinguished leaders for making this important free trade agreement a reality.

□ 1145

Understanding the importance of this agreement and with the August recess quickly approaching, the gentleman from California (Mr. THOMAS) made great efforts to expedite the consideration of this agreement in the House. The gentleman from Illinois (Speaker HASTERT) has been especially solid in his leadership on this critical issue, as has been the gentleman from Texas (Mr. DELAY), the majority leader, and the gentleman from California (Mr. DREIER), chairman of the Committee on Rules. Ambassador Bob Zoellick has been and continues to be a stalwart, strong advocate on behalf of the economic interests of the United States and especially job creation in America, and President Bush's leadership has truly been the linchpin for great accomplishments such as this.

While we fight terror across the globe, the United States, under this President, has deepened economic and security-based relationships with our friends for the benefit of our protection and our freedom.

Mr. Speaker, I urge my colleagues to support both the rule and the underlying legislation that we bring before the House today.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman from Florida (Mr. LINCOLN DIAZ-BALART) for yielding me the customary 30 minutes.

Mr. Speaker, an important part of our job is to encourage the purchase of U.S. goods and services by others in the international community, especially now when the economy is limping along and failing to replace the 1.1 million jobs lost since the Bush administration took office. Hopefully opening up foreign markets for American products will lead to the creation of good, high-paying jobs here in the United States. However, we must be mindful of the consequences of free trade agreements such as the U.S.-Morocco Free Trade Agreement.

Last week this body considered the free trade agreement, FTA, between the United States and our ally Australia. Serious questions were raised about the impact patent protection language might have on the ability of the United States to reimport lower cost drugs from other countries and the impact on the Australian government's low-cost pharmaceutical drug program.

According to the Wall Street Journal, urged by the drug industry, the U.S. Trade Representative is seeking to strengthen protections for costlier brand-name drugs, defending the U.S. companies from foreign competition of foreign producers of generic drugs. So far the USTR has successfully added this safeguard to the trade agreements with Jordan, Chile, Singapore, Australia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Dominican Republic, and Morocco.

The U.S.-Morocco agreement contains patent protection language which restricts Morocco for 5 years from approving generic-drug applications if the application is based on the data of the original manufacturer. What impact will this 5-year ban have when enforced? Will this interfere with a developing African nation's ability to get affordable, generic pharmaceuticals to fight public health crises like the HIV infection?

In response to these serious concerns, the USTR points to a letter of understanding between the United States and Morocco. In the letter, both countries agree that the patent provisions ''do not affect the ability of either country to take necessary measures to protect public health by promoting access to medicine for all, and in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency.''

This mutual understanding is promising. However, it is not directly part of the free trade agreement or the implementing legislation. According to Robert Weissman of Essential Action, ''This statement of understanding expresses noble sentiments, but is unlikely to make much, if any, material difference in the implementation of the agreement.'' I hope Mr. Weissman is wrong.

Approximately 16,000 Moroccans are infected with HIV, and the pandemic of HIV and AIDS is devastating the nations of Africa. Will Morocco be able to purchase or produce less expensive, generic anti-viral and other medications needed to fight HIV infection? Of the 40 million people with HIV or AIDS globally, less than 10 percent have access to drugs that have transformed many cases of HIV infection to a chronic illness, from a death sentence. In most of the developing world, drugs to fight HIV infection and AIDS are far too expensive for most. Any barrier to access to more affordable generic medicine denies essential health care to the poor.

Women are nearly half of the 40 million infected with HIV, and the infection rate of women is climbing faster than the infection rate of men in many regions. Irene Khan, Secretary-General of Amnesty International, told last week's World AIDS Conference that ''gender inequality is driving new infections among women and girls like never before.''

Mr. Speaker, more free trade agreements are in the works. The U.S. Trade Representative has negotiated with six Central American countries and has just initiated negotiations with Thailand. The consequences of trade agreements go far beyond merely eliminating trade barriers, such as tariffs. These agreements enforce significant public policy decisions made not by Congress, but by the Trade Representative. Congress has a narrow role in trade agreements, so I urge my colleagues to carefully consider the language in this and all future agreements. Free trade must be fair trade.

Mr. Speaker, I reserve the balance of my time.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I yield myself such time as he may consume to the gentleman from California (Mr. DREIER), the distinguished chairman of the Committee on Rules.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, I rise in strong support of the U.S.-Morocco Free Trade Agreement. Let me begin by responding to some of the comments my very good friend, the gentlewoman from Rochester, New York (Ms. SLAUGHTER), offered. Those have to do with HIV/AIDS and with gender inequality. We are all very concerned about dealing with those very serious crises that are out there. Most of us have come to the conclusion that one of the best tools that we can utilize to deal with those challenges is to encourage greater economic growth. Improving the standard of living for people will dramatically enhance the chance to deal with gender inequality, to deal with the challenge of having the resources to tackle greater education when it comes to the proliferation of HIV/AIDS.

So let me say that this agreement is itself a very, very comprehensive, unique and cutting-edge agreement which will create opportunities on both sides of the Atlantic.

Last week this body overwhelmingly passed the U.S.-Australia Free Trade Agreement. There is certainly a great deal of differences between Australia and Morocco. Australia has an economy which is very much like ours. They are a developed, industrialized nation with stringent labor and environmental standards. And like the United States, they have an economy that is increasingly based on services.

Morocco, by contrast, is a developing country facing many of the challenges that confront nations throughout the developing world. They are working very hard in Morocco to modernize their infrastructure and develop new sectors even as they strengthen the traditional industries like agriculture and textiles. They are aggressively pursuing labor and environmental reforms as well as combating piracy and counterfeiting. In short, Morocco is working diligently to climb higher and higher up that proverbial economic ladder.

The very remarkable thing about trade liberalization is these two trade agreements, with vastly different economies, can both be unequivocally good for all parties involved, making it a win/win. Trade is not only beneficial for big economies like the United States or wealthy economies like Australia, but it is very, very important for small, developing economies like Morocco, and I would argue in many ways because of the contrast that exists, trade agreements like this for developing nations create a potential for an even more dramatic improvement in the quality of life and the standard of living in those countries.

Unfortunately, economic isolationists often hide behind the guise of fair trade, an argument that was just put forth by my colleague from New York. They use fair trade to argue that because some countries lack the resources to pay American wages or enforce identical labor standards that we have in America, the most developed nation in the world, that we should somehow not trade with these countries. This is a tragically misguided argument.

It is precisely because these countries have further to go up that economic ladder that we should and must pursue open trade. Trade liberalization provides the tools for economic growth by opening up new markets, by building the legal framework necessary for a healthy business and investment environment by creating the resources to set high labor and environmental standards. Morocco is a perfect example of just such a country.

Mr. Speaker, for many years Morocco has been working to bring its economy into this new and vibrant 21st century. It has been working to increase its standard of living, and it has been striving to raise its labor and environmental standards. In fact, Morocco's aggressive efforts to reform its labor laws since the start of the free trade agreement process began, culminated in a groundbreaking new labor law that was passed just a few weeks ago.

These reforms address issues ranging from child labor to the minimum wage to nondiscrimination of women and the disabled, leading again to deal with the challenge that the gentlewoman from Rochester, New York (Ms. SLAUGHTER) raised. This new labor code makes Morocco a leader in the developing world, and it is a testament both to Morocco's commitment to high standards and the effectiveness and the importance and the dynamism of economic engagement.

Morocco is living up to its commitments even before implementation of this free trade agreement, but I want to make it very clear, while the FTA is critical to helping Morocco stay on its current path of economic development, it is by no means a mere gift from the United States of America. American businesses, American consumers, American workers and investors will all benefit from this agreement. Mr. Speaker, 95 percent of all trade in consumer and industrial goods will immediately become duty free. American farmers will have a huge advantage as they gain greater access than even Morocco's traditional European trading partners currently enjoy. U.S. service providers will benefit from broad-based liberalization across all service sectors, and American producers will benefit from the highest intellectual property protections ever negotiated in a free trade agreement, and that is particularly of concern to those Members from areas like southern California where our entertainment industry is so important. Setting an example and dealing with this issue of intellectual property is key.

The FTA also grants us an opportunity to strengthen our relationship. I want to say that relationship has been dramatically strengthened from the work that the gentleman from Florida (Mr. LINCOLN DIAZ-BALART) has done in developing this important relationship we have. He and the gentleman from Pennsylvania (Mr. ENGLISH) and others he mentioned have been very critical to building this U.S.-Morocco Caucus, and I congratulate them for their hard work in doing what we can to build that relationship which I believe has played a big role in leading us to this point where we, by an overwhelming margin, are going to pass this.

I believe this trade agreement is going to have a chance to deal with one of the challenges that exists in Morocco, and that is dealing with a challenge which has been going on for a long period of time with the Western Sahara. It is my hope that as we strengthen further this relationship between our two countries, we will be able to see a resolution to that.

Mr. Speaker, we know this has been a very important relationship between our two countries. Since 1777, when our

friendship formally began, Morocco has proven to be an important and strategic partner. This friendship has never been more apparent than throughout our recent global efforts to combat terrorism. We all know Morocco has been a critically important ally to us in that effort, and as a Muslim-Arab country, they have been an ardent U.S. supporter in a part of the world where our list of very good friends is not as strong as we would have liked.

Mr. Speaker, on both economic and political fronts, Morocco is making tremendous efforts. Today we are able to strengthen this important relationship while tearing down barriers, creating new opportunities for, as I said, American workers, American investors, American business people, and Moroccans alike. I urge my colleagues to demonstrate their support for our pro-economic growth agenda by voting for this rule and for the underlying measure.

Ms. SLAUGHTER. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. LEVIN), a valued member of the Committee on Ways and Means.

(Mr. LEVIN asked and was given permission to revise and extend his remarks.)

Mr. LEVIN. Mr. Speaker, I support this rule. However, I want to make it clear that we do not want this as a precedent that on trade agreements only 2 hours of debate always are allowed. In this case I think 2 hours will be satisfactory. That will not always be true.

□ 1200

There are good reasons to support this FTA, and I do so. There is the historical relationship between our two countries, as mentioned. There are the present realities in our relationship, Morocco's important role in its area and beyond that. Also, there are some important provisions in this agreement; for example, relating to manufacturing goods outside of the textile area. Ninety-five percent of them will become duty-free. There are strong services commitments, strong IPR commitments. So there are good reasons to be supportive of this.

I do want to put in perspective, though, several issues that have come up in our discussion, and these issues really were raised by us on the minority side. The gentleman from California (Mr. DREIER) likes to talk about raising issues as if it is a reflection of economic isolationism. That is the rubric, the mantra, the propaganda of the majority. They try to pin it on Democrats, including JOHN KERRY. It is absurd. We raised several issues because they were legitimate ones, not because we opposed expanded trade, but because we want expanded trade to work for everybody. We want expanded trade to be shaped. We do not think it is some magic bullet that we simply have to shoot and everything will work out. We do not think trade policy should be on automatic pilot. We do not think that what is necessarily appropriate in one trade agreement is appropriate in another. These cookie cutter approaches of this administration are wrong, and surely we do not support this agreement because we think that the economic record of this administration is worthy of support by anybody in this country.

So we raised a couple of issues. And the gentlewoman from New York (Ms. SLAUGHTER) referred to the prescription medicine provision, and I want to talk about it. Before I do that, a brief word and we will have more discussion during the 2 hours about the core labor standard provisions. The gentleman from California said we should not impose U.S. wages, identical laws on other countries. That is not what we are talking about. That again is propaganda from the majority side. What we are talking about are basic core international standards, and countries, including ours, have signed on to a declaration that says that people should have the right to associate, to bargain, to be free from discrimination, there should be no child or forced labor. That is what we are talking about when we say they should be incorporated into free trade agreements.

We asked the question, an important one, where is Morocco? Where is Morocco today in terms of their laws and their enforcement of these core labor standards? And the majority, because of their view that trade always works out for the best, it is always win-win, did not raise any questions about that. In fact, as to the reforms of 2003 in Morocco, there was not even within our government an English translation of these laws. And we asked for one and we looked at them. We talked to the Moroccan government about these laws, and I am pleased to say that we had a very useful discussion, which we initiated and the Moroccan government responded to, regarding the status of these core labor standards in Moroccan law and in Moroccan practice.

The reforms that were inaugurated last year were a major step forward. The Moroccan society has some history of some freedom for workers, and the independent union in Morocco supports this agreement, I think, as a result. But there were issues raised as to the ability of people to associate, to bargain, and to strike, and so we asked the Moroccan government to give us in writing the status, and I want to quote from their letter and I will place that letter in the RECORD. The letter read this way:

''The government of Morocco is committed to protecting the right to strike in conformance with ILO, International Labor Organization's core principles. In particular, the government will not use Article 288 of our penal code against lawful strikers.''

So I very much disagree with the administration's approach in general. They have in the agreements enforce their own laws. They put these in the agreements regardless of whether the laws incorporate the standards and whether there is implementation of them. And when we have a chance, when we take over, that will change. But in the meanwhile, the question is, is there conformance, is there conformance basically in Morocco with the core labor standards? And I think the realities as we were able to dig them out indicate that they are basically in conformance with the core labor standards.

Now a few words about prescription medicines. Why did we inquire? First of all, there is the same provision here as there is in the previous agreement, including Australia, the general patent provision that could be applied to reimportation of prescription medicines. It turns out in the case of Morocco that that provision is not going to have any potential effect. All of the legislation that has been introduced regarding reimportation does not include Morocco. They have a very small pharmaceutical industry. So I do not think, though I do not like this provision as a general rule, that we should vote against Morocco because of it, but we should make clear that we do not believe these provisions or this provision should be in trade agreements.

Now what about the impact of these provisions not on our important health needs but the important health needs of the people of Morocco? And we were concerned about that. The gentleman from California (Mr. DREIER) talked about AIDS. Look, if we are really concerned, and I think we all are, we need to look at these agreements to see what is the potential impact on the availability of medicines to people in Morocco who are suffering from AIDS and where there is in other cases as well some kind of a health emergency? And there were several provisions in this agreement that raised questions about the accessibility of the people of Morocco in these cases to necessary pharmaceuticals and the ability of the government of Morocco to take the steps necessary to make these drugs available. And these are fairly technical provisions, but they relate to the lives of hundreds of thousands of people. One relates to so-called parallel imports and the other to test data protections.

So I will make a long story short, and, if necessary, we can talk more about this when we have the debate of 2 hours. We entered into discussions with USTR. We on the Democratic side sent a letter to USTR, and they responded. And I include those two letters in the RECORD. And we said, in a few words, would the provisions in these two cases prevent accessibility to necessary drugs in a real case of emergency or necessity? And essentially what USTR has said: The agreement in the side letters, when read together, would not prohibit action by the Moroccan government to provide access to these drugs. And these side letters do have effect. The USTR has told us the

following, and I want to read them so there is clarity. This is from page 8 of the mentioned letter to me:

''As stated in the side letter, the letter constitutes a formal agreement between the parties. It is thus a significant part of the interpretive context for this agreement and not merely rhetorical.'' And they also then earlier have said: ''Therefore, if circumstances ever arise in which a drug is produced under compulsory license,'' meaning the government of Morocco has given that license to make these drugs available, ''and it is necessary to approve that drug to protect public health or effectively utilize the TRIPS/health solution, the data protection provisions in the FTA would not stand in the way.'' And they say the same as to the parallel import issue.

So I just finish by saying this to make it very clear: We were concerned. There is an AIDS epidemic. There are other health issues of serious import for the lives of children and other citizens of Morocco, and we took the initiative to be sure that this agreement would not prevent the availability of medicines in these circumstances. The Declaration, the language that was worked out in Doha, made it clear as to WTO that countries could protect themselves and their citizens when there was an overriding health need, and we wanted to make sure that nothing in this FTA would override that ability. And I am satisfied because of the exchange of letters. I am satisfied because of what was written to us by USTR. I am now satisfied by their categorical statement at our hearing just a few days ago that there would be nothing that would prevent access to these medicines in the circumstances I mentioned because of the FTA.

For all of those reasons, I believe that the issue for Morocco has been addressed. But I want to make it very clear that when we negotiate these agreements in the first place, as is true for core labor standards, as is true for health needs, as is true for anything else, we should be sensitive to what the possible impact would be. We should not be using cookie cutter approaches when the lives and the livelihoods of people in our country and in other countries are involved.

So I support this agreement. I urge passage of the rule. But I think this has been a healthy process, and I think we have both clarified the meaning of this agreement, and also I think what we have done is to serve notice as to how these agreements should be negotiated in the future.

EMBASSY OF THE
KINGDOM OF MOROCCO,
Washington, DC, July 14, 2004.

Hon. SANDY LEVIN,
Rayburn House Office Building,
Washington, DC.

DEAR CONGRESSMAN LEVIN: I have deeply appreciated the continuing opportunity to work with you on the U.S. Morocco Free Trade Agreement. In particular, I welcome your interest in our nation's labor law, specifically the comprehensive reforms, passed last year.

I want to address through this letter some of the issues that have been highlighted in conversations with you and your staff. Under Moroccan law, it is illegal to fire an individual because they are a member of a labor organization or have engaged in labor organizing. To fire someone on these grounds would be arbitrary under the 2003 law and would make available the full remedies provided under that law.

Under Moroccan law, it is illegal to refuse to hire an individual because they are a member of a labor organization or have engaged in labor organizing. It is also illegal to refuse to rehire or extend the contract of an individual for these reasons.

Section 473 is a provision in the 2003 Labor Law and the provision's intent is to ensure that labor representatives do not undermine the traditional labor organizations. The government intends to implement this provision to achieve that goal, consistent with the core provisions of the ILO.

The right to strike is protected in the Moroccan constitution. Further clarification of these rights is underway. The government of Morocco is committed to protecting the right to strike in conformance with the International Labor Organization's core principles. In particular, the government of Morocco will not use Article 288 of our penal code against lawful strikers.

Concerning the questions regarding Labor Representatives, employers have the obligation to organize the elections for the labor representatives. Employers cannot vote in these elections and are not able to choose labor representatives. Only employees can vote and elect freely the labor representatives.

Employees can join freely the Union of their own choice. Unions designate their representatives within the companies.

On the ILO involvement, Morocco has always worked with ILO. For instance, ILO assisted Morocco to write the Labor Code of 2003 and the new law on child labor. Morocco, as in the past, will continue to ask the support of ILO and work with this organization in all labor issues such as new laws and will ask its help in providing assistance for the implementation of the current rules.

I look forward to continuing to work with you on these issues and any others of potential concern. Nevertheless, I wanted to get back to you in a timely manner on the key issues addressed in this letter.

Sincerely,

AZIZ MEKOUAR,
Ambassador.

EMBASSY OF THE
KINGDOM OF MOROCCO,
Washington, DC, July 19, 2004.

Hon. SANDY LEVIN,
Rayburn House Office Building,
House of Representatives.

DEAR REPRESENTATIVE LEVIN: I deeply appreciate the opportunity to work with you on the U.S.-Morocco Free Trade Agreement. In particular, I appreciate the opportunity to talk to you about the pharmaceutical provisions in the Free Trade Agreement, and about how the Government of Morocco is meeting the health needs of its citizens.

The Government of Morocco has a well-developed health system, including a comprehensive public health program. For example, free medical care, including medicines, is available through our hospitals. Morocco's health care policy includes a strong emphasis on generic drugs.

Morocco has not needed to engage in emergency measures such as compulsory licensing or parallel imports. In fact, there is a well-developed domestic pharmaceutical industry in Morocco, producing also generics, and in 2000, well in advance of the Free Trade Agreement and completely independent of it, Morocco decided to bar parallel imports.

In addition, as a separate, but quite important matter, the Government of Morocco is strongly committed to and has agreed to the highest-standard intellectual property rights provisions in the Free Trade Agreement. The Government of Morocco believes that effective intellectual property right protection will play a vital role in the continued economic development of our country.

The pharmaceutical provisions in the Free Trade Agreement were carefully considered in Morocco. They were discussed in detail with all parties. All sectors of our health system were involved, including the pharmaceutical industry. The discussions also included the members of the civil society in Morocco.

The Government of Morocco achieved in this agreement full flexibility to meet our nation's health concerns. In particular, the Government of Morocco believes the agreement fully preserves its right to issue a compulsory license in the event that this should prove necessary.

The Agreement does bar ''parallel imports'' in 1.5.9.4. However, as described above, the Government of Morocco already bans ''parallel imports.'' In addition, the Government of Morocco believes that in the event that it faced a situation where extraordinary action was required, it could meet the needs of its people through a compulsory license.

The Government of Morocco considered carefully the data exclusivity provisions in the agreement. We do not believe that they present any risk to our ability to meet the health needs of our citizens.

Under the Agreement, a compulsory license does not override obligations to provide data exclusivity under 15.10.1 and 2. The Government of Morocco believes it is unlikely that a situation would ever arise where data exclusivity would be a barrier to the issuance of a compulsory license. If such an event did occur, the Government of Morocco believes that an accommodation could be reached with the owner of the data.

The Government of Morocco supports the Paragraph 6 solution of the Doha Declaration. The Free Trade Agreement does not restrict our ability to export under the Paragraph 6 solution of the Doha Declaration. To the specific, 15.9.6 does not create a barrier to exports under the Paragraph 6 solution of the Doha Declaration.

The June 15, 2004 side letter between our two countries addresses the ability to amend the Free Trade Agreement, responsive to amendments to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Under the Agreement, the Government of Morocco believes it can consult immediately to amend the Agreement responsive to any WTO amendments. Under the Agreement, it is not required to wait for there to be an application in dispute of the Agreement.

I look forward to keep working with you.

Sincerely,

AZIZ MEKOUAR,
Ambassador.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 15, 2004.

Hon. ROBERT B. ZOELLICK,
U.S. Trade Representative,
Washington, DC.

DEAR AMBASSADOR ZOELLICK: We are writing to express our ongoing concern about sections of recently negotiated U.S. free trade agreements (FTAs) that could affect the availability of affordable drugs in developing countries. In particular, we are concerned about the impact of restrictions on

parallel imports and about marketing exclusivity requirements for pharmaceuticals included in the Morocco FTA. Our concern relates to two points.

First, it appears that some of the provisions contradict, both explicitly and in spirit, commitments made by the United States in the World Trade Organization in both the November 2001 Declaration on the TRIPS Agreement and Public Health (the Doha Declaration) and the September 2003 Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (the Paragraph 6 Decision). Section 2101(b)(4)(C) of the Trade Act of 2002 (Trade Promotion Authority or TPA) directs the Administration to respect the Doha Declaration, necessarily including subsequent agreements related to that Declaration.

Second, we are concerned that the FTA's restrictions on obtaining regulatory approval for drugs, including drugs that are already off-patent, are likely to increase prices in the Moroccan market. These restrictions, described below, could undermine the availability of generic versions of drugs to treat serious health problems, including HIV/ADS, that are widespread in many, if not most, developing countries. Moreover, any increase in the price of drugs in a developing country like Morocco will be borne by consumers because most developing countries have large rural, uninsured, and poor populations who pay out-of-pocket for drugs.

In discussions with your staff and in recent testimony before the Committee on Ways and Means, we understand that your office is of the view that the FTA does not interfere with a country's efforts to ensure broader access to medicines. We request that you explain that view to us in writing, and in particular, by responding to the questions outlined below. We have focused on Chapter 15 of the U.S.-Morocco FTA, because it may be considered by Congress in the coming weeks.

RESTRICTIONS ON PARALLEL IMPORTATION

Article 15.9.4 of the U.S.-Morocco FTA requires both countries to recognize the exclusive right of a patent holder to import a patented product, at least where the patent holder has restricted the right to import by contractual means. In practical terms, this provision means that neither Morocco, nor for that matter, the United States, may allow parallel imports of patented pharmaceutical products from the other country, or where a national of the other country owns the patent.

With respect to Morocco, which is a developing country, this provision appears to limit one of the flexibilities identified in the Doha Declaration for increasing access to medicines, and accordingly, it appears to contradict the direction in section 2102(b)(4)(c) of TPA. Specifically, the Doha Declaration reaffirmed that the TRIPS Agreement provides flexibility for WTO Members to take measures to protect public health, including ''promot[ing] access to medicines for all.'' One of the key flexibilities identified in the Doha Declaration is the right of each country to determine for itself whether to allow parallel imports.

Does Article 15.9.4 of the Morocco FTA prevent Morocco from allowing parallel imports of a patented pharmaceutical product?

Given that the Doha Declaration explicitly confirms the right of each country to retain flexibility in allowing parallel imports of drugs as one way of meeting the public health needs of its citizens, please explain why the provision was included given that TPA directs the Administration to respect the Doha Declaration?

Which country sought inclusion of this provision?

If Morocco or the United States eliminated the exclusive right of a patent holder to import a patented product, would either be in violation of Article 15.9.4?

MARKET EXCLUSIVITY AND RELATED PROVISIONS

Article 15.10.1 of the U.S.-Morocco FTA requires that both countries prevent the use of data submitted to support an application for marketing approval (e.g., approval from the Food and Drug Administration (FDA)) for a new pharmaceutical chemical product without the consent of the person submitting such data, for a period of five years from the date of approval. In layman's terms, this means that if a company submits data to meet FDA-type safety and efficacy standards, and obtains marketing approval based on that data, other companies cannot obtain regulatory approval based on those data for five years. Given the cost of generating such data, this provision operates effectively as a grant of market exclusivity in virtually all cases, including in cases where the drug is off patent. Article 15.10.2 appears to allow an additional three years of marketing exclusivity for new uses of an already-approved pharmaceutical product. Article 15.10.3 requires both countries to extend patents where there is a delay in the marketing approval process.

The provisions described above appear to be based on 1984 amendments to U.S. law known as the Hatch-Waxman Act. The objectives of the Hatch-Waxman Act were to accelerate and increase the availability of generic drugs in the United States while balancing the need for continued investment in new drugs. As you are aware, the Hatch-Waxman Act was necessary because prior to 1984, U.S. law made it extremely difficult and expensive to bring a generic version of a pharmaceutical product to market, even after a patent expired. This was because prior to the 1984 changes, a company seeking marketing approval for a copy of an already-approved drug had to generate its own data to support its FDA application. The cost of generating those data effectively precluded second entrants from entering the market. (First entrants were able to offset the cost for generation of the data because they enjoyed patent protection.) The Hatch-Waxman Act allowed second entrants to rely on data submitted by first entrants, thereby reducing costs and speeding introduction of generic versions of drugs to the U.S. market. In exchange for allowing second entrants to ''piggy-back'' off first entrants, first entrants were given a period of market exclusivity, even for drugs that are off-patent.

The Hatch-Waxman Act's provisions on market exclusivity were part of a compromise necessary to ensure that the U.S. regulatory structure was updated to facilitate the entry of generic drugs into the U.S. market. Most developing countries already have robust generic markets, in large part because they already allow producers of generic versions of drugs to obtain regulatory approval based on data submitted by first applicants or based on prior approval. In light of that fact, and given that innovative drug companies largely develop drugs for developed country markets and conduct the necessary tests to get marketing approval in those markets regardless of whether they are given market exclusivity in low-income developing countries, what is the rationale for including these provisions?

Please describe the circumstances under which the three additional years of marketing exclusivity described in Article 15.10.2 would apply.

Neither Article 15.10.1 or 15.10.2 on marketing exclusivity appear to allow for reliance on previously submitted data or prior approval during the period of market exclusivity absent consent of the first applicant. The Doha Declaration reaffirmed the right of countries to use flexibilities under the TRIPS Agreement, such as compulsory licenses. A compulsory license allows someone other than the patent holder to produce and sell a drug under patent. It is not clear to us why the grant of a compulsory license would override a grant of market exclusivity, as provided in Articles 15.10.1 and 15.10.02. (We note that there is no exception to protect the public.) Please describe how the market exclusivity provisions in Article 15.10.1 and Article 15.10.2 relate to Morocco's ability to issue a compulsory license.

Where a compulsory license has been issued, may a Party automatically deem that the first applicant has consented to reliance on the data or prior approval for the drug produced under the compulsory license?

If the patent and test-data were owned by different entities, does a compulsory license result in legal ''consent'' by both the patent holder and the data owner for use of the patented material and the test data?

When the drug is off patent, and a Party wishes to permit marketing for a second entrant, what mechanism exists in the FTA to allow for an exception to the provisions on market exclusivity?

Is a grant of market exclusivity pursuant to Articles 15.10.1 and 15.10.2 considered an ''investment'' with respect to Chapter 10 of the agreement? If so, would an abridgement of the period of market exclusivity constitute a compensable expropriation under Chapter 10?

Article 10.6.5 of the FTA appears to clarify that any act of patent infringement carried out by a Party in the issuance of a compulsory license in accordance with the TRIPS does not constitute a compensable expropriation. Issuance of a compulsory license, however, is only one aspect of the process of getting a drug to market. Does the clarification in Article 10.6.5 also ensure that other measures taken by a government to ensure that a drug on which a compulsory license has been issued can be lawfully marketed (e.g., a grant of marketing approval to a generic or second producer before the period of marketing exclusivity has expired) will not constitute compensable expropriations? If not, is there another provision in the agreement that would ensure that such measures do not constitute expropriations?

Article 15.10.3 requires that a patent term be extended where there is a delay in the regulatory approval process. The provision does not state whether delays attributable to the applicant (e.g., failure to provide adequate data) mitigate against extension. Article 15.9.8, the comparable provision for extension of a patent term because of a delay in the patent approval process, makes clear that delays attributable to the patent applicant should not be considered in determining whether there is a delay that gives rise to the need for an extension. Why was similar language not included in Article 15.10.3?

Is Morocco, or for that matter the United States, required by the FTA to extend a patent term where there is a delay in the regulatory approval that is attributable to the applicant?

BOLAR-TYPE PROVISIONS THAT LIMIT EXPORT

Article 15.9.6 of the U.S.-Morocco FTA appears to allow a person other than a patent holder to make use of a patent in order to generate data in support of an application for marketing approval of a pharmaceutical product (e.g., approval from the FDA). However, Article 15.9.6 also states that if exportation of the product using the patent is allowed, exportation must be limited to ''purposes of meeting marketing approval requirements.'' This provision appears to preclude Morocco from exporting generic

versions of patented pharmaceutical products for any reason other than use in obtaining marketing approval because that is the only exception noted.

If that is the case, the provision would seem to curtail Morocco's ability to act as an exporter of pharmaceutical products to least-developed and other countries under the Paragraph 6 Decision. Specifically, the Paragraph 6 Decision allows countries to export drugs produced under a compulsory license to least-developed countries or to countries that lack pharmaceutical manufacturing capabilities. Were the provisions to constrain Morocco's ability to export under the Paragraph 6 Decision, the United States could be accused of backtracking on commitments that have been made.

Please explain whether this Article prohibits Morocco from allowing the export of generic versions of patented pharmaceutical products for purposes other than ''meeting market approval requirements.'' If it does not, please explain in detail how you came to that conclusion.

If this provision does in fact limit Morocco's ability to allow the export of generic versions of patented pharmaceutical products, please explain how Morocco could serve as an exporting country to help least-developed and other countries address public health needs under the Paragraph 6 Decision. (Exporters under the Paragraph 6 Decision are exporting to meet the health needs of an importing country, not merely to obtain marketing approval.)

Does Article 15.9.6 allow export of a generic version of a patented drug to get marketing approval in a third country (i.e., other than the United States or Morocco)? (Article 15.9.6 states that ''the Party shall provide that the product shall only be exported outside its territory for purposes of meeting marketing approval requirements of that Party.'')

SIDE LETTER TO THE AGREEMENT

The Morocco FTA includes an exchange of letters dated June 15, 2004, between the Governments of Morocco and the United States. The letters appear intended to clarify the relationship between the intellectual property provisions of the FTA and the ability of Morocco and the United States to take measures to protect the public health.

The letters address two issues. First, the letters state that the intellectual property provisions in the FTA ''do not prevent the effective utilization'' of the Paragraph 6 Decision. Second, the letters state that if the TRIPS Agreement is amended on issues related to promotion of access to medicines, and that either the United States or Morocco takes action in conformity with such amendments, both countries will ''immediately consult in order to adapt [the intellectual property provisions of the FTA] as appropriate in light of the amendment.''

On the Paragraph 6 Decision, please explain how the statement that the FTA does not ''prevent the effective utilization'' is not merely rhetorical. Please be specific as to why you believe the provisions in the FTA do not preclude Morocco from acting as an importer or exporter of drugs under the Paragraph 6 Decision, including how the FTA's provisions related to market exclusivity can be waived if Morocco acts in either capacity.

On the issue of consultation, do the letters mean that both Parties agree to amend the FTA as soon as possible to reflect access to medicines amendments to the TRIPS Agreement? Will the United States refrain from enforcing provisions of the FTA that contravene the TRIPS Agreement amendments while the FTA is being amended? Is USTR willing to engage in an exchange of letters with the Government of Morocco memorializing such an understanding?

We appreciate your prompt response to these questions.

Sincerely,

CHARLES B. RANGEL,
Ranking Democrat, Committee on Ways and Means.
JIM MCDERMOTT,
Member, Committee on Ways and Means.
SANDER LEVIN
Ranking Democrat, Subcommittee on Trade, Committee on Ways and Means.
HENRY A. WAXMAN,
Ranking Democrat, Committee on Government Reform.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE,
Washington, DC, July 19, 2004.

Hon. SANDER M. LEVIN,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN LEVIN: Thank you for your letter of July 15, 2004, regarding certain provisions of the intellectual property chapter of the U.S.-Morocco Free Trade Agreement (FTA).

I have addressed each of your specific questions below. As a general matter, for the reasons also set forth below, the FTA does not conflict with the Doha Declaration on the TRIPS Agreement and Public Health or otherwise adversely, affect access to medicines in Morocco. The FTA does not require Morocco to change its policies with respect to any of the flexibilities noted in the Doha Declaration. Furthermore, we believe that this FTA can advance Morocco's ability to address public health problems, both by putting in place incentives to develop and bring new medicines to market quickly and by raising standards of living more broadly.

The experience of Jordan under the U.S.-Jordan FTA is illuminating. The United States and Jordan signed the FTA in 2000, during the prior Administration, and we worked with Congress to enact that agreement in 2001. The U.S.-Jordan FTA contains a strong intellectual property chapter that covers, for example, data protection, one of the issues highlighted in your letter. Jordan has witnessed a substantial increase in pharmaceutical investment, creating new jobs and opportunities. In addition, Jordan has approved 32 new innovative medicines since 2000—a substantial increase in the rate of approval of innovative drugs, helping facilitate Jordanian consumers' access to medicines. The Jordanian drug industry has even begun to develop its own innovative medicines. This is an example of how strong intellectual property protection can bring substantial benefits to developing and developed countries together.

Your specific questions with respect to the U.S.-Morocco FTA are addressed below.

PARALLEL IMPORTATION

1. Does Article 15.9.4 of the Morocco FTA prevent Morocco from allowing parallel imports of a patented pharmaceutical product?

Article 15.9.4 of the FTA reflects current Moroccan law and therefore does not require Morocco to do anything it does not already do. The FTA also reflects existing U.S. law. Both Morocco and the United States already provide patent owners with an exclusive right to import patented products, including pharmaceuticals but also all other types of patented products. Many innovative industries and their employees in the United States—from the high tech and pharmaceuticals sectors to sectors covering chemicals and agricultural inputs, and on to engineering and manufacturing—benefit from this long-standing protection in U.S. patent law.

2. Given that the Doha Declaration explicitly confirms the right of each country to retain flexibility in allowing parallel imports of drugs as one way of meeting the public health needs of its citizens, please explain why the provision was included given that TPA directs the Administration to respect the Doha Declaration?

Providing patent owners with an exclusive import right is consistent with Article 28.1 of the TRIPS Agreement, which states that patent owners have the exclusive right to make, use, sell, offer for sale, and import products covered by their patents. U.S. law, developed through a long line of Supreme Court and lower court cases, has recognized this right for over a hundred years. The TRIPS Agreement more precisely articulated the exclusive import right, and, when implementing TRIPS in the Uruguay Round Agreements Act, Congress amended the patent law by providing for such a right expressly in the statute.

At the same time, however, the TRIPS Agreement also allows countries to choose to permit ''international exhaustion'' without challenge under WTO dispute settlement. International exhaustion would allow parallel imports. The Doha Declaration affirms this approach, and states that ''[t]he effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4.''

Importantly, neither the TRIPS Agreement nor the Doha Declaration require WTO members to adopt an international exhaustion rule; they merely recognize that countries may do so without challenge. WTO members are free to exercise their sovereign right to choose an alternative policy. As noted, the United States does not permit parallel imports. Morocco also decided in 2000, well before the FTA negotiations, not to permit parallel imports. The fact that the FTA reflects principles already present in both Parties' laws does not in any way lessen our commitment to the Doha Declaration. In fact, in previous FTA negotiations with developing countries that do not have parallel import restrictions in their domestic law (e.g., Central America, Chile, and Bahrain), the final negotiated texts do not contain provisions on parallel importation.

3. Which country sought inclusion of this provision?

This provision is a standard component of the U.S. draft text, which USTR staff has presented to Congress for review and comment on numerous occasions. Morocco readily accepted the proposal, without objection, and noted during the negotiations that Moroccan patent law, like U.S. law, already provided patentees with an exclusive importation right.

4. If Morocco or the United States eliminated the exclusive right of a patent holder to import a patented product, would either be in violation of Article 15.9.4?

It would depend on the details of the particular legislation. A change in U.S. law would, however, affect many other innovative sectors that rely on patents besides the pharmaceutical sector. Many U.S. technology, manufacturing, and other innovative businesses—as well as Members of Congress—urge us regularly to vigorously safeguard U.S. patents and the jobs they help create.

MARKET EXCLUSIVITY

5. The Hatch-Waxman Act's provisions on market exclusivity were part of a compromise necessary to ensure that the U.S.

regulatory structure was updated to facilitate the entry of generic drugs into the U.S. market. Most developing countries already have robust generic markets, in large part because they already allow producers of generic versions of drugs to obtain regulatory approval based on data submitted by first applicants or based on prior approval. In light of that fact, and given that innovative drug companies largely develop drugs for developed country markets and conduct the necessary tests to get marketing approval in those markets regardless of whether they are given market exclusivity in low-income developing countries, what is the rationale for including these provisions?

In negotiating the U.S.-Morocco FTA and other recent FTAs, USTR has been mindful of the guidance provided in the Trade Act of 2002, which directs USTR to seek to ''ensur[e] that the provisions of any multilateral or bilateral trade agreement governing intellectual property rights that is entered into by the United States reflect[s] a standard of protection similar to that found in United States law.'' We understand the rationale of this guidance is to help protect and create high-paying jobs in leading American businesses. As a developed economy, it is understandable that U.S. workers will be increasingly employed in higher value (and better paid) innovative and productive jobs. On the basis of Congress' direction, the United States sought to include provisions that reflect U.S. law, including with respect to the protection of data.

The protection of clinical test data has long been a component of trade agreements negotiated by U.S. Administrations with both developed and developing countries. Data protection provisions were included, for example, in many past trade agreements, including the U.S.-Jordan FTA and the U.S.-Vietnam Bilateral Trade Agreement—both negotiated by the prior Administration after the passage of the law to which you refer. Such provisions were included in NAFTA, too. They are in all recent FTAs, including the U.S.-Singapore FTA and the U.S.-Chile FTA. Data protection provisions have also been included in many bilateral intellectual property agreements.

The TRIPS Agreement itself requires protection of clinical test data against unfair commercial use. While the United States protects data to obtain approval for new chemical entities for five years, other countries provide different terms. The EU, for example, protects such data for 6–10 years.

Implicit in the question, however, appears to be an assumption that data protection is disadvantageous for developing countries like Morocco. Yet, protection of data actually has the potential of facilitating and accelerating access to medicines. As recognized in Chapter 15 of the FTA (footnotes 12 and 13), Morocco does not currently approve generic versions of medicines based on approvals granted in other countries. As a result, today a generic producer wishing to sell pharmaceuticals in Morocco may obtain approval only if an innovative producer first obtains approval in Morocco or if the generic producer invests the significant money and time necessary to recreate the data itself. After an innovative producer obtains approval in Morocco, a generic producer may rely on such data to obtain approval for its generic product.

Therefore, under existing Moroccan law, generic manufacturers in Morocco cannot obtain marketing approval for a generic drug until an innovator has first obtained approval for the drug in Morocco. Without data protection, innovative producers will be less likely to enter the Moroccan market in the first place because, once they obtain approval, generic producers may capture most of the market. The data exclusivity provisions of the FTA can thus provide an important incentive for innovators to enter the market, which may in turn expand the potential universe of generic drugs in Morocco. As noted above, this is the development we are seeing in Jordan, to the benefit of Jordan consumers.

6. Please describe the circumstances under which the three additional years of marketing exclusivity described in Article 15.10.2 would apply.

The question seems to imply that the basic five year term of protection for data submitted to obtain approval of new chemical entities may be extended to eight years. This is not correct. There is no circumstance in which the FTA requires that an innovator receive a data protection period longer than five years for new chemical entities.

The three year period of protection reflects a provision in U.S. law, which relates to new information that is submitted after a product is already on the market (for example, because the innovator is seeking approval for a new use of an existing product). In that situation, at least in cases where the origination of this new data involves considerable effort, the FTA requires that the person providing the new data gets three years of protection for that new data relating to that new use. This three year period only applies to the new data for the new use; it is not added to the exclusivity period for any data previously submitted.

For example, if a new chemical entity is given marketing approval, the data supporting that approval is protected for five years. After that time, generic producers may rely on the data to obtain approval for a generic version of the drug for the use supported by the original data. If a new use is subsequently discovered for the chemical entity, and the health authority approves the new use based on new data, then the originator of the new data is entitled to three years of protection for that data. During that time, however, generics can continue to produce and market the drug for the original use.

7. Neither Article 15.10.1 or 15.10.2 on marketing exclusivity appear to allow for reliance on previously submitted data or prior approval during the period of market exclusivity absent consent of the first applicant. The Doha Declaration reaffirmed the right of countries to use flexibilities under the TRIPS agreement, such as compulsory licenses. A compulsory license allows someone other than the patent holder to produce and sell a drug under patent. It is not clear to us why the grant of a compulsory license would override a grant of market exclusivity, as provided in Articles 15.10.1 and 15.10.2. (We note that there is no exception to protect the public.) Please describe how the market exclusivity provisions in Article 15.10.1 and Article 15.10.2 relate to Morocco's ability to issue a compulsory license.

The Doha Declaration recognizes that the TRIPS Agreement allows countries to issue compulsory licenses to address public health problems. The U.S.-Morocco FTA is fully consistent with this principle. It contains no provisions with respect to compulsory licensing, leaving the flexibilities available under WTO rules unchanged.

In the negotiation of the U.S.-Morocco FTA, both parties recognized the importance of protecting public health. Your questions pertain to whether provisions of Chapter 15 (which is the Intellectual Property Rights chapter) might affect this common interest. To address this type of concern, the United States and Morocco agreed to a side letter on public health in which both Parties stated their understanding that ''[t]he obligations of Chapter Fifteen of the Agreement do not affect the ability of either Party to take necessary measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency.'' The Parties also stated that ''Chapter Fifteen does not prevent the effective utilization of the TRIPS/health solution'' reached in the WTO last year to ensure that developing countries that lack pharmaceutical manufacturing capacity may import drugs. Therefore, if circumstances ever arise in which a drug is produced under a compulsory license, and it is necessary to approve that drug to protect public health or effectively utilize the TRIPS/health solution, the data protection provisions in the FTA would not stand in the way.

8. Where a compulsory license has been issued, may a Party automatically deem that the first applicant has consented to reliance on the data or prior approval for the drug produced under the compulsory license?

As explained above, if the measure described in the question is necessary to protect public health, then, as explained in the side letter, the FTA would not stand in the way.

9. If the patent and test-data were owned by different entities, does a compulsory license result in legal ''consent'' by both the patent holder and the data owner for use of the patented material and the test data?

See previous response.

10. When the drug is off patent, and a Party wishes to permit marketing for a second entrant, what mechanism exists in the FTA to allow for an exception to the provisions on market exclusivity?

A patent is designed to protect one type of intellectual property work, i.e., an invention. Protection of data is intended to protect a different type of work, i.e., undisclosed test data that required significant time and effort to compile. The fact that one type of intellectual property protection for a product has expired, should not lead as a matter of course to the conclusion that all other intellectual property rights attached to the same product should also expire. The same is true in other areas of intellectual property. For example, a single CD may encompass several intellectual property rights related to the music, the performer and the record company. These rights may expire at different times. The fact that the copyright attached to the sound recording has expired, should not mean that the composer or performer loses the copyright it has. As you know, this principle is important to a broad range of U.S. creative and innovative industries, including the entertainment sector, America's second largest export business.

However, as indicated in the side letter, if a circumstance arose, such as an epidemic or national emergency, that could only be addressed by granting a second entrant marketing approval notwithstanding the data protection rights of the originator of the data, the FTA would not stand in the way.

11. Is a grant of market exclusivity pursuant to Articles 15.10.1 and 15.10.2 considered an ''investment'' with respect to Chapter 10 of the Agreement? If so, would an abridgement of the period of market exclusivity constitute a compensable expropriation under Chapter 10?

The definition of an ''investment'' in the FTA includes, inter alia, ''intellectual property rights.'' Whether an abridgement of the data protection obligation gives rise to a compensable expropriation of an ''investment'' under Chapter Ten is a fact-specific issue that would have to be resolved on the merits of a particular case. It is worth noting, however, that Article 10.6.5 provides

that the expropriation provision of Chapter Ten does not apply to the issuance of compulsory licenses or to the limitation of intellectual property rights to the extent that such action is consistent with the intellectual property chapter (Chapter Fifteen). A determination concerning the consistency of an action with Chapter Fifteen would be informed by the side letter.

12. Article 10.6.5 of the FTA appears to clarify that any act of patent infringement carried out by a Party in the issuance of a compulsory license in accordance with the TRIPS does not constitute a compensable expropriation. Issuance of a compulsory license, however, is only one aspect of the process of getting a drug to market. Does the clarification in Article 10.6.5 also ensure that other measures taken by a government to ensure that a drug on which a compulsory license has been issued can be lawfully marketed (e.g., a grant of marketing approval to a generic or second producer before the period of marketing exclusivity has expired) will not constitute compensable expropriations? If not, is there another provision in the agreement that would ensure that such measures do not constitute expropriations?

See response to Question 11.

13. Article 15.10.3 requires that a patent term be extended where there is a delay in the regulatory approval process. The provision does not state whether delays attributable to the applicant (e.g., failure to provide adequate data) mitigate against extension. Article 15.9., the comparable provision for extension of a patent term because of a delay in the patent approval process, makes clear that delays attributable to the patent applicant should not be considered in determining whether there is a delay that gives rise to the need for an extension. Why was similar language not included in Article 15.10.3?

The Parties did not find it necessary to specifically address the issue of how to handle delays attributable to an applicant for marketing approval in the context of data protection. As with numerous other provisions, the Parties retain the flexibility to address such details in their implementation of the FTA, provided that they comply with the basic obligation.

14. Is Morocco, or for that matter the United States, required by the FTA to extend a patent term where there is a delay in the regulatory approval that is attributable to the applicant?

The FTA preserves flexibility for the Parties to address the issue of delays attributable to an applicant for marketing approval through their domestic laws and regulations.

BOLAR PROVISIONS

15. Please explain whether this Article prohibits Morocco from allowing the export of generic versions of patented pharmaceutical products for purposes other than ''meeting marketing approval requirements.'' If it does not, please explain in detail how you came to that conclusion.

No, it does not. The Article dealing with the ''Bolar'' exception to patent rights only deals with one specific exception. It does not occupy the field of possible exceptions, and thus does not prevent Morocco from allowing the export of generic versions of patented pharmaceutical products for purposes other than ''meeting marketing approval requirements'' when permitted by other exceptions. For example, Morocco has the right to allow exports where consistent with TRIPS Article 30 and WTO rules on compulsory licensing. Morocco may, for example, allow export of generic versions of patented drugs by issuing a compulsory license in accordance with the TRIPS/health solution agreed last August in the WTO.

16. If this provision does in fact limit Morocco's ability to allow the export of generic versions of patented pharmaceutical products, please explain how Morocco could serve as an exporting country to help least-developed and other countries address public health needs under the Paragraph 6 Decision. (Exporters under the Paragraph 6 Decision are exporting to meet the health needs of an importing country, not merely to obtain marketing approval).

As noted in the response to Question 15, the FTA does not limit Morocco's ability to make use of the TRIPS/health solution agreed last August to export drugs under a compulsory license to developing countries that cannot produce drugs for themselves.

17. Does Article 15.9.6 allow export of a generic version of a patented drug to get marketing approval in a third country (i.e., other than the United States or Morocco)? (Article 15.9.6 states that ''the Party shall provide that the product shall only be exported outside its territory for purposes of meeting marketing approval requirements of that Party.'')

Morocco can get marketing approval in a third country to allow export of a generic version through the issuance of a compulsory license for export, consistent with WTO rules. Article 15.9.6 does not interfere with that result.

SIDE LETTER

18. On the Paragraph 6 Decision, please explain how the statement that the FTA does not ''prevent the effective utilization'' is not merely rhetorical. Please be specific as to why you believe the provisions in the FTA do not preclude Morocco from acting as an importer or exporter of drugs under the Paragraph 6 Decision, including how the FTA's provisions related to market exclusivity can be waived if Morocco acts in either capacity.

There are no provisions in the FTA related to compulsory licensing, which means that it does not limit in any way Morocco's ability to issue compulsory licenses in accordance with WTO rules, including TRIPS Article 31 and the TRIPS/health solution. With respect to other rules included in Chapter 15, including data protection, the side letter states that the FTA does not ''prevent the effective utilization of the TRIPS/health solution.'' As stated in the side letter, the letter constitutes a formal agreement between the Parties. It is, thus, a significant part of the interpretive context for this agreement and not merely rhetorical. According to Article 31 of the Vienna Convention on the Law of Treaties, which reflects customary rules of treaty interpretation in international law, the terms of a treaty must be interpreted ''in their context,'' and that ''context'' includes ''any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty.''

19. On the issue of consultation, do the letters mean that both Parties agree to amend the FTA as soon as possible to reflect access to medicines amendments to the TRIPS Agreement? Will the United States refrain from enforcing provisions of the FTA that contravene the TRIPS Agreement amendments while the FTA is being amended? Is USTR willing to engage in an exchange of letter with the Government of Morocco memorializing such an understanding?

The United States would, of course, work with Morocco to ensure that the FTA is adapted as appropriate if an amendment to the TRIPS Agreement were adopted to ensure access to medicines. The only amendment currently being contemplated with respect to TRIPS involves translating the TRIPS/health solution from last August into a formal amendment. The United States has no intention of using dispute settlement to challenge any country's actions that are in accordance with that solution. In fact, Canada passed legislation recently that would allow it to export drugs in accordance with the TRIPS/health solution. The United States reached an agreement with Canada just last Friday, July 16, to suspend parts of NAFTA to ensure that Canada could implement the solution without running afoul of NAFTA rules.

In closing, let me emphasize that we appreciate the importance of the U.S. commitment to the Doha Declaration on the TRIPS Agreement and Public Health and the global effort to ensure access to medicines in developing countries to address acute public health problems, such as AIDS, malaria and tuberculosis. The United States played a leading role in developing these provisions, including enabling poor countries without domestic production capacity to import drugs under compulsory licenses. We also successfully called for giving Least Developed Countries an additional ten years, from 2006 until 2016, to implement TRIPS rules related to pharmaceuticals. These accomplishments offer a significant solution to the conflicts we encountered on taking office in 2001.

At the same time, as Congress has directed us, the Administration has worked on multiple fronts to strengthen the value internationally of America's innovation economy. These efforts have included stronger intellectual property protection rules and enforcement so as to assist U.S. businesses and workers, and encourage ongoing innovation that benefits U.S. consumers.

Our FTAs are but one component of the Administration's broader efforts to achieve these objectives, and complement efforts undertaken in other fora. Our FTAs not only do not conflict with the objectives expressed in the Doha Declaration but reinforce those objectives and facilitate efforts to address public health problems.

Sincerely,

JOHN K. VERONEAU,
General Counsel.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Speaker, I thank the gentlewoman from Rochester, New York for yielding me this time.

I rise today in support of the Moroccan Free Trade Agreement because it is an important agreement with a moderate Muslim country and it represents a vital step towards establishing broader free trade in the Middle East.

Former Clinton administration U.S. Trade Representative Mickey Kantor said, ''Closer and mutually beneficial ties between Morocco and the United States will bolster a country that has for several centuries earned a reputation for moderation, tolerance, and stability. The Moroccans have democratized their political structures. They recently made historic reforms to improve women's rights, and codified new labor rights and protections based upon key International Labor Organization conventions.

Mr. Speaker, the Moroccan Free Trade Agreement is the first trade pact to be negotiated with an Arab and Muslim country since September 11, and it

would permit Morocco to join Jordan in the ranks of countries that have entered into an enhanced partnership with the United States.

□ 1215

This agreement will enhance our foreign policy and diplomatic efforts to bridge greater understanding and cooperation with moderate Arab nations.

This FTA is going to ensure that U.S. businesses and workers have greater access to the Moroccan market by further eliminating trade barriers. It will deepen and expand bilateral commercial ties beyond the average level of $1 billion in current annual two-way trade flows. In fact, the United States enjoyed a surplus of $2 billion between 1999 and 2003. So they are buying more from us than we are buying from them. This is creating more jobs in the United States.

More than 95 percent of bilateral trade in consumer and industrial products will become duty free immediately upon entry into this agreement, with all remaining tariffs to be eliminated within 9 years. It is the best markets access package of any U.S. free trade agreement with a developing country.

It is going to create new opportunities for U.S. banks, insurance, securities and related services and telecommunications. Key U.S. export sectors gain immediate duty-free access to Morocco, such as information technology, machinery, construction equipment, and chemicals. Morocco is going to accord substantial market access across its entire services regime and adhere to strong and detailed disciplines on regulatory transparency, a key factor.

Additionally, Morocco has agreed to strengthen its intellectual property laws, and the agreement is going to help Morocco to further expand its economic and labor reform efforts.

Mr. Speaker, this FTA will expand trade and bring greater economic opportunities for U.S. workers, farmers and businesses, and is going to promote economic development in other nations.

Through this type of economic engagement, we can forge stronger ties with our allies around the world and promote democracy, free markets, and improved labor standards. That is why I support this agreement. I urge my very good friends, particularly on this side of the aisle, to vote in favor of this implementing legislation.

Ms. SLAUGHTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think the gentleman from Virginia brought up some very important points, and I think they are important to emphasize and not only take note of. This agreement, in addition to the many, many important aspects that it contains for the economy, obviously, of Morocco, and the United States, is a very important agreement politically; and it encourages the extraordinary progress that Morocco has made in the area of labor rights, in the area of a free press, and in the area of democratization.

Morocco has multiple political parties, espousing all conceivable viewpoints. It has an elected parliament and an elected prime minister. It has made commendable progress. It is a great friend and ally of the United States.

For so many reasons, Mr. Speaker, it is important and appropriate for this Congress to be moving forward today passing this implementing legislation for the United States-Morocco Free Trade Agreement.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. BOOZMAN). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The SPEAKER pro tempore. Pursuant to clauses 8 and 9 of rule XX, this 15-minute vote on adopting House Resolution 738 will be followed by 5-minute votes, as ordered, on suspending the rules and passing H.R. 4175; and suspending the rules and adopting H. Res. 728.

The vote was taken by electronic device, and there were—yeas 345, nays 76, not voting 13, as follows:

[Roll No. 407]

YEAS—345

Abercrombie
Ackerman
Aderholt
Akin
Allen
Andrews
Bachus
Baird
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Bell
Bereuter
Berkley
Berman
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Cooper
Cox
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeGette
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Everett
Farr
Fattah
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinojosa
Hobson
Hoeffel
Hoekstra
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McHugh
McInnis
McKeon
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller (FL)
Miller (MI)
Miller, Gary
Miller, George
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Ortiz
Osborne
Ose
Otter
Oxley
Pearce
Pelosi
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Radanovich
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (WI)
Ryun (KS)
Sanchez, Loretta
Sandlin
Saxton
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Stearns
Stenholm
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Towns
Turner (OH)
Turner (TX)
Upton
Van Hollen
Vitter
Walden (OR)
Walsh
Wamp
Watson
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (AK)
Young (FL)

NAYS—76

Alexander
Baca
Baldwin
Becerra
Berry
Boucher
Brady (PA)
Brown (OH)
Capuano
Conyers
Costello
Cramer
Cummings
DeFazio
Delahunt
DeLauro
Doyle
Evans
Filner
Green (TX)
Grijalva
Hastings (FL)
Hinchey
Holden
Jackson (IL)
Kanjorski
Kildee
Kleczka
Larson (CT)
Lee
Lipinski
Lofgren
Markey
Marshall
McGovern
McIntyre
McNulty
Michaud
Miller (NC)

Mollohan
Murtha
Nadler
Napolitano
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Peterson (MN)
Rahall
Rothman
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanders
Schakowsky
Sherman
Slaughter
Solis
Spratt
Stark
Strickland
Stupak
Taylor (MS)
Tierney
Udall (CO)
Udall (NM)
Velázquez
Visclosky
Waters
Watt
Woolsey
Wu

NOT VOTING—13

Bass
Carson (IN)
Collins
Gephardt
Greenwood
Kirk
Kucinich
Lowey
Majette
Paul
Quinn
Simmons
Sullivan

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BOOZMAN) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1244

Mrs. NAPOLITANO, Mr. BECERRA, Ms. BALDWIN, and Mr. MCGOVERN changed their vote from ''yea'' to ''nay.''

Mr. GUTIERREZ and Mr. WELDON of Florida changed their vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2004

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 4175, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and pass the bill, H.R. 4175, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 421, nays 0, not voting 13, as follows:

[Roll No. 408]

YEAS—421

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Becerra
Bell
Bereuter
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—13

Bass
Berman
Carson (IN)
Collins
Gephardt
Greenwood
Kirk
Kucinich
Lowey
Majette
Paul
Quinn
Watt

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BOOZMAN) (during the vote). Members are advised 2 minutes are left in this vote.

□ 1253

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

SENSE OF THE HOUSE REGARDING POSTPONEMENT OF A PRESIDENTIAL ELECTION

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the resolution, H. Res. 728.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. NEY) that the House suspend the rules and agree to the resolution, H. Res. 728 on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 419, nays 2, not voting 13, as follows:

[Roll No. 409]

YEAS—419

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble

Cole	Holden	Murtha
Conyers	Holt	Musgrave
Cooper	Honda	Myrick
Costello	Hooley (OR)	Nadler
Cox	Hostettler	Napolitano
Cramer	Houghton	Neal (MA)
Crane	Hoyer	Nethercutt
Crenshaw	Hulshof	Neugebauer
Crowley	Hunter	Ney
Cubin	Hyde	Northup
Culberson	Inslee	Norwood
Cummings	Isakson	Nunes
Cunningham	Israel	Nussle
Davis (AL)	Issa	Oberstar
Davis (CA)	Istook	Obey
Davis (FL)	Jackson (IL)	Olver
Davis (IL)	Jackson-Lee (TX)	Ortiz
Davis (TN)	Jefferson	Osborne
Davis, Jo Ann	Jenkins	Ose
Davis, Tom	John	Otter
Deal (GA)	Johnson (CT)	Owens
DeFazio	Johnson (IL)	Oxley
DeGette	Johnson, E. B.	Pallone
Delahunt	Johnson, Sam	Pascrell
DeLauro	Jones (NC)	Pastor
DeLay	Jones (OH)	Payne
DeMint	Kanjorski	Pearce
Deutsch	Kaptur	Pelosi
Diaz-Balart, L.	Keller	Pence
Diaz-Balart, M.	Kelly	Peterson (MN)
Dicks	Kennedy (MN)	Peterson (PA)
Dingell	Kennedy (RI)	Petri
Doggett	Kildee	Pickering
Dooley (CA)	Kilpatrick	Pitts
Doolittle	Kind	Platts
Doyle	King (IA)	Pombo
Dreier	King (NY)	Pomeroy
Duncan	Kingston	Porter
Dunn	Kleczka	Portman
Edwards	Kline	Price (NC)
Ehlers	Knollenberg	Pryce (OH)
Emanuel	Kolbe	Putnam
Emerson	LaHood	Radanovich
Engel	Lampson	Rahall
English	Langevin	Ramstad
Eshoo	Lantos	Rangel
Etheridge	Larsen (WA)	Regula
Evans	Larson (CT)	Rehberg
Everett	Latham	Renzi
Farr	LaTourette	Reyes
Fattah	Leach	Reynolds
Feeney	Lee	Rodriguez
Ferguson	Levin	Rogers (AL)
Filner	Lewis (CA)	Rogers (KY)
Flake	Lewis (GA)	Rogers (MI)
Foley	Lewis (KY)	Rohrabacher
Forbes	Linder	Ros-Lehtinen
Ford	Lipinski	Ross
Fossella	LoBiondo	Rothman
Frank (MA)	Lucas (KY)	Roybal-Allard
Franks (AZ)	Lucas (OK)	Royce
Frelinghuysen	Lynch	Ruppersberger
Frost	Majette	Rush
Gallegly	Maloney	Ryan (OH)
Garrett (NJ)	Manzullo	Ryan (WI)
Gerlach	Markey	Ryun (KS)
Gibbons	Marshall	Sabo
Gilchrest	Matheson	Sánchez, Linda T.
Gingrey	Matsui	Sanchez, Loretta
Gonzalez	McCarthy (MO)	Sanders
Goode	McCarthy (NY)	Sandlin
Goodlatte	McCollum	Saxton
Gordon	McCotter	Schakowsky
Goss	McCrery	Schiff
Granger	McDermott	Schrock
Graves	McGovern	Scott (GA)
Green (TX)	McHugh	Scott (VA)
Green (WI)	McIntyre	Sensenbrenner
Grijalva	McKeon	Serrano
Gutierrez	McNulty	Sessions
Gutknecht	Meehan	Shadegg
Hall	Meek (FL)	Shaw
Harman	Meeks (NY)	Shays
Harris	Menendez	Sherman
Hart	Mica	Sherwood
Hastings (FL)	Michaud	Shimkus
Hastings (WA)	Millender-McDonald	Shuster
Hayes	Miller (FL)	Simmons
Hayworth	Miller (MI)	Simpson
Hefley	Miller (NC)	Skelton
Hensarling	Miller, Gary	Slaughter
Herger	Miller, George	Smith (MI)
Herseth	Mollohan	Smith (NJ)
Hill	Moore	Smith (TX)
Hinchey	Moran (KS)	Smith (WA)
Hinojosa	Moran (VA)	Snyder
Hobson	Murphy	Solis
Hoeffel	Murtha	Souder
Hoekstra	Musgrave	Spratt
Holden	Myrick	Stark
Holt	Nadler	Stearns
Honda	Napolitano	Stenholm
Hooley (OR)	Neal (MA)	Strickland
Hostettler	Nethercutt	Stupak
Houghton	Neugebauer	Sullivan
Hoyer	Ney	Sweeney
Hulshof	Northup	Tancredo
Hunter	Norwood	Tanner
Hyde	Nunes	Tauscher
Inslee	Nussle	Tauzin
Isakson	Oberstar	Taylor (MS)
Israel	Obey	Taylor (NC)
Issa	Olver	Terry
Istook	Ortiz	Thomas
Jackson (IL)	Osborne	Thompson (CA)
Jackson-Lee (TX)	Ose	Thompson (MS)
Jefferson	Otter	Thornberry
Jenkins	Owens	Tiahrt
John	Oxley	Tiberi
Johnson (CT)	Pallone	Tierney
Johnson (IL)	Pascrell	Toomey
Johnson, E. B.	Pastor	Towns
Johnson, Sam	Payne	Turner (OH)
Jones (NC)	Pearce	Turner (TX)
Jones (OH)	Pelosi	Udall (CO)
Kanjorski	Pence	Udall (NM)
Kaptur	Peterson (MN)	Upton
Keller	Peterson (PA)	Van Hollen
Kelly	Petri	Velázquez
Kennedy (MN)	Pickering	Visclosky
Kennedy (RI)	Pitts	Vitter
Kildee	Platts	Walden (OR)
Kilpatrick	Pombo	Walsh
Kind	Pomeroy	Wamp
King (IA)	Porter	Waters
King (NY)	Portman	Watson
Kingston	Price (NC)	Watt
Kleczka	Pryce (OH)	Waxman
Kline	Putnam	Weiner
Knollenberg	Radanovich	Weldon (FL)
Kolbe	Rahall	Weldon (PA)
LaHood	Ramstad	Weller
Lampson	Rangel	Wexler
Langevin	Regula	Whitfield
Lantos	Rehberg	Wicker
Larsen (WA)	Renzi	Wilson (NM)
Larson (CT)	Reyes	Wilson (SC)
Latham	Reynolds	Wolf
LaTourette	Rodriguez	Woolsey
Leach	Rogers (AL)	Wu
Lee	Rogers (KY)	Wynn
Levin	Rogers (MI)	Young (AK)
Lewis (CA)	Rohrabacher	
Lewis (GA)	Ros-Lehtinen	
Lewis (KY)	Ross	
Linder	Rothman	
Lipinski	Roybal-Allard	
LoBiondo	Royce	
Lucas (KY)	Ruppersberger	
Lucas (OK)	Rush	
Lynch	Ryan (OH)	
Majette	Ryan (WI)	
Maloney	Ryun (KS)	
Manzullo	Sabo	
Markey	Sánchez, Linda T.	
Marshall	Sanchez, Loretta	
Matheson	Sanders	
Matsui	Sandlin	
McCarthy (MO)	Saxton	
McCarthy (NY)	Schakowsky	
McCollum	Schiff	
McCotter	Schrock	
McCrery	Scott (GA)	
McDermott	Scott (VA)	
McGovern	Sensenbrenner	
McHugh	Serrano	
McIntyre	Sessions	
McKeon	Shadegg	
McNulty	Shaw	
Meehan	Shays	
Meek (FL)	Sherman	
Meeks (NY)	Sherwood	
Menendez	Shimkus	
Mica	Shuster	
Michaud	Simmons	
Millender-McDonald	Simpson	
Miller (FL)	Skelton	
Miller (MI)	Slaughter	
Miller (NC)	Smith (MI)	
Miller, Gary	Smith (NJ)	
Miller, George	Smith (TX)	
Mollohan	Smith (WA)	
Moore	Snyder	
Moran (KS)	Solis	
Moran (VA)	Souder	
Murphy	Spratt	
Murtha	Stark	
Musgrave	Stearns	
Myrick	Stenholm	
Nadler	Strickland	
Napolitano	Stupak	
Neal (MA)	Sullivan	
Nethercutt	Sweeney	
Neugebauer	Tancredo	
Ney	Tanner	
Northup	Tauscher	
Norwood	Tauzin	
Nunes	Taylor (MS)	
Nussle	Taylor (NC)	
Oberstar	Terry	
Obey	Thomas	
Olver	Thompson (CA)	
Ortiz	Thompson (MS)	
Osborne	Thornberry	
Ose	Tiahrt	
Otter	Tiberi	
Owens	Tierney	
Oxley	Toomey	
Pallone	Towns	
Pascrell	Turner (OH)	
Pastor	Turner (TX)	
Payne	Udall (CO)	
Pearce	Udall (NM)	
Pelosi	Upton	
Pence	Van Hollen	
Peterson (MN)	Velázquez	
Peterson (PA)	Visclosky	
Petri	Vitter	
Pickering	Walden (OR)	
Pitts	Walsh	
Platts	Wamp	
Pombo	Waters	
Pomeroy	Watson	
Porter	Watt	
Portman	Waxman	
Price (NC)	Weiner	
Pryce (OH)	Weldon (FL)	
Putnam	Weldon (PA)	
Radanovich	Weller	
Rahall	Wexler	
Ramstad	Whitfield	
Rangel	Wicker	
Regula	Wilson (NM)	
Rehberg	Wilson (SC)	
Renzi	Wolf	
Reyes	Woolsey	
Reynolds	Wu	
Rodriguez	Wynn	
Rogers (AL)	Young (AK)	
Rogers (KY)		
Rogers (MI)		
Rohrabacher		
Ros-Lehtinen		
Ross		
Rothman		
Roybal-Allard		
Royce		
Ruppersberger		
Rush		
Ryan (OH)		
Ryan (WI)		
Ryun (KS)		
Sabo		
Sánchez, Linda T.		
Sanchez, Loretta		
Sanders		
Sandlin		
Saxton		
Schakowsky		
Schiff		
Schrock		
Scott (GA)		
Scott (VA)		
Sensenbrenner		
Serrano		
Sessions		
Shadegg		
Shaw		
Shays		
Sherman		
Sherwood		
Shimkus		
Shuster		
Simmons		
Simpson		
Skelton		
Slaughter		
Smith (MI)		
Smith (NJ)		
Smith (TX)		
Smith (WA)		
Snyder		
Solis		
Souder		

NAYS—2

Baird	McInnis

NOT VOTING—13

Bachus	Greenwood	Paul
Carson (IN)	Kirk	Quinn
Collins	Kucinich	Young (FL)
Gephardt	Lofgren	
Gillmor	Lowey	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SHIMKUS) (during the vote). Members are advised 2 minutes are left in this vote.

□ 1300

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. BASS. Mr. Speaker, on Thursday, July 22, I regrettably missed recorded votes numbered 407 and 409. Had I been present, I would have voted ''yea'' on both measures.

MARRIAGE PROTECTION ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 734, I call up the bill (H.R. 3313) to amend title 28, United States Code, to limit Federal court jurisdiction over questions under the Defense of Marriage Act, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 734, the bill is considered read for amendment.

The text of H.R. 3313 is as follows:

H.R. 3313

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 ''Marriage Protection Act of 2003''.

SEC. 2. LIMITATION ON JURISDICTION.

(a) IN GENERAL.—Chapter 99 of title 28, United States Code, is amended by adding at the end the following:

''§ 1632. Limitation on jurisdiction

''No court created by Act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or determine any question pertaining to the interpretation of section 1738c of this title or of this section. Neither the Supreme Court nor any court created by Act of Congress shall have any appellate jurisdiction to hear or determine any question pertaining to the interpretation of section 7 of title 1.''.

(b) AMENDMENT TO TABLE OF SECTIONS.—The table of sections at the beginning of chapter 99 of title 28, United States Code, is amended by adding at the end the following new item:

''1632. Limitation on jurisdiction.''.

The SPEAKER pro tempore. The amendment in the nature of a substitute printed in the bill is adopted.

The text of the amendment in the nature of a substitute is as follows:

H.R. 3313

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 ''Marriage Protection Act of 2004''.

SEC. 2. LIMITATION ON JURISDICTION.

(a) IN GENERAL.—Chapter 99 of title 28, United States Code, is amended by adding at the end the following:

''§ 1632. Limitation on jurisdiction

''No court created by Act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, section 1738C or this section.''.

(b) AMENDMENTS TO THE TABLE OF SECTIONS.—The table of sections at the beginning of chapter 99 of title 28, United States Code, is amended by adding at the end the following new item:

''1632. Limitation on jurisdiction.''.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 45 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

□ 1300

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the time for debate on H.R. 3313 be extended by 20 minutes, said time to be equally controlled by myself and the ranking member, the gentleman from Michigan (Mr. CONYERS).

The SPEAKER pro tempore (Mr. SHIMKUS). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill, H.R. 3313.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. DELAY), the distinguished majority leader.

Mr. DELAY. Mr. Speaker, I asked the gentleman from Wisconsin (Mr. SENSENBRENNER) for the privilege of opening this debate so as to lay before the

House not only the arguments in favor of the Marriage Protection Act, but also, and perhaps more importantly, to appeal to Members on all sides of this issue to conduct today's debate with the compassion and civility that it deserves.

Mr. Speaker, I repeat my appeal to Members on all sides of this issue. I would hope that Members would conduct today's debate with the compassion and civility that it deserves.

I really feel that, I fear that the debate about homosexual marriage, which has recently been thrust upon the entire Nation by the Supreme Judicial Court of Massachusetts, has begun to deviate from a productive conversation about public policy. Too often proponents and opponents seem more interested in talking to themselves than to each other, and if we truly seek a national consensus on the future of marriage, little can be gained by an afternoon spent hectoring each other.

So those who oppose homosexual marriage need not be lectured about compassion any more than those who support it need to be lectured about morality. You think this bill is cruel and we think same sex marriage is a contradiction in terms. Saying so at the top of our lungs for the next few hours will do little good for anyone, least of all the millions of American homosexuals who deserve respect in this debate as American citizens and as human beings.

Mr. Speaker, we are elected to judge policies, not people, and the policy before us today, the Marriage Protection Act, would reaffirm the current national consensus on homosexual marriage by leaving to the States and to the American people the right to define marriage in this country. This is the position that many Democrats say that they support, all 50 States deciding for themselves how to define marriage rather than a one-size-fits-all definition being imposed on them from above, and this bill is their opportunity to publicly adhere to that argument.

If you support the States and respect the will of the American people, you must support this bill. The overwhelming bipartisan passage of the Defense of Marriage Act in 1996, signed into law by President Bill Clinton, provides uncontradicted testimony to the consensus opinion of the American people, an opinion shared by every civilized society in history. That consensus is simply that marriage is the union between one man and one woman.

The consensus of the American people is simply that marriage is the union between one man and one woman. It is not a contract of mutual affection between consenting adults. It is, instead, the architecture of family, the basic unit of civilization, and the natural means by which the human species creates, protects and instills its values in its children.

Traditional marriage is the most stable, enduring and efficient means of raising children, laying down the roots of community life and establishing the necessary and sustainable predicates of nationhood. This is the evolution of civilization.

Individual men and women, with the innate qualities of their gender, come together in shared sacrifice to raise children. They each make their own unique contributions to the raising of boys and girls as male and female models for their male and female children and create the ideal family unit of mother, father and children, an ideal established by nature, sustained by human experience and supported by decades of social science.

It is not a collection of individuals but of families that come together to form a community of shared values and common purpose, and communities in turn come together and bind each other by those shared values and common purpose to establish a common nation. If any link, if any link in that chain breaks, like, for instance, the erosion of the traditional family that has occurred in this country over the last 40 years, the institution of marriage suffers, but so does the Nation.

Children need their community and their Nation to help stabilize their social environment so that they can have the same chances in life we and every generation of Americans have had before them. That is why there has always been and always will be a compelling government interest to protect the institution of marriage from corrosion within or artificial social engineering without.

If it is true what the Massachusetts Supreme Court says, and I do not believe that it is, that ''marriage is an evolving paradigm,'' then should not that evolution be an organic, natural evolution and left to the collective and evolving wisdom of the American people?

And if, on the other hand, no such institutional evolution exists, does not the arrogance of judges who would impose on our society their own contrary and misguided prejudices fundamentally undermine American democracy?

In both cases the answer is yes, and in both cases the Marriage Protection Act will ensure that we take the proper course.

We are a nation of laws, not commandments, and neither the conservative politician nor the liberal judge by himself has the right to define marriage for a nation of 270 million people. That responsibility, that responsibility lies with the people we all serve, whether it is in Sugar Land or San Francisco and everywhere in between.

So I urge my colleagues, let us have a debate. Let us have a civil debate. But in the end I hope my colleagues understand that that responsibility lies in the body of the House of Representatives and you will vote yes on the bill before us.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I begin by thanking the leader and the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for allowing us to add 10 minutes on each side to this debate.

Now, let us begin with the nature of H.R. 3313. This is not about marriage. This is about whether the third branch of government, the judiciary, since Marbury v. Madison will continue to be the arbiter of what is constitutional in the American system.

So I begin by pointing out that to deny any branch, any issue the right to full judicial review would bring about more chaos than even the proponent of this change, which is patently unconstitutional, would want. The legislation is the first of its kind that has ever been brought to the floor of the House of Representatives.

Never have we ever tried to do something as breathtaking as taking away the right of a Federal appeal when it is clearly permissive not even to go to the Supreme Court. We had an amendment that would have allowed the Supreme Court at least to take precedent. It was voted down by the conservatives in the Committee on the Judiciary. This would be the only instance in the history of the Congress that we have totally precluded the Federal courts from considering the constitutionality of Federal legislation.

The other body only last week decided this question the same way that I pray we will today. They turned it back. It was considered too unconstitutional and too unprecedented. Now, make no mistake about it, were the bill to be enacted, the chaos that would ensue from 50 States plus the District of Columbia issuing conflicting opinions on the marriage law would be irrational.

Why, I ask my colleagues, and I will yield, why would anyone want to create out of this rational body a law that would prevent the Federal courts from deciding cases rather than allowing anywhere up to 50, 51 different decisions? I yield to anyone in this body.

So I want to urge to you that the reason is that we are actually stripping the Federal courts from jurisdiction that has historically been theirs. We have these branches in the judiciary. Now, what would have happened had conservatives decided during the civil rights battles of the sixties to have decided that we would just take the decisions away from the courts, or Brown v. The Board or any of the tests against the Civil Rights Act, the Voter Rights Act, would have had nowhere to go had someone come across this incredibly weird decision.

So I rise in strong opposition to this. I urge the Members, as the leader who preceded me said, may rationally analyze where stripping the Federal courts from any one single issue, where that would lead this great Constitution and democracy of over 209 years.

I rise in strong opposition to this unconstitutional, discriminatory, divisive, and unprecedented bill. The only reason we are debating today is that the President is in danger of losing his job and wants to detract attention from

his failure in Iraq and to bolster support amongst right-wing conservatives.

In the past few weeks, I am sorry to say the death toll of U.S.-led forces in Iraq topped 1,000. The bipartisan 9–11 Commission found, contrary to the President's implications, that there was no "collaborative relationship" between Iraq and Al Qaeda. And we all know that no weapons of mass destruction have been found in Iraq.

What did the President do about it? He followed the advice of conservative organizers and "changed the subject" so he could have a chance of winning in November.

That is why we are here. The President and the Republican leadership know that a constitutional amendment could not pass; in fact, it failed the Senate last week. Instead, they are moving this divisive and unconstitutional bill, which proposes to strip all federal courts and the Supreme Court from reviewing not just one but two acts of Congress.

I cannot believe that proponents of this bill understand its implications. Imagine if, in the early 1950's, a conservative Congress had succeeded in stripping the federal courts of jurisdiction to hear segregation cases. The Supreme Court would never have issued its historic Brown v. Board of Education decision declaring that separate was not permitted in education.

Alternatively, consider the implications if a more liberal Congress opted to prevent federal courts from hearing any Second Amendment cases. How would my conservative colleagues like it if the California or the Massachusetts Supreme Court was the final arbiter of the right to bear arms in their states? Would they think it fair that a single class of citizens—gun owners—were excluded from appeals to our federal judicial system?

Yet that is what H.R. 3313 would do—deny any judicial review, even by the Supreme Court—of any case brought challenging the constitutionality of the Defense of Marriage Act, which clarifies that states need not give full faith and credit to same sex marriages entered into in other states. This legislation would be the first and only instance in which Congress had totally precluded the federal courts from considering the constitutionality of federal legislation.

This runs totally contrary to our bedrock principles. Article III of the Constitution says "the judicial Power of the United States, shall be vested in one supreme Court." And in the more than 200 years that have passed since Marbury v. Madison, judicial review has served as the very touchstone of our constitutional system and our democracy.

It is no wonder that, when court stripping legislation was proposed in the 1970's concerning school prayer, abortion, and busing, conservatives found the proposals to be so repugnant. Then-Yale Law School Professor Robert Bork wrote of the bills, "you'd have 50 different constitutions running around out there, and I'm not sure even conservatives would like the results." Senator Barry Goldwater stated that the "frontal assault on the independence of the Federal courts is a dangerous blow to the foundations of a free society" and warned "there is no clear or coherent standard to define why we shall control the Court in one area but not another."

Today, the stakes are no less significant. As emotionally charged and politicized as the issue of same sex marriage has become, we should not use that controversy to permanently damage the courts, the Constitution, and the Congress. At a time when it is more important than ever that our Nation stand out as a beacon of freedom, we must not countenance a bill that undermines the very protector of those freedoms—our independent federal judiciary.

The bill is even more misguided considering that it was a state court, not a federal court, that issued an opinion that permitted same sex marriage. Further, no federal court has even opined on the constitutionality of DOMA.

Make no mistake about it. If this bill is enacted, chaos will ensue when the fifty states and the District of Columbia issue conflicting opinions on DOMA. Then my colleagues on the other side will be clamoring for review by a Supreme Court that has seven Republican appointees and two Democratic appointees.

I urge my colleagues to vote "no" on this legislation.

CONGRESSIONAL RESEARCH SERVICE.

MEMORANDUM

To: House Committee on the Judiciary, Attention: Perry Apelbaum.

From: Johnny H. Killian, Senior Specialist, American Constitutional Law, American Law Division.

Subject: Precedent for Congressional Bill.

This memorandum is in response to your query, respecting H.R. 3313, now pending before the House of Representatives, as to whether there is any precedent for enacted legislation that would deny judicial review in any federal court of the constitutionary of a law that Congress has enacted, whether a law containing the jurisdictional provision or an earlier, separate law. We are not aware of any precedent for a law that would deny the inferior federal courts original jurisdiction or the Supreme Court of appellate jurisdiction to review the constitutionality of a law of Congress.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3313, the Marriage Protection Act, simply prevents one or more Federal judges from striking down the provision of the Defense of Marriage Act, known as DOMA, that protects States from having to recognize same sex marriage licenses granted in other States.

This bill will prevent unelected lifetime appointed Federal judges from taking away from the States their right codified in DOMA to reject same sex marriage licenses issued elsewhere if States so choose.

DOMA passed the Congress overwhelmingly in the House by a vote of 342 to 67 and in the Senate by a vote of 85 to 14, and it was signed into law by President Clinton.

□ 1315

This afternoon we will hear from opponents of this bill that this is an unprecedented move to restrict the jurisdiction of the Federal courts. This is not the case.

Beginning with the first Congress, when the Judiciary Act of 1789 was passed, the jurisdiction of the Federal courts was limited; and since that time, Congress has passed enactments either expanding or restricting the jurisdiction of the Federal courts, whether it be in the area of diversity jurisdiction or elsewhere, including the interpretation of Federal laws.

Just less than 2 years ago, as a part of a supplemental appropriations bill, the Congress enacted a provision inserted by Senator DASCHLE of South Dakota preventing Federal court review of determinations made on the clearing of brush on Indian reservations in South Dakota. That was not called an assault on the Constitution by anyone. It was merely a determination by the Congress that these types of questions should not be reviewed judicially, and that is very clearly authorized by article III, section 2 of the Constitution.

Today, we are talking about an issue of whether the Federal courts can interpret the Defense of Marriage Act to take away the right of the State to determine its own marriage laws.

We have heard earlier in this debate that the supreme judicial court of Massachusetts in an interpretation of States rights made the determination that it was unconstitutional to deny marriage licenses, and in that one State only, to persons of the same gender who applied for such a license. What this bill will do is to prevent a Federal court from exporting the decision of a divided court in a single State to the other States.

I do not believe that when James Madison wrote the Constitution his idea of federalism was to allow a divided court in a single State to set national policy, and I sincerely doubt the Constitution would have been ratified had that been the notion that pervaded Philadelphia in 1787 and in the State legislatures elsewhere.

What we are doing here is restoring the Federal system. We are restoring a Federal system in an area that has always been conceded to be the province of the State.

Now, a lot of people will also argue against this bill saying that the danger is not there. I am here to say that the danger is real.

Just 2 days ago, a lesbian couple married in Massachusetts filed the first lawsuit in a Florida Federal court to set Federal precedent and to strike down DOMA's protection that allows States not to recognize same-sex marriage licenses issued in Massachusetts. The attorney for the plaintiffs explicitly stated he filed the case because he wants a Federal court to force every State to recognize same-sex marriage licenses issued in Massachusetts, whether the people of that State agree or not.

Now, the laws of Florida are different than the laws of Massachusetts. Florida should be allowed to make its own laws and to enforce its own laws and not to have residents who disagree with those laws run to Massachusetts and come back and force a Federal judge to recognize that license in Massachusetts.

The threat that is posed to traditional marriage by a handful of Federal judges whose decisions can have an impact across State boundaries has renewed concern about abuse of power from the Federal judiciary. This concern has roots as old and venerable as our Nation's history and is nothing new in the year 2004.

Thomas Jefferson wrote of Federal judges: ''Their power is the more dangerous as they are in office for life and not responsible to the elective control.''

Abraham Lincoln said in his first inaugural address in 1861: ''The candid citizen must confess that if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the people will have ceased to be their own rulers having, to that extent, practically resigned their government into the hands of that eminent tribunal.''

This statement by Abraham Lincoln was in the wake of the Dred Scott decision, a decision of the Supreme Court which was the single most important spark that began a civil war which to this day was the most bloody conflict in our history.

A remedy to abuses by Federal judges has long been understood to lie, among other places, in Congress's ability to limit Federal court jurisdiction. H.R. 3313 would prevent a few Federal judges from rewriting State marriage recognition laws in ways that do not reflect the will of the people. Nothing in this bill denies anyone their day in court. The bill simply provides that in cases involving DOMA's protection of States rights, those cases are to be brought in State court.

The door of the courthouse is not slammed shut. The people who were married in Massachusetts and want to get recognition of their marriage elsewhere, it is the State courthouse that they go to, not the Federal courthouse.

Any Member who wishes to protect the Defense of Marriage Act's protections for States from invalidation by Federal judges should support this bill. The vast majority of Members of the House represent States that have passed laws that specifically rely on the right of the States codified in DOMA to resist same-sex marriage licenses issued out of State.

The Constitution clearly provides that the lower Federal courts are entirely creatures of the Congress, as is the appellate jurisdiction of the Supreme Court, excluding only the Supreme Court's very limited original jurisdiction over cases involving ambassadors and cases in which States have legal claims against each other.

In The Federalist Papers, Alexander Hamilton made clear the broad nature of Congress's authority to amend Federal court decisions to remedy perceived abuse. He wrote, describing the Constitution, that ''it ought to be recollected that the national legislature will have ample authority to make such exceptions, and to prescribe such regulations as will be calculated to obviate or remove the inconveniences'' which are posed by decisions of the Federal judiciary.

That understanding prevails today. As a leading treatise on Federal court jurisdiction has pointed out: ''Beginning with the first Judiciary Act in 1789, Congress has never vested the Federal courts with the entire 'judicial power' that would be permitted by article III'' of the Constitution. Even the famously liberal Justice William Brennan wrote a Supreme Court opinion that said: ''Virtually all matters that might be heard in article III Federal courts could also be left by Congress to State courts.''

The United States Constitution applies to the State courts. That was made clear in the 14th amendment.

Limiting Federal court jurisdiction to avoid abuses is not a partisan issue. Senate Minority Leader DASCHLE, as I have previously indicated, supported legislation enacted during the last Congress that denies the Federal court jurisdiction over the procedures governing timber projects in order to expedite forest clearing. If limiting the jurisdiction of the Federal court is good enough to protect trees, it sure ought to be good enough to protect a State's marriage policy.

Far from violating the separation of powers, legislation that leaves State courts with jurisdiction to decide certain classes of cases would be an exercise of one of the very checks and balances provided for in the Constitution. No branch of the Federal Government can be entrusted with absolute power and certainly not a handful of tenured Federal judges appointed for life. The Constitution allows the exercise of judicial power, but it does not grant the Federal courts the unchecked power to define the limits of its own power.

Integral to the American constitutional system is each branch of government's responsibility to use its powers to prevent overreaching by the other branches. H.R. 3313 does just that, and I urge my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Maryland (Mr. HOYER), Democratic whip.

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding me time.

I supported the Defense of Marriage Act. I rise now in the defense of the Constitution of the United States. I rise now in defense of the separation of powers. I rise now in defense of a Nation of laws, not of men and women.

Mr. Speaker, I urge all of my colleagues to seriously consider the ramifications of the legislation under consideration.

If this bill becomes law, it will represent the first time in our history that Congress has enacted legislation that completely bars any Federal court, including the United States Supreme Court, from considering the constitutionality of Federal legislation. Thus, it contradicts the Supreme Court's historic ruling more than 200 years ago in Marbury v. Madison, which enunciated the principle of Federal judicial review of Federal laws and established the separation of powers doctrine.

How dramatically different has that made America than every other nation in the world, in fact? A Nation of laws.

In Marbury, Chief Justice John Marshall wrote: ''It is emphatically the province and duty of the judicial department to say what the law is.''

This legislation, however, would undue the deference and respect that Congress has given to the principle of judicial review. It would intrude upon the principle of separation of powers; and as a result, I believe it is unconstitutional.

This legislation also would undermine the independent Federal judiciary. Even the majority's witness, hear me colleagues, the witness called by the majority, Professor Redish, said that if Congress strips the courts of jurisdiction it would, the majority's own witness, ''risk undermining public faith in both Congress and the Federal courts.'' That was your witness, not ours.

And there is little doubt that this bill would set a dangerous precedent.

The author of the Defense of Marriage Act, one of the most conservative Members that has served in this Congress, Bob Barr, said this: ''My main concern with H.R. 3313 is that it will lay the path for the sponsors of unconstitutional legislation to simply add the language from H.R. 3313 to their bills.'' Bob Barr, the sponsor of the Defense of Marriage Act, said that.

If this end-run of judicial review becomes law, what is next? No judicial review of laws restricting freedom of speech or religion or laws affecting the right to vote?

I was elected to the Maryland State Senate in 1966. One of the first bills I voted on in January of 1967 was to repeal the miscegenation statutes that then were on the Maryland books. America has nevertheless stood strong.

Let us reject this undermining of what America stands for, a Nation of laws, not of men and women.

Mr. SENSENBRENNER. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. CHABOT), the distinguished chairman of the Subcommittee on the Constitution.

Mr. CHABOT. Mr. Speaker, I want to thank the gentleman from Wisconsin for his leadership on this issue. I also want to thank the gentleman from Indiana (Mr. HOSTETTLER) for proposing this legislation and his leadership as well.

□ 1330

Mr. Speaker, I rise in strong support of H.R. 3313, the Marriage Protection Act. This legislation prevents unelected lifetime appointed Federal

judges from striking down the protections Congress afforded States through the Defense of Marriage Act.

The fact of the matter remains that marriage between a man and a woman has been and continues to be the cornerstone of our society. If we are going to change that, if we are going to make two men able to be married or two women able to be married in this country, and I do not think we should, but if we were, it ought to be done through the will of the people, and the will of the people is expressed through their elected representatives, either at the State legislature, whatever State they are located within, or the Congress of the United States, should we determine to take that on nationally.

Rather than having the elected representatives do this, it has been done piecemeal by a rogue mayor, for example, in San Francisco, or a court by a 4 to 3 decision in Massachusetts. So clearly what has happened here, and this is an issue that some on the other side of the aisle might think that Members on this side of the aisle want to be debating today, well, this is an issue which has been thrust upon us by rogue mayors and rogue courts, not something we chose but something we have to do.

The Subcommittee on the Constitution that I chair held four hearings focusing on the status of marriage in the United States. One of the hearings focused specifically on the issue we are considering today. That hearing clearly demonstrated that we could, if we wished, constitutionally strengthen the Defense of Marriage Act and limit the ability of activist Federal judges to force one State's controversial marriage laws on any other State by passing this legislation. We can clearly constitutionally do this.

Now as my colleagues know, in 1996 the House overwhelmingly passed the Defense of Marriage Act by a 342–67 vote. The Senate voiced similar support passing DOMA by a vote of 85–14. It was later signed into law by President Clinton. In passing DOMA, Congress recognized that controversial views on marriage adopted in one State should not be forced on other States. Understanding that marriage as defined by a State would have an impact across State lines, Congress exercised its authority under Article IV, Section 1 of the Constitution, the full faith and credit clause, to protect States right.

Under this provision, ''full faith and credit should be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.''

Today, 44 States have enacted laws defining marriage as between a man and woman. That is 88 percent of the States, and 86 percent of the population throughout the country. So far, 38 States have specifically rejected the recognition of same sex marriage licenses granted out of State. Unfortunately, the will of the States could be jeopardized by Federal judges. That is the point of this legislation.

H.R. 3313 will protect the provision of DOMA that keeps final authority of the will of the States with the States, not with Federal judges. Let me make something very clear. If Members voted for the Defense of Marriage Act or purport to support it now, Members must logically vote for the Marriage Protection Act, this law. Voting against this legislation will undermine DOMA and potentially force same-sex marriages on all 50 States.

The Constitution allows Congress to protect DOMA through judicial limitations set forth in H.R. 3313. Together, Article III, Sections 1 and 2 of the Constitution, provide that the Federal courts derive authority solely from Congress and the Supreme Court's appellate jurisdiction is subject to such exceptions and such regulations as the Congress shall make. Moreover, this authority was made clear as far back as the first Judiciary Act of 1789, which according to leading scholars ''is widely viewed as an indicator of the original understanding of Article III.''

Mr. Speaker, I strongly encourage my colleagues to support this legislation. It is very important.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, more than anything else, today's debate is about the politics of a national election. Perhaps our sons and daughters have been sent to Iraq based on intelligence we now know was not correct, perhaps millions of Americans are out of work, and many more do not have access to a doctor. Perhaps our seniors cannot afford life-protecting medications, but none of that matters, at least we can today take the time out to beat up on an unpopular minority.

Mr. Speaker, that may be good politics, but it demonstrates a dangerous contempt for our system of government. This debate is not really about gay marriage, no matter how long they may talk about it. The courts will or will not declare the Defense of Marriage Act unconstitutional. We do not know that yet. If they declare the Defense of Marriage Act unconstitutional, for those that disagree with them, the remedy is the normal remedy, a constitutional amendment, which I gather we will be debating on this floor in a couple of weeks before we know what the courts do.

But this debate is about whether Congress can adopt unconstitutional legislation on any subject and protect that legislation from constitutional challenge by stripping the courts of their jurisdiction to consider any such challenge. We have never done that before in our history, and we should not do that now.

No less a conservative icon than Barry Goldwater opposed court stripping bills in previous decades on the subjects of school prayer, school busing and abortion, which were the big issues in those days. He warned his colleagues that, ''The frontal assault on the independence of the Federal courts is a dangerous blow to the foundations of a free society.''

Our former colleague, Bob Barr, the author of the Defense of Marriage Act which this bill purports to protect, had this to say in a letter to the Members of Congress about this bill. ''H.R. 3313 will needlessly set a dangerous precedent for future Congresses that might want to protect unconstitutional legislation from judicial review. During my time in Congress, I saw many bills introduced that would violate the takings clause, the second amendment, the 10th amendment, and many other constitutional protections. The fundamental protections afforded by the Constitution would be rendered meaningless if others follow the path set by H.R. 3313.'' That is from Bob Barr.

The distinguished majority leader of the House, the gentleman from Texas (Mr. DELAY), has already said that if this bill passes he will introduce court-stripping legislation on other subjects. In fact, the likelihood is that language saying the court shall have no jurisdiction to judge the constitutionality of this act will become boilerplate. Just as every rule that we consider in this House has boilerplate language saying that all points of order against this bill are waived, which means the rules of the House do not apply, it will become boilerplate on every bill of doubtful constitutionality. That would render the Bill of Rights meaningless.

The 1936 Stalinist constitution of the Soviet Union read wonderfully on paper. It had a long list of Bill of Rights, freedom of religion, freedom of speech, and freedom of assembly. It was not worth the paper it was written on because there was no means of enforcing those rights. We depend on the courts to enforce our rights against majorities represented in Congress or State legislatures, momentary majorities perhaps.

Without the means of the courts enforcing the Bill of Rights, the Bill of Rights is a nullity. Our Constitution would become like the Soviet constitution, meaningless. We must have a Federal forum to protect liberty, otherwise that liberty will not exist.

The due process clause of the fifth amendment, passed after the Judiciary Court Act of 1789, says that no person may be deprived of life, liberty or property without due process of law. Due process of law means there has to be a judicial forum to assert the right and have the judges decide.

We are told the State courts will be the forum. The State courts will decide whether a law, a Federal law or a State law, violates the United States Constitution. That means we will have 50 different constitutions, 50 different laws. We say in the Pledge of Allegiance the United States is one Nation, indivisible; not if this bill passes. If this bill and other bills like it pass, we

will balkanize the United States. The Constitution will mean one thing in New Jersey, another thing in New York and a third thing in Pennsylvania.

Mr. Speaker, it is our very system of government and the constitutional system of checks and balances which is under attack with this bill. If the Congress by statute can prevent the Federal courts from applying the Constitution on any subject matter, then the protections of an independent judiciary, the protections of the Bill of Rights, the protections of the United States Constitution, become no more than a puff of smoke. It will, of course, be unpopular minorities, whether religious minorities, political minorities, ethnic minorities, racial minorities, lesbians, gays, whoever is unpopular at the moment, who will lose their rights.

There have been many Supreme Court decisions I have found loathsome and wrong, such as Bush v. Gore, and some of the cases invalidating or limiting our civil rights law, but while that makes me question the wisdom of some of the justices, even occasionally the motives, it does not make we want to alter the fundamental structure of our government that has protected our liberties for the last two centuries.

The evisceration of our Constitution and Bill of Rights, the natural result of this bill, threatens all of us. It is far, far more important than the question of gay marriage, which is not really involved here because that has not been decided by the courts. We are playing with fire with this bill, and that fire could destroy the Nation we love.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, the predictions of attacks by opponents of this bill, including the gentleman from New York (Mr. NADLER), are slaps in the face of the 50 States.

The Supreme Court itself agrees in this case. In a decision this year, the Supreme Court reaffirmed that ''the whole subject of domestic relations of husband and wife, parent and child belongs to the laws of the States and not to the United States.'' That is Elk Grove Unified School District v. Newdow.

The Supreme Court also has stated, ''domestic relations are preeminently matters of State law.'' That is Mansell v. Mansell, 1989. And that ''family relations are a traditional area of State concern,'' Moore v. Sims, 1979.

So by reserving marriage law decisions to States, as this bill does, we are doing nothing more than what the Supreme Court itself has said is proper.

Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. HOSTETTLER), who is the author of the bill.

(Mr. HOSTETTLER asked and was given permission to revise and extend his remarks.)

Mr. HOSTETTLER. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the full committee, for yielding me this time.

In my discussion during the consideration of the rule, I informed the body of the constitutional basis for this law. I have several of the provisions beside me here, and for Members who are actually interested in what the Constitution says, that is available in the record as well as in several copies that are available to every Member's office.

However, I would like to address some of the issues talked about during this debate, and one of the issues that is a discussion of where we are with regard to other countries, it was suggested earlier, and we heard it in the last person's speech, that somehow we are doing as the Soviet Union has done in the past by limiting the ability for individuals to go before the court.

Well, the fact is that there was a mechanism in the Soviet Union very similar to the mechanism we have in this country, and it was referred to as the Politburo, and the Politburo was a very small entity of individuals that made policy for the hundreds of millions of individual citizens of the Soviet Union. We have that today in this country. We refer to it as the United States Supreme Court. As few as five people in black robes can look at a particular issue and determine for the rest of us, insinuate for the rest of us, that they are speaking for the majority when, in fact, they are not.

It is time with the passage of this legislation to say that we will have the people in the several States to determine their marriage laws, and we will not allow, for example, what is attempting to be done in the State of Florida, and that is a couple that was wed in the State of Massachusetts imposing their will on the rest of the country by overturning the Defense of Marriage Act.

This bill uses constitutional provisions to allow the States and to allow the citizens of the several States to determine the definition of marriage for themselves and to not allow another State and especially the Federal judiciary to determine the definition of marriage for them.

□ 1345

Mr. NADLER. Mr. Speaker, I yield 1½ minutes to the distinguished gentleman from California (Mr. BERMAN).

Mr. BERMAN. Mr. Speaker, I thank the gentleman for yielding me this time.

I think I just heard the Supreme Court of the United States analogized to the politburo of the Soviet Union, but I am not sure. The Hostettler fix was tried before. It has never happened, but it was tried before and here is what Attorney General William French Smith said in a letter to Strom Thurmond back in 1982:

''The integrity of our system of Federal law depends on a single court of last resort having a final say on the resolution of Federal questions. State courts could reach disparate conclusions on identical questions of Federal law, in this case interpreting the Constitution, and the Supreme Court would not be able to resolve the inevitable conflicts.''

If you want to do away with the supremacy clause, repeal Marbury v. Madison, and rip apart any uniform effort to enforce constitutional protections, you should vote for this bill. But one day, some liberal runaway court in some State, justices which we cannot impeach and that we did not confirm over in the other body, one day that court will come down and say that DOMA, the Defense of Marriage Act, is unconstitutional because of the full faith and credit clause; and the losing parties, the people who want State control on the issue of who can marry, will not be able to appeal that to the U.S. Supreme Court under this bill.

What a ridiculous situation.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the chairman of the Committee on the Judiciary, the gentleman from Wisconsin, for yielding me this time.

Mr. Speaker, all Americans are entitled to a fair hearing before independent-minded judges whose only allegiance is to the law. However, over the last several years we have witnessed some judges wanting to determine social policy rather than interpret the Constitution. They seem to be legislators, not judges; promoters of a partisan agenda, not wise teachers relying on established law.

Judicial activism has reached a crisis. Judges routinely overrule the will of the people, invent new rights, and ignore traditional morality. Judges have redefined marriage, deemed the Pledge of Allegiance unconstitutional, outlawed longstanding religious practices, and imposed their personal views on all Americans.

Fortunately, there is a solution. The Constitution empowers Congress to say that some subjects are off-limits to Federal courts. The constitutional authority authorizing Congress to restrain Federal courts, in fact, has been used before, and it should be used again.

The legislation being considered today preserves the right of State courts to consider the constitutionality of the Defense of Marriage Act, DOMA. It prevents Federal judges from ordering States to accept another State's domestic relations policy, an area of the law historically under the jurisdiction of the States, not the Federal Government.

While the bill does not dictate any conclusions about DOMA, the vast majority of States have enacted laws that support DOMA. We need to protect the right of the voters of those States to define marriage as they see it.

When Federal judges step over the line, Congress has a responsibility to

drop a red flag. On behalf of the American people, we should vote for this legislation because it rightfully restrains Federal judges who threaten our democracy.

Mr. NADLER. Mr. Speaker, I yield myself 20 seconds.

Mr. Speaker, reference was made before to the Daschle court-stripping bill. There was no such thing. His bill did not court-strip. In fact, in the case of Biodiversity Associates v. Cables, his bill was judged constitutional. If the courts had been stripped of jurisdiction, they could not have done that.

The CRS says, ''We are not aware of any precedent for law that would deny the inferior Federal court's original jurisdiction or the Supreme Court of appellate jurisdiction to review the constitutionality of a law of Congress.''

Let us stop with this nonsense that this is not unprecedented.

Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, I rise in opposition to this bill. It is an attack on fundamental rights and unconstitutionally exceeds the power of this body to regulate the judicial branch of government.

Within our constitutional framework, although Congress is expected to follow the Constitution, it is not for Congress to make the final decision as to what is constitutional and what is not. Since Marbury v. Madison in 1803, at least until today, there has been a longstanding acceptance of the principle that the United States Supreme Court is the final arbiter of what is constitutional and what is not. And although Congress has some power to regulate the jurisdiction of Federal courts, it cannot totally prevent the Supreme Court from ensuring that States comply with the Constitution.

Mr. Speaker, this bill not only violates numerous constitutional principles; it is dangerous policy. If this bill were found to be constitutional, there would be no prohibition against boilerplate language stuck into every bill we consider, stripping judicial review from every controversial issue.

Frankly, I am glad that this kind of legislation did not pass before 1954 so Congress did not strip the Supreme Court from jurisdiction over segregation in public schools, or before the 1960s when unelected, lifetime-appointed activist Federal judges required Virginia to recognize racially mixed marriages, overruling the will of the people of Virginia.

If this bill ever became law, there would be no Federal law. Some States would rule that DOMA is constitutional. Other States would rule that DOMA is unconstitutional. States will adopt full faith and credit principles in some areas and not in others. A Massachusetts or Vermont couple moving to another State may have their relationship recognized in some States, but not in others. If this bill passes, each State will decide for itself what the Federal law is. Even if it passes, some States will recognize same-sex marriages.

Mr. Speaker, simply because we anticipate that we may not like how the Supreme Court will rule on an issue is no reason to prevent the court from ruling. Today, some Members of Congress are afraid of how courts may rule on issues pertaining to marriage. Tomorrow they may be afraid of how the courts may rule on a different issue, such as abortion or gun control. If we strip the jurisdiction of the Supreme Court over the Defense of Marriage Act, what will we do next?

Mr. Speaker, this unprecedented and perilous legislation violates constitutional principles, establishes dangerous procedure, and undermines the credibility of our system of government. For these reasons, Mr. Speaker, I urge my colleagues to oppose the bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, the gentleman from New York has just referenced the Daschle provision in Public Law 107–206 and said it was not, ''court-stripping.'' I just want to quote what the provision of law says:

''Any action authorized by this section shall not be subject to judicial review by any court of the United States.''

That quote from the law speaks for itself.

Mr. Speaker, I yield 2 minutes to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. I thank the gentleman for yielding time.

Mr. Speaker, I first want to agree with what the gentleman from Maryland and the gentleman from Virginia said on the other side. They said we are talking about fundamental rights here. They said what we are talking about, this decision today, defines us as Americans, that this is about who we are as Americans. I want to agree with that. This is an important decision, one that defines us as a country.

Who should make that decision? The gentleman from Maryland said an individual, every individual, ought to make that decision about marriage. Is that so? A man and a woman? Or two men? Or two women? What about a man and two women? What about a man and three women? What about a man and his first cousin? What if a man chooses to marry his daughter? Is that not an individual decision? Of course not. What if a man decides to marry a 12-year-old young lady? We said, no, that is not an individual decision. It is a decision of law. That is who makes it. The people make it the law.

The gentleman from Maryland said we are a Nation of laws, not people; and that is why it is up to the people to make the decision through their elected Members, their elected representatives, not the courts.

What about letting the courts be the final arbiter of the Constitution? Thomas Jefferson said on August 18, 1821 that it was a very dangerous doctrine for the Supreme Court to be the final arbiter of what the law is. He said in 1820, it would be an act of suicide for the Supreme Court or a judge to make the law. An act of suicide. He said letting the Supreme Court fix the law would be for the people to give up their own ability to rule themselves.

Mr. Speaker, as I close, I submit for printing in the RECORD quotes from Abraham Lincoln and Thomas Jefferson all saying that it is the legislature who makes the law as representatives of the people.

America's greatest leaders have long been concerned about limiting federal judges' abuse of their authority.

Deep concern that federal judges might abuse their power has long been noted by America's most gifted observers, including Thomas Jefferson and Abraham Lincoln.

Thomas Jefferson lamented that ''the germ of dissolution of our federal government is in the constitution of the federal judiciary; . . . working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped . . .'' In Jefferson's view, leaving the protection of individuals' rights to federal judges employed for life was a serious error. Responding to the argument that federal judges are the final interpreters of the Constitution, Jefferson wrote:

''You seem . . . to consider the [federal] judges as the ultimate arbiters of all constitutional questions, a very dangerous doctrine indeed and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men and not more so. They have with others the same passions for party, for power, and the privilege of their corps . . . [T]heir power [is] the more dangerous as they are in office for life and not responsible, as the other functionaries are, to the elective control. The constitution has erected no such single tribunal, knowing that, to whatever hands confided, with the corruptions of time and party its members would become despots.''

Jefferson strongly denounced the notion that the judiciary should always have the final say on constitutional issues:

''If [such] opinion be sound, then indeed is our Constitution a complete felo de se [act of suicide]. For intending to establish three departments, coordinate and independent, that they might check and balance one another, it has given according to this opinion, to one of them alone, the right to prescribe rules for the government of the others, and to that one too, which is unelected by, and independent of the nation . . . The constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.''

Abraham Lincoln said in his first inaugural address in 1861, ''The candid citizen must confess that if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers having, to that extent, practically resigned their government into the hands of that eminent tribunal.''

Mr. NADLER. Mr. Speaker, I am pleased to yield 2 minutes to the distinguished gentleman from Michigan (Mr. DINGELL), the dean of the House.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, this is an outrage. I do not know whether you

are for or against gay marriage, and I do not think it makes a great deal of difference. I happen to oppose the idea. But this is an extraordinary piece of arrogance on the part of the House of Representatives to consider a piece of legislation which would strip American citizens of their right to access to court. Can you imagine anything more shameful than telling an American citizen you cannot go into court to have your concerns addressed, to have cases and controversies, many of which will arise under the Constitution, heard by the courts of your Nation?

The right to access to courts to decide questions of policy is as old as the Magna Carta, and it is as important to us as anything else in the Constitution. Here we calmly say, you cannot have access to the courts, the Federal courts, the lower inferior courts, and the Supreme Court. Shame. Shame, shame, shame.

It is a precedent which is going to live to curse us, and we are going to live to regret this day's labor because other precedents will be following this, wherein we will strip the rights from citizens to go to schools, to have questions relative to their equal rights, to have questions decided about whether they can properly be detained by courts or others and whether or not the citizen can be detained under the authority of the Attorney General; rights of citizens under the second amendment, the first amendment, all of the important questions of the Constitution. Rights under the 14th and the 15th and the 13th amendments, those will also be precedents which could follow this.

The Congress has considered these kinds of questions before. It is to be anticipated if this works, we can look to see this kind of abusive legislation considered in this body again. And you can be almost certain that somebody is sitting there now out there deciding, what new rights can we strip of American citizens because we disagree with them.

I do not think the question is whether or not there should be gay marriage. The question before this body today is, are we going to protect all of the rights of American citizens, regardless of who they might be or how they might be affected?

Mr. NADLER. Mr. Speaker, I yield 2½ minutes to the distinguished gentlewoman from California (Ms. LOFGREN), a member of the committee.

Ms. LOFGREN. Mr. Speaker, as the prior speaker, the dean of the House, has indicated, however one feels on the issue of gay marriage, the question before the House today really is quite a different one, and it is about the fundamental nature of our democracy. Really, the plan before us is a radical, extreme plan to overturn the system of government that we as free Americans have enjoyed for over 200 years.

I have been a Member of this House for 10 years; and I must confess, I have never been as disappointed as I am today in the level of legal analysis that I have heard here. It is disappointing in the extreme. I must also say that you know you are in trouble when you have to go back and reread a case from 1803, Marbury v. Madison, because that is what we are talking about overturning today, that seminal case that we all read in law school, and I read it again this week and it was inspiring me again to understand how fortunate we are that we have a written Constitution and that we have a system of checks and balances that makes sure that the rights in that Constitution cannot be taken away in a flimsy or easy way.

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Court Justice Marshall 201 years ago said in his decision, ''It is emphatically the province and duty of the judicial department to say what the law is. If then the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution and not such ordinary act must govern the case to which they both apply.''

It is that principle of constitutional law that is threatened today, and we should not fool ourselves into thinking that overturning our democracy, our system of checks and balances, can be limited to just the hot button issue of today. If this is constitutional, and many scholars believe it is not, but if this measure passes and is constitutional, we will end up not having the ability to rely on the rights guaranteed to us and the generations before us in our Constitution. We will in fact see any item that a majority of this House and this Congress can muster enshrined as equal to the Constitution itself. I think that that is a result that is disastrous for the United States of America. It is not something I thought I would see as a Member of the House of Representatives, as a member of the House Committee on the Judiciary. It is a radical and extremist position to take that, and I urge all Members of the House, whatever their view is on gay marriage, to not destroy our checks and balance system of America that we have been handed that we should treasure and preserve and cherish instead of recklessly endanger in this way.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. PENCE), a member of the Committee on the Judiciary.

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, I rise in strong support of the Marriage Protection Act. I commend the gentleman from Indiana (Mr. HOSTETTLER) for his principled leadership on this issue.

The Marriage Protection Act is a constitutional remedy to a looming constitutional crisis. Let me say, despite what we have just heard on this blue and gold carpet, nothing in this bill shuts access by petitioners to any State court in the land. What brings us here today is that activist judges in some States are poised to force a new definition of marriage on States like Indiana, and the Marriage Protection Act will stop that strategy in its tracks.

Let me say clearly not on my watch will I stand idly by while the courts in Massachusetts redefine marriage in Indiana, and despite what my colleagues have said on the other side of the aisle about high principle and constitutional ideals and a history lesson, this is about marriage. The Bible says ''If the foundations are destroyed, what can the righteous do?'' And marriage is such a foundation in our society. Marriage was ordained by God, established in the law. It is the glue of the American family and the safest harbor to raise children. We must preserve and defend this foundation in our society, and we begin by defending the right of States like Indiana to define marriage as it has ever been defined and will always be defined in the hearts of the overwhelming majority of the American people.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Ms. PELOSI), distinguished minority leader.

Ms. PELOSI. Mr. Speaker, I have been married for over 40 years, and I cannot for the life of me think how this legislation that is on the floor today, the so-called Marriage Protection Act, is any protection for my marriage. In fact, I think it is not a protection of the rights of Americans.

Every Member of this body has taken a solemn oath to protect and defend the Constitution of the United States. That is our oath of office. All Members should consider that this bill has far-reaching consequences for the separation of powers that has been the hallmark of our Constitution, our government, and our rights as American citizens. We must today honor our oath of office and oppose this legislation.

This court-stripping bill is not about reaffirming the Defense of Marriage Act or even about gay marriage. The fundamental issue in this bill is whether we want to undermine the Supreme Court and the Federal judiciary and our system of checks and balances. This bill will impact the very foundation of our government. It impedes the uniformity of Federal law. It sets a dangerous precedent, and it does grave damage to the separation of powers.

When former Senator Barry Goldwater spoke against a court-stripping bill in 1982, he warned his colleagues in the other body that it was a frontal assault on the independence of the Federal courts and it is a dangerous blow to the foundations of a free society. We must heed that warning today.

This bill would prohibit Federal courts, including the Supreme Court of the United States, from hearing cases related to the interpretation and the validity under the Constitution of the full faith and credit provision of the

Defense of Marriage Act as well as this court-stripping bill. If passed, it would constitute the first time in the over 200 years of our country's history that Congress has enacted legislation totally eliminating any Federal court from considering the constitutionality of Federal legislation. Only State courts would be able to decide questions related to this provision of a Federal statute. The irony of that is that if one's State passed a law that allowed gay marriages and they wanted to challenge it in Federal court, they would only be confined in challenging it in a State court in their State. So even those who would oppose gay marriage would not have recourse to the Federal courts.

I know that the gay marriage issue is a difficult issue for many people, and I respect that. But do not let that bait take them down a path that would have them dishonor their oath of office that they took to become a Member of this House. Attempting by statute to remove the Supreme Court's and the entire Federal judiciary's power to hear a class of cases and to even determine the constitutional validity of a statute is nothing more than a backdoor attempt to amend the Constitution by simple majority.

It would effectively end the Supreme Court's role as a separate and independent branch of government. It would eliminate all means of reconciling conflicting State court interpretations of the Constitution. Think about that. If passed, it would prevent the Supreme Court from being the guardian of our rights.

It has been a settled principle since Chief Justice John Marshall's opinion in Marbury v. Madison, which has been oft quoted here today. Marbury v. Madison stated that ''It is emphatically the province and the duty of the judicial department to say what the law is.'' Subsequent decisions and the Court's role as an equal branch strongly suggest that Congress cannot prohibit the Court from determining the validity of a law in the first place.

Indeed, the author of this legislation here today stated that he believed that the part of Marbury v. Madison that established judicial review was ''wrongly decided.'' Over 200 years of precedent was ''wrongly decided,'' a view that can only be characterized as radical.

Just 2 months ago we all celebrated the 50th anniversary of Brown v. The Board of Education. If the precedent established by this bill had been in force in 1954, there may have been no Brown decision. Imagine what would have happened to all of the advances in civil rights without that ruling. Imagine how little we would have had to celebrate.

Numerous legal experts, including from the other party, indicate that this bill will likely be found unconstitutional. The court-stripping issue is not a new one. Numerous proposals have been made since the Civil War but have never been adopted because Congress wisely exercised restraint and respected the separation of powers and our constitutional framework.

More recently, in 1981 and 1982, more than 30 court-stripping proposals were introduced, primarily by former Senator Jesse Helms, to remove such issues as school prayer, reproductive rights, school busing from Federal courts' jurisdiction. They all failed, thanks to the principled opposition on a bipartisan basis, principally that of, as quoted earlier, Senator Barry Goldwater and then Attorney General under President Ronald Reagan, Attorney General William French Smith.

Mr. Speaker, now as then, full jurisdiction of the Supreme Court is fundamental under our system of government for a uniform and consistent interpretation of the law even when we do not agree with the Court's decision. The impact of this legislation goes far beyond the subject matter that the proponents claim to be concerned with. Our Founders carefully constructed our system of checks and balances, which we tamper with at our peril. It is unwise and politically motivated, I believe. It is designed simply to distract attention from the real issues that we should be dealing with.

Today, Mr. Speaker, millions of Americans are looking for work. Millions more Americans do not have access to quality health care since President Bush took office. Our children are not receiving the quality of education that they deserve to have, the opportunity that is the promise of our country. We are driving ourselves deeply in debt with the irresponsible reckless economic policies of the Republicans here, giving our children obligations instead of opportunity. We have our men and women in uniform in harm's way without the proper equipment, training, and intelligence to get the job done, and we want them to be second to none, and we will make sure they have what they need, but we must take the time to do that.

And instead, what are we doing? Instead, we are gathering here to talk about discrimination, to talk about undermining the Constitution of the United States, to talk about dishonoring the oath of office that we take to protect and defend the Constitution.

I agree with those who say ''this bill is as wrong as wrong can be.'' In short, this bill is bad law, bad policy. That is why it will not have my support.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I can understand the fervor of the gentlewoman from California (Ms. PELOSI), distinguished minority leader, in opposition to this legislation. She did not support the Defense of Marriage Act when it was passed in 1996 and signed by President Clinton. But to insinuate that this bill is an attack on the foundations of our government is just plain wrong.

The framers of the Constitution put in Article III, Section 2 relating to the jurisdiction of the Federal courts, inferior Federal courts and the appellate jurisdiction of the Supreme Court to provide a check by the legislative branch of government on the judicial branch of government, and we have heard quotes from Thomas Jefferson and Abraham Lincoln expressing their fears about judicial power being unchecked.

This bill is a check on judicial power, and the question is whether we should have the elected representatives of the people, in this case the Congress today and the State legislatures in the future, determining Federal marriage policy, or whether we should have a Federal judge stating that for a State to take a different position than a divided court in Massachusetts is an unconstitutional deprivation of rights.

Now, in the last 10 years or so Congress has restricted the jurisdiction of the Federal courts on numerous occasions. Much has been mentioned here about the provision that the minority leader in the Senate, Senator DASCHLE, put into Public Law 107–206.

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The press comments about that action, which is public law today, included headlines that said: ''Daschle seeks to exempt his State; wants logging to prevent fires,'' and ''Plan to curb forest fires wins support.''

Senator DASCHLE told the Congress and the country there was an emergency in his State, that action needed to be taken, and we could not have judicial review. The Congress agreed. And we did not hear the hue and cry about the Constitution being undermined because of a congressional determination that there had to be some logging to prevent forest fires in South Dakota, and I think the Congress was right in agreeing with Senator DASCHLE in this instance.

Now, there are a number of other instances in the past 10 years where Congress has precluded Federal judicial review in cases. In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was passed. That was Public Law 104–208. It precluded all judicial review over specified discretionary decisions of the Immigration and Naturalization Service. There you are involving the allegations of rights by people who are subject to deportation or other actions by the INS. Congress, when it passed that bill, and it was signed by President Clinton, said no judicial review. Did we hear at the time that that undermined the Constitution? No, we did not. It was a correct decision by the Congress to preclude judicial review on this.

After September 11, 2001, Congress passed the Terrorism Risk Insurance Act, Public Law 107–297, precluding judicial review of certifications by the Secretary of the Treasury that a terrorist event had occurred. Did anybody allege that that undermined the Constitution at the time? No way.

The Small Business Liability Relief and Brownfields Revitalization Act,

also passed in the last Congress as Public Law 107–118, precludes judicial review of hazardous waste cleanup programs.

So this has been going on all the time.

The Judiciary Act of 1789, one of the first bills passed by the first Congress, recognized that the judicial power of the United States was not unlimited and limited that judicial power. There have been expansions and contractions in the area of diversity jurisdiction of the Federal courts. Nobody has alleged that the Constitution is being undermined; and, in fact, Federal judges have come to the Congress and asked that the jurisdictional amount in diversity cases be raised so they did not have as many cases to decide.

We have heard the Supreme Court say in asbestos that there should be some way to prevent 600,000 cases from choking the Federal court dockets. I would hope that we would be able to pass some kind of asbestos litigation reform.

The fact of the matter remains that we could go on and on and on. It does not violate the Constitution. There are over 200 years of precedents in adjusting the jurisdiction of the Federal Court.

What this bill says is that if a State decides it does not want to recognize a same-sex marriage license granted in another State, there will not be Federal judicial review to do so. This is a States rights bill, and the Supreme Court has repeatedly said that marriage and family law is primarily a matter of the States, and this ensures that it will be.

Mr. Speaker, I yield 1 minute to the gentlewoman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, I find it so interesting that some of our colleagues today are trying to talk about all sorts of other issues, and some that support same-sex marriage are just saying this is an election year ploy to get votes.

I can tell you that for my constituents in Tennessee, they support what we are doing here today, and they are not concerned about whether or not it is an election year or not. They are concerned about protecting marriage, because they know that marriage is an institution that is at the very core of our existence, and that is why we are here today, to protect marriage.

I think it is very sad, very sad, that some courts and some activist judges have taken it upon themselves to usurp the will of the people. Let me remind my colleagues who oppose this that we are acting in the will of the people today.

Already there is a lawsuit that is being brought by same-sex couples in Massachusetts to force other States, like my State of Tennessee, to accept their Massachusetts marriage license, and it is contrary to the Defense of Marriage Act, and it is contrary to the will of the people.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Georgia (Mr. LEWIS).

Mr. LEWIS of Georgia. Mr. Speaker, I thank my friend and colleague, the gentleman from New York (Mr. NADLER), for yielding.

Mr. Speaker, for me, this is unreal. It is unbelievable. I thought that as a Nation and as a people that we had moved much further down the road. To pass this legislation would be a step backward.

There is a song, and some of you are old enough to know it: ''Mr. Big stuff, who do you think you are?'' I would ask, well, Members of Congress, who do you think we are?

We have not been called or chosen by the people to strip the courts of their power. We have not been ordained by some force to say, ''Don't come in here. Don't apply for justice.''

Those of us who came through the civil rights movement saw the Federal courts as a sympathetic referee in the struggle for justice, for fairness and for equality.

If it had not been for the Federal courts, where would we be? If it had not been for the Supreme Court of 1964, there would still be legalized segregation in America. If it had not been for the Federal courts, we would still see signs saying ''White Men,'' ''Colored Men,'' ''White Women,'' ''Colored Women,'' ''White Waiting,'' ''Colored Waiting.''

If it had not been for the Federal courts, I would not be standing here today and many Members of Congress who are people of color would not be standing here either.

We do not want to go back. We want to go forward. To vote for this legislation would be like Members of Congress trying to stand in the courthouse door, just like George Wallace stood in the schoolhouse door to stop integration of Alabama schools.

Today it is gay marriage. Tomorrow it will be something else. During the 1960s, in 1963, in 1964, in 1965, we heard some of the same old arguments. Have we learned anything?

Forget about the politics. Vote your conscience. Vote with your heart, with your soul, with your gut. Do what is right and defeat this bill.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Florida (Mr. WEXLER).

Mr. WEXLER. Mr. Speaker, in spite of all this rhetoric about protecting marriage and saving the country from rogue activist Federal judges, the bill we are debating here today does not protect Americans from gay marriage. We are not debating a gay marriage bill. We are debating a court-stripping bill, and one that is more Draconian than any such bill Congress has ever considered.

Every year, we teach elementary school students throughout America about the wisdom of our Founding Fathers, about the precious rights we have fought at home and abroad to protect, about our democracy that considers all people as equals, and about the delicate system of checks and balances upon which all of this is based.

It is a shame that Members of Congress appear to have forgotten these most basic lessons. They have forgotten that our Founding Fathers established three equal branches of government, no one more powerful than the other; they have forgotten that this system has served us well for over 200 years; and they have forgotten that this is a system that cannot survive if one branch arbitrarily strips power from another.

This is not about gay marriage. This is not about respecting marriage. For the record, my marriage is not threatened by gays and lesbians in Massachusetts or California. What is the heinous crime that gays and lesbians have committed? They want to live with the same dignity that their fellow Americans live with every day.

Please vote this bill down.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I sit here and listen to this debate, and it is one of many debates on this issue that we have had, and it is one of many we will have into the future. And as I listened to the gentleman talk about the civil rights, I harkened back to a time when I sat in the Iowa Senate, where I heard a senator stand and say the next great civil rights crusade is homosexual rights.

Something about how true that rang to me, it caused me to pay attention and understand that was the message. There will always be another civil rights crusade. We will never get this right. There will always be people that see the glass of rights as half full, like us, and some that will say it is half empty, like others.

I will tell you that this is not a civil right. You can look in title VII of the Civil Rights Act, and there it says race, color, religion, sex or national origin. Those things are all immutable characteristics, with the exception of religion, which is constitutionally protected. Immutable characteristics are characteristics that cannot be self-identified, but can be independently verified, and cannot be changed. That is not the case with homosexual marriage.

I hear other statements. The gentleman from Maryland, ''risk undermining public faith in the courts.'' It is the courts that risk undermining public faith in the courts. We are establishing public faith in the process.

And the statement made by the gentlewoman from California, ''this is nothing more than a back door attempt to amend the Constitution by simple majority.'' No, the courts have been continually amending the Constitution by the will of a bare majority

of appointed courts. The transfer of the will of four judges from Massachusetts against the will of the people of the United States of America is protected by the Constitution, and that responsibility lies with us and we must step up to that responsibility.

So I would ask, and, as we heard from the minority witness in hearings, the bottom line of that testimony was that the Congress can grant authority to the courts, and we can create courts and that courts can grasp authority by decisions that they make; but we can only limit the courts by allowing the courts to limit themselves.

Now, how ridiculous is that? How far-reaching is the power of the judicial branch if we will take this position that Congress cannot limit the courts when it specifically is in the constitution? We are charged not with just the right or the privilege, but the duty and obligation, when we swore to uphold this Constitution, to defend the separation of powers.

There is no civil right for marriage, there is a license for marriage, and a license is by definition a permit to do something which is otherwise illegal. We grant that to marriages for those reasons that you have heard some of my colleagues speak to, because the family, the father, the mother, the children and the home, is the essential building block, not just of this culture and this society and this civilization, but every civilization for the last 6,000 years.

That is what is at stake here, and it is our obligation; and I think this is the most essential issue of our time. There is no issue more important than defending marriage, because it is the essential building block of this society, this civilization, and every civilization. We have the duty and obligation.

Mr. NADLER. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, to vote in favor of H.R. 3313, I would say that the supporters of the bill have to reach four conclusions:

One, they have to decide that Marbury v. Madison was wrongly decided. Some people on the Committee on the Judiciary freely admitted that. You have to agree that when John Marshall wrote, ''If the courts are to regard the Constitution and the Constitution is superior to any ordinary act of the legislature, the Constitution and not such act shall govern the case to which they both apply.''

Secondly, you have to come to the conclusion that DOMA is going to be struck down by this very conservative Supreme Court. Otherwise, why would you be here? If you thought the court was going to uphold it, and I have to tell you, I went back and I looked at some of the speeches. A lot of the debate was whether or not DOMA was constitutional. And, one by one, you stood up and said, oh, it absolutely is, it absolutely is, it absolutely is.

So you have to conclude in order to support H.R. 3313 that the Supreme Court is about to strike down DOMA, although I do not know where you get that indication, unless you believe it was violative of the Constitution.

Third, you have to believe that this clause is more important than abortion, more important than gun control, more important than the Flag amendment, more important than any other thing, because you are including this provision in this bill and you have not done it to protect abortion or to ban abortion or to protect gun rights. How come? Do you not feel strongly about those things? Do you not want to keep the Supreme Court out of those issues?

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And finally, in order to support this, you have to have utter and complete contempt for individual rights and freedoms, something I thought conservatives stood for.

What if you are the only person in your State that believes something? What if you are the only person in your judicial area that believes something? And what if you are right? What if you are protected by the Constitution?

Time and time again I have heard people stand up and say this is about doing the will of the people. That is not what the courts are supposed to do. The courts are supposed to protect the minority to make sure their rights are not trampled on, protect women when they want to vote, protect blacks when they want to be considered citizens, protect those that want to have the full rights of the Constitution. That is what the Court is supposed to guarantee, because that is never what the majority does. The majority looks out for the majority rule. That is not the role of the legislature, that is the role of the courts.

If you draw those conclusions that you think DOMA is constitutionally flawed, Marbury v. Madison was wrongly concluded, that this is a more important issue than abortion, gun control, anything else, and that you have contempt for individual rights, vote yes on H.R. 3313.

Mr. NADLER. Mr. Speaker, I yield 2½ minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished gentleman from New York for yielding me this time, and I thank him for his leadership.

I hope that this is viewed by the American people as a singular discussion on whether or not, no matter what station in life one may hold, whether or not one represents a voice of one or a voice of thousands, the constitutional rights that have been protected by this Constitution is given to you.

As I spoke to some of our very able young people that are serving us as pages here in the United States Congress, and I am so very proud of them because they are inquisitive without being biased or discriminatory, but they are not our futures, they are our todays. In trying to understand what we are doing today, this is not a pronouncement of a constitutional amendment that requires two-thirds of this body and three-fifths of our States, an elongated process that would allow us to debate the question of whether or not we want to preserve the rights of those who are not like us, some of us here, and give them the same rights. This is not this debate.

This is, in fact, a way to sidewind itself around the idea of whether or not whoever you are, whether you be a farmer, an environmentalist, a parent, someone injured, a young military person fighting on the front lines of Iraq, that you come back and the front doors of the courthouse have been closed to you.

I am ashamed that my colleagues would misuse the constitutional instruction for the understanding of the three branches of government, because Article III does say this: ''The judicial power shall extend to all cases in law and equity arising under the Constitution by the laws of the United States of America.'' Can you tell me how we can argue that we can eliminate someone's right to go into the Court to simply ask for relief on their petition.

I do not want to debate one's religious faith. I cannot equate myself to you. I know what I feel in my heart, that all of us are created equal. The Declaration of Independence said that we all are created equal with certain inalienable rights of life, liberty and the pursuit of happiness. I want people to be able to practice their faith. God bless them.

But this is a tragedy, for I stand here as an unequal person in this Nation. If it had not been for the courts of this Nation, many of us, no matter whether you look like me or have my history, would have the doors closed to you.

So, Mr. Speaker, let me say to my colleagues that the reason why we are voting against this, and I ask my colleagues to consider it, because it would be damaging and devastating and detrimental to the constitutional premise of the Founding Fathers who stood for 3 months trying to establish a nation that could keep democracy for now some 200 years plus.

The crux of this is to do this: one, it does not provide for the equal protection of the law. Two, when the legislature overreaches, you have no place to go; you cannot go into courts and find relief. Three, I would say that this denies you due process.

So this is not a question of one's personal determination, it is a question of your rights as an American citizen. Might I say to you as we look at the rights of American citizens, let me reemphasize, the fact that the eliminating of the right to access the appellate courts has never been done before.

To my good friends and colleagues who believe in the Constitution like I do, let us own up to the American people, let us own up to them that what we are doing is destroying justice as we know it. I would only say to my colleagues that I love America, and I would only hope that when we stand to vote that no one looks to see who is who, only to recognize that each of us are equal under the law and should have our right of access to our courts.

Mr. Speaker, marriage is important. Marriage is a concern of many Americans, but so is equal protection, due process and the right of judicial review for a contentious matter raising constitutional issues and questions of law.

Mr. Speaker, I strongly oppose this legislation. Everything from its name to its provisions are in contravention of the principles on which the original Framers of the Constitution created that respected document.

We can see that this proposal purports to deceive our colleagues even in its title. How can this legislation ''protect'' marriage when it precludes access to Federal courts when married couples seek judgment on the merits and validity of their union? A colleague of ours in the Senate was cited, in the context of the Defense of Marriage Act (DOMA) that recently passed, as stating that same-sex marriages threaten a 5,000 year history of the man-woman union as the ''proper union.''

However, this argument, along with the bill before us today, fails to constitutionally address the cause that its proponents intend. The bill before us today, as well as DOMA, are overbroad in their scope.

Article III, Section 2 of the United States Constitution states that ''The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, and the Laws of the United States . . . (emphasis added).''

Today's debate concerns the question of whether we decide to strip the Federal courts of their constitutionally-vested powers to even decide whether it will hear a matter—justiceability. H.R. 3313 takes the decision away from the Federal courts in the area of justiceability.

First of all, the institution of marriage has roots that stem from religion. Given that we have a great myriad of different religions and creeds that have a wide spectrum of perspectives on marriage, it is unrealistic to draft a single bill to mandate what character we will accept for this union. Furthermore, man is not so omniscient that he can, alone, determine what a legitimate union is.

If my colleagues on the other side of the aisle profess to have a formula for the appearance of the ''traditional'' or ''acceptable'' marriage, I ask them whether the following types of family arrangements fit their criteria: single parent, divorced, unmarried parents.

If our colleagues can summarily decide that a same-sex union does not comport with our ideal of ''family'' or ''marriage'' because it is not the union of a man and a woman, how do they characterize the above unions?

On the aspect of overbreadth, this bill, while purporting to protect our view of what an ''acceptable marriage'' is, strips the courts of jurisdiction, strips our Federal judges on the discretion that they have retained for years, and strips tax-paying Americans of their legitimate right to have their causes heard by a Federal court.

As a threshold matter, we as lawmakers should enact legislation that summarily abridges or curtails access to Federal courts only in extreme cases or as a last resort. Furthermore, we should use the same philosophy as it pertains to amending the U.S. Constitution. The bill introduced in the Senate, as well as the bill before us today, amend the document that was created by the original Framers and strip Federal judges of their discretion on the issue of justiceability.

Lastly, I would have offered an amendment that would simply allow the Supreme Court, the highest court in the land, to retain its jurisdiction to hear these matters. It would be at the least, arrogant of legislators to think that their judgment, experience, and expertise would make them better arbiters on this issue than life-appointed judicial officials whose job it is to make determinations concerning our laws. The high court has made so many rulings that have changed the lives of minorities, women, children, the disabled, and many other aggrieved individuals and classes that stripping it of its ability to continue this effort would be injurious to the entire Nation.

Mr. Speaker, for the above reasons, I strongly oppose this legislation.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2½ minutes to the gentleman from Illinois (Mr. HYDE), the distinguished former chairman of the Committee on the Judiciary.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I think this is a wonderful debate. It is something that I have waited for years to listen to, because these are very important questions and the Constitution is everybody's business. It is certainly ours.

What we are really debating is what does Article III, Section 1, clause 1 mean. The power to court strip, is it there, and if it is there, why is it a mortal sin for Congress to exercise it? I do not know.

The Court is not the only repository of wisdom, nor of due process. We could have a seminar some day on the first amendment. Why does the establishment clause dominate jurisprudence concerning the relationship of religion and the State, but not the free exercise, which is ignored, which withers on the vine? What about the 10th amendment, which says all matters not enumerated to the Court are reserved to the people? It is ignored. It has been ignored for generations.

So as we raise up the Court as the sole repository of wisdom and justice and fair play, we are not very historical because they are capable of abuses, too.

Now, democracy requires checks and balances. We know that. What is the check and balance on the Supreme Court? Unelected, these are people who are well connected and they get confirmed, and they are imperial in their scope, and no check and balance whatsoever.

Now, I would rather have a check and balance on the Court, just as I want one on the Congress, and the best check and balance is the people, the people who do the electing. That is what Article III, Section 1, clause 1 does. It reserves to the people the ultimate decision on a given issue.

Well, I just want to say for a court of last resort, I think ''the people'' is superior to these people who are nominated and confirmed and unelected and sit for life. I have never heard of an imperial state in this country, but I have heard of an imperial court.

This is not the end of the world; this is fulfilling the very language that our Founding Fathers were wise enough to incorporate into the Constitution, and all of the sky-is-falling-down rhetoric is misconceived, in my judgment.

Mr. NADLER. Mr. Speaker, I am pleased to yield 3 minutes to the distinguished gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, I disagree with my friend from Illinois. This does not take the matter out of the courts; it takes the matter of constitutionality away from the United States Supreme Court and confers it on the 50 State supreme courts.

What this bill says is, no court created by act of Congress and the Supreme Court shall have no jurisdiction to hear or decide any question pertaining to, among other things, the validity under the Constitution of Section 13, et cetera.

The State courts have, as has been acknowledged, also the right to interpret the Federal Constitution. Frankly, from the standpoint of there being more same-sex marriages under the Full Faith and Credit Clause, I think there would be more if this bill became law. I do not want the bill to become law because of its terrible precedential consequences. But, frankly, the likelihood that this U.S. Supreme Court will find that full faith and credit compels the nationwide recognition of same-sex marriages is quite slight. It is likelier that there are four, five or six State courts that will find that.

So what you are saying is not that the people will decide it as opposed to the courts, the courts presumably made up of aliens that you have appointed in many cases, but the fact is that it will be decided by State supreme courts.

Now, this is the problem. The gentleman from Wisconsin says there is precedent. He is wrong. All of the things he cited had to do with administrative matters, with deportees who are by definition noncitizens and who do not have the same rights. There is no case in American history of this language: you cannot decide any question pertaining to the validity under the Constitution. This is the first time we have said, not that it will not be litigated, but it will not be decided by the U.S. Supreme Court. What you are doing here, you are not repealing anything except the Constitution by going back to the Articles of Confederation.

Here is the problem, and it is not just about same-sex marriage. As I have

said, I think there will probably be more State courts that will find full faith and credit than national. But we all know that we never in this body do anything only once. The gentleman from New York (Mr. WEINER) was right when he said, what about other issues. Once you establish this as the way you show your fealty to a principle, it will be demanded with regard to everything else. This will become boilerplate. So on issue after issue we will pass legislation, and we will say, but it cannot be questioned by the Supreme Court.

Now, I can tell you, on the Committee on Financial Services on which I serve, the business community of the United States overwhelmingly comes to us and says we need uniformity, we need uniformity. What you are enacting here today does not say the courts do not have the final say; it says that instead of there being one United States Supreme Court binding interpretation on constitutional questions that are controversial, there will be different State court interpretations, and the impact will be much less on same-sex marriage than on economics, on land-takings, on gun control and a whole range of other issues.

Mr. NADLER. Mr. Speaker, I yield 1½ minutes to the distinguished gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Mr. Speaker, at every critical juncture in American history, each preceding generation has been asked to pick between equality and inequality, justice and injustice. In that struggle, our predecessors always tipped the scale in favor of equality and justice, and always widening the circle of democracy. And in widening that circle of democracy, America's character and her democratic values were renewed.

Today we are taking a reactionary departure from constitutional history. Our congressional predecessors never successfully attempted such an extreme measure as this, because they knew it would violate every principle that defines America, but this Congress and its majority leaders, in its infinite wisdom, will take that radical step today.

The majority leader asked for a debate known for its tolerance concerning a piece of legislation that is neither tolerant nor respectful of debate. The proponents of this legislation say, this is an effort to protect the institution of marriage. Half of all marriages end in divorce. Divorce threatens marriage. So why do we not deny access to the Federal courts to divorcees?

If you are worried about your marriage, read your vows and leave our Constitution alone.

Today we are not defending marriage; we are defeating the Constitution. Thomas Jefferson wrote in the Declaration of Independence that all men are created equal, but maybe George Orwell is more appropriate today: all are equal, but some are more equal than others.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, this bill, H.R. 3313, is not about gay marriage, it is about taking away access to the Federal judiciary while manipulating our Constitution by using a wedge issue. It is about degrading the role that Federal courts have played in the enforcement of civil rights law. It is about preventing challenges by individuals and groups of Americans who are needy and deserving of their day in court. Most of all, this bill is about ignoring the Constitution.

We must protect the system of checks and balances that our Founding Fathers created. We must refuse to create this dangerous precedent.

This legislation would be precedence for removal of Federal court jurisdiction for other contentious constitutional civil rights issues such as gun rights, religious protections, civil rights.

Mr. Speaker, this is just plain bad policy. Do not support this bill. Know what the proponents are after and do not let them bully you into eroding our judicial protections.

□ 1445

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Missouri (Mr. AKIN).

(Mr. AKIN asked and was given permission to revise and extend his remarks.)

Mr. AKIN. Mr. Speaker, I have heard a number of people saying today that this is not about the institution of marriage. It most certainly is about the institution of marriage. It is also how marriage is going to be defined. I somehow cannot get my mind around the concept that the Founders' idea was that a bare majority in one State court and a bare majority in the Supreme Court can redefine the word of marriage and shove that down the throats of 49 other States. Somehow that does not seem to make sense. The Democrats here have been suggesting that the Supreme Court should be totally sovereign in every decision, and that one also I find rather puzzling, because the first foray of activist judges on the Supreme Court was that brilliant decision of Dred Scott, which said that African Americans are not actually people.

Now, if every decision of the Supreme Court is gold, how about this one? And what was the result of this little act of activism? Well, they are the wonderful folks who gave us the Civil War. I just cannot understand the logic of saying and talking about the idea of separation of powers and checks and balances and at the same time say, anything the Supreme Court says goes. That is what I am hearing argued today.

The question is when the Supreme Court gets really goofy, and my friends, we can pick how goofy is goofy, but when they really start legislating from the bench, at what point and what is the mechanism to hold them in check? Well, whose job is it? Well, it has been made reference to here. We take an oath of office to uphold the Constitution. It is our job, my friends, as legislators, and it is the job of the President, who also seeks to uphold the Constitution.

Now, there is one other thing that has been stated that some staffers probably should be let go, because they have not done their homework. Because if we take a look in the 107th Congress alone, we can take a look and see that the expedite, the construction of the World War II memorial has article III, section 2, the American Service Members Protection Act. Article III, section 2 language, Aviation Security Act. This is all 107th Congress alone. PATRIOT Act, article III, section 2 language. Intelligence Authorization Act, article III, section 2. Terrorism Risk Insurance Act, and also the Department of Justice Authorization Act, that is not to mention a particular elected representative from South Dakota who said no court can have anything to say about his clearing the undergrowth from his forest.

The question before us is a question of whether or not a redefinition of marriage is going to be imposed on all of our States by a few activist judges. Believe me, the answer should be no.

Mr. NADLER. Mr. Speaker, I yield to the gentleman from Washington for purposes of a unanimous consent request.

Mr. MCDERMOTT. Mr. Speaker, I rise against this amendment.

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, what the Republicans are doing today is a "needless, futile and utterly dangerous abandonment of constitutional principle . . . without precedent or justification." These were the very words used by the Senate Judiciary Committee in 1937 when they opposed President Roosevelt's court packing scheme. it was exactly 67 years ago today that the U.S. Senate voted down that dangerous plan.

Mr. Speaker, the legislation that you are asking this August body to consider is no less dangerous. This legislation, the so-called Marriage Protection Act, is championed by the Republican leadership. It aims to manipulate, to indeed disrobe the Third Branch of our government, The Judiciary.

Any why, Mr. Speaker? Because the Republican Party and this Republican Congress wishes to deny a particular class of people their right to come before the federal courts and defend their unalienable rights. What a horrible precedent.

Mr. Speaker, Alexander Hamilton—the man on our ten dollar bill—in Federalist 78 said that the courts of justice are the bulwarks of a limited constitution against legislative encroachments, and are there to safeguard the private rights of particular classes of citizens against unjust and partial laws. What the Republican bill does is attack the very foundation upon which our Founding Fathers built this great republic.

The Republican party says that we "need to protect marriage from activist judges." Maybe

there are a few activist judges out there, but this bill strips all federal courts—even the Supreme Court—from considering the constitutionality of a federal law that attacks the rights of a particular class of people.

The Defense of Marriage Act is clearly a legislative encroachment upon the Constitutional rights of Homosexuals. Why else would you bring a bill out here that denies judicial review over that unjust and partial law?

Mr. NADLER. Mr. Speaker, I yield 1½ minutes to the gentleman from Maryland (Mr. WYNN).

Mr. WYNN. Mr. Speaker, I rise today in opposition to the Marriage Protection Act. I took an oath when I came here to protect and defend the Constitution. This bill obliterates the Constitution.

Let me first make an observation. I am married, and many of my colleagues are married. I do not think my marriage or my colleagues' marriages are threatened because two gay people in Massachusetts want to get married. Maybe it is threatened by meddling inlaws, but certainly not by some legislation that passed in Massachusetts.

But I make that observation as an aside. This bill really is not about marriage, gay or otherwise. This bill is about the Constitution. This legislation sets a very dangerous precedent. It says that we are going to set aside our very cherished separation of powers that is provided in the Constitution that enables the courts to check us, to say, wait a minute, Congress, you have gone too far. My colleague says, well, we have the right to make laws. We do. If we do not like it, we can amend the Constitution; but my Republican colleagues are not trying to amend the Constitution. They are trying to change the Constitution by stripping the courts. We need the separation of powers. We need the courts to independently review the things that we do here in Congress.

Think about it. If we can strip the court's jurisdiction, the Supreme Court's jurisdiction over this matter, what about civil rights laws? Could not some Congress come down here and say, well, we do not need the Federal courts or the Supreme Court ruling on civil rights laws? What does that mean? It means that a State court in Arkansas can say one has this right, while another State court in Nevada could say, oh, no, you do not. That is not what the Founders envisioned. This is a very dangerous vision of America in which the courts do not play a critical role. Let us retain the Constitution as we know it.

Mr. NADLER. Mr. Speaker, I yield 1½ minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Speaker, I thank the gentleman for yielding me this time and for his leadership.

This is really a sad day. By stripping away the jurisdiction of the Federal courts and the Supreme Court to hear challenges to the Defense of Marriage Act, this bill opens the door to further court-stripping of additional rights. What is next, the right to vote, the right to assemble, the right to a trial, the right to privacy? Congress would undo over 200 years of history and could potentially rewrite the Bill of Rights, gutting Federal protections against discrimination that are enshrined within the 14th amendment. Where would we be today without a way to redress our grievances against ill-conceived or discriminatory legislation passed by earlier Congresses?

Would interstate travel still be segregated? Would the separate but equal doctrine still exist? Where would we have been without Brown v. Board of Education, Roe v. Wade, or other sufficient landmark court decisions?

From now on will we seek to limit the ability of the Federal courts to hear challenges to any law just because one side or the other opposed it? What does an approach like this bode for the future of our democracy? So why are we doing this? Why are we doing this? I think we are undermining our Constitution today, quite frankly, about trying to get more votes in November. That is why we are doing this. Vote ''no'' on this dangerous bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield to the gentleman from Iowa for purposes of a unanimous consent request.

Mr. LEACH. Mr. Speaker, I rise in opposition to this bill.

(Mr. LEACH asked and was given permission to revise and extend his remarks.)

Mr. LEACH. Mr. Speaker, America is divided on many issues, perhaps none more emotive than that which surrounds family values and the institution of marriage.

For many Americans definitions are critical. Traditionalists believe the term marriage can only properly be applied to a union between a man and a woman. Non-traditionalists, particularly in the gay community, believe that qualification under law for marriage or other forms of civil unions should be provided to same sex couples and that without changes in law to allow such to occur some citizens will have less personal security and legal protection than other elements of the American community.

Historically, issues of marriage come under the primary jurisdiction of State law, but because States may have different approaches and because there is under our Constitution a recognition that legal arrangements made in one State are generally to be respected in others, the Congress chose several years back (1996) to pass a law called the Defense of Marriage Act (DOMA) to allow States not to recognize the validity of same-sex marriages performed in other States.

The measure before Congress today is H.R. 3313, an act which would deny Federal courts, including the Supreme Court, the right to review the constitutionality of the Defense of Marriage Act.

The arguments on the floor today have largely swirled around the issue of marriage. My view is that the bigger issue is process. In America, process is our most important product. Our constitutional system was established with checks and balances. To curb the prospect of concentration of power our Founders created three branches of government—executive, legislative, and judicial—and then quadruplicated these balancing arrangements by creating executive, legislative, and judicial entities at the state, county and city levels.

At any moment in time there will be conflict among various branches and between various levels of government. This discord is sorted out through time tested processes involving compromises, give and take, and at critical moments, definitive decision-making.

In this case, whether one supports or opposes expanding marriage definitions or favors compromise approaches such as sanctioning civil unions, it is a dubious precedent to deny a key component of the American governmental system—federal courts—the power to exercise its constitutional responsibilities.

Although the Constitution gives Congress broad authority to define the jurisdiction of courts, Congress has historically been cautious in limiting the power of courts to review substantive law. to do so would wreak havoc with the separation-of-power doctrine and our legal system.

If one of the objectives in the bill before us is to rein in a runaway judiciary, we might be equally concerned about creating runaway legislative precedents. Barry Goldwater, who was no friend of activist judges, noted a decade ago when referring to previous court stripping attempts: ''frontal assault on the independence of the Federal courts is a dangerous blow to the foundations of a free society.'' It opens up a can of worms, making all controversial issues vulnerable to similar ''court stripping'' legislation.

It is this court stripping precedent which is primarily at issue today. But it is not the only process problem on the table. One consequence of passage of H.R. 3313 is that it would allow each of the 50 State supreme courts to define DOMA's constitutionality but leave the U.S. Supreme Court powerless to sort out the constitutional mess. Confusion rather than legal clarity would be the likely result.

Judicial review is the heart of constitutional governance. To tamper with the power of courts is a perilous undertaking.

The only oath Members of Congress take upon assuming office is to uphold the Constitution. The founders, who had extensive experience with political persecution, wrote a Constitution which did not put exclusive power in the legislative and executive branches because they wanted to place a check on popular will as well as capricious executive governance. As Madison wrote in Federalist No. 48, ''an elective despotism was not the government we fought for . . .''

Constitutionalism is not majoritarianism. The rights of minorities must be respected and all citizens provided due process under the law. Accordingly, I am convinced the constitutional obligation is to vote ''no.''

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. NEUGEBAUER).

(Mr. NEUGEBAUER asked and was given permission to revise and extend his remarks.)

Mr. NEUGEBAUER. Mr. Speaker, I rise today in support of H.R. 3313, the Marriage Protection Act of 2004, and in defense of the institution of marriage in America.

In 2003, the Texas State Legislature defined marriage as a union between

one man and one woman. Texas joins 37 other States that have enacted similar legislation defending traditional marriages.

With the Defense of Marriage Act, Congress declared that no State can be forced to accept another State's definition of marriage. Unfortunately, these actions are not enough. We have seen time and time again the will of the people can be overturned by the actions of a few judges.

Currently, Federal lawsuits attacking the institution of marriage are underway in several States across the country. If these lawsuits are successful, the voice of the people in Texas and the voice of the overwhelming majority of Americans will be ignored.

Without the Marriage Protection Act, it is possible that Federal judges in California can determine the definition of a marriage in Texas or any other State which tries to protect marriage.

This attack against marriage goes against every value that I and the vast majority of my constituents hold dear. For these reasons I strongly urge the passage of H.R. 3313.

Mr. NADLER. Mr. Speaker, I yield 1½ minutes to the gentleman from Texas (Mr. BELL).

Mr. BELL. Mr. Speaker, as the Democratic leader pointed out earlier, this year marked the 50th anniversary of the historic Brown v. Board of Education decision, and thinking about that decision in the context of today's debate, I think we have to ask ourselves what if some of our segregationist forefathers who felt every bit as strongly about the issue of race as many people here today feel about the issue of gay marriage, what if they had succeeded in passing some radical legislation to prevent any Federal court challenge to the law of separate but equal?

Well, obviously, the progress that we have witnessed in the area of civil rights would have been at the very least stymied and most likely prevented altogether. And the real question is they might have no problem with the law that they seek to protect today, but they might have very big problems with the law that they seek to protect tomorrow; and ladies and gentlemen, we cannot cherry-pick. We cannot control what might come forth in the future, because once this genie is out of the bottle, it is out for good.

And the bottom line is, this is not. This is not how our country works. Just how far are we going to let extremists go in tearing down what makes this country great?

And, yes, open courts, open courts where free people can go in and fight for what they believe is right are a part of what makes this country great; and just because it is an election year, just because it is an election year and some wish to fan the flames of an incredibly controversial issue, let us not make the unforgivable mistake of closing off our courts. It is un-American; it is wrong. Vote ''no.''

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Ms. LORETTA SANCHEZ).

Ms. LORETTA SANCHEZ of California. Mr. Speaker, I thank the gentleman for yielding me the time.

I rise today in strong opposition to H.R. 3313. I call it the ''Offense to the Constitution Act.'' Not only does this bill have nothing to do with what it pretends to address, but it attacks one of the fundamental principles of our American democratic system, the separation of powers.

The Founding Fathers wisely separated the powers of the executive, the legislative, and the judicial branches so as to avoid an abuse of power by any one of the three. This administration was cemented and codified in great historic American cases like Marbury v. Madison. H.R. 3313 is a direct attack on the separation of powers and the legacy of those cases. It says: ''No court created by act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, section 1738C or this section.''

Protect the Constitution. Vote down this bill. Vote ''no'' on H.R. 3313.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska (Mr. OSBORNE).

Mr. OSBORNE. Mr. Speaker, I am not a constitutional scholar, obviously. I spent 40 years working with approximately 2,000 young people. I actively recruited those young people to go to the University of Nebraska. I visited annually 60 to 70 of them personally in their homes and met their parents, and I saw firsthand the difference a family makes, for better or for worse.

In my experience, the marriage findings of 12 leading family scholars who summarized thousands of studies on child rearing are as follows: children raised by both biological parents within a marriage are less likely to become unmarried parents, live in poverty, drop out of school, have poor grades, experience health problems, die as infants, abuse alcohol and drugs, experience mental illness, commit suicide, experience sexual and verbal abuse, engage in criminal behavior. And then they concluded with this statement that I think is noteworthy: ''Marriage is more than a private emotional relationship. It is also a social good. It is the bedrock of our culture.''

And so what I observed was that a father contributes something unique to the welfare of a child. A mother also makes a unique contribution. Several countries, notably in Scandinavia, have changed the traditional definition of marriage. There has always been a decline of traditional marriage and a surge of out-of-wedlock births in these countries, and children born in such circumstances, on average, suffer significant dysfunction.

So the question before us is this, as I see it: Do we allow a small number of members of the judiciary to alter an institution which has been the backbone of this Nation? Do we allow these same jurists to do so with a great majority of our citizens and our States firmly in opposition to a change? Forty-four of 50 States have laws defining marriage in a traditional manner.

Again, Mr. Speaker, this is a matter that speaks directly to the welfare of our children, the future of our country, and I urge support of H.R. 3313.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentleman from Washington (Mr. BAIRD).

Mr. BAIRD. Mr. Speaker, I thank the gentleman from New York for yielding me this time.

My friends, surrounding us here are profiles of the great law givers. There are two Americans up there, Jefferson and Mason. Mason did not sign the Constitution at the Convention. He did not, because it did not have a Bill of Rights in it. Jefferson, on his epitaph, looked at as one of his proudest accomplishments, was the establishment of the clause providing for religious freedom in the State of Virginia.

□ 1500

We have 900 dead Americans in Iraq, thousands more wounded, we have a $600 billion deficit, we have 3 million Americans without jobs, 37 million kids are born in poverty in this country, and we are here today proposing to try to take away one of the three pillars of a three-legged stool that has made our country so strong for so many years.

Do not do this. A three-legged stool cannot stand. A society that does not have a judiciary to protect the rights of the minority will ultimately degenerate, and we must not let that happen.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York (Mr. CROWLEY).

(Mr. CROWLEY asked and was given permission to revise and extend his remarks.)

Mr. CROWLEY. Mr. Speaker, I thank the gentleman from New York for yielding me this time.

We will hear the word ''distraction'' a great deal in the next couple of weeks because that is what is happening here today.

The 9/11 Commission came out with a report today and instead of focusing on and discussing the issues pertaining to the 9/11 Commission's report, we are here today debating a bill that in essence will change the Constitution without going through the formalities of actually changing the Constitution.

We have 2 million people who are unemployed today in this country who would like to work but do not have the opportunity to do so today. We have 44 million Americans in this country today who do not have health insurance coverage, and yet we are here today debating this bill on the floor that will undermine the rights and privileges, not only of people who are gay or lesbian in the country but all

Americans, if this bill were to become law.

Mr. Speaker, I ask my friends and colleagues to vote down this bill. This bill is unfair and unjust. It will undermine the very premise of our Constitution. I challenge my colleagues to please vote down this bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. STEARNS).

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, first of all, most of the folks on that side of the aisle keep talking about that we are mending and changing the Constitution. But I think the argument has been shown to be overwhelmingly wrong and the gentleman from New York (Mr. NADLER) will have to agree, and he would now say clearly, it does not violate the Constitution to pass this bill. And I think others will agree with that.

So the people that come down here and say it violates the Constitution are wrong, for your side of the aisle to say we are violating the Constitution, amending and changing it, clearly we are not.

The distinguished chairman of the Committee on the Judiciary has given you nine examples, recent examples, of where we have used almost the same clause or language to do the same thing we are doing today. Did you know that to expedite construction for the World War II Memorial we did this same thing. We did it for the Terrorist Risk Insurance Act, the Department of Justice Authorization Act, which I am sure the gentleman from New York (Mr. NADLER) voted for. The Intelligence Act, the PATRIOT Act, even for campaign finance reform in which the majority of the people on that side of the aisle voted for.

But now let us talk about the Daschle Act. Now that is more recent and I think something we should mention. The distinguished chairman of the Committee on the Judiciary mentioned it, but I just want to read to you what Senator DASCHLE actually said on the Senate floor when he said, Due to extraordinary circumstances, timber activities will be exempt from the National Forest Management Act and National Environment Policy Act. And these exemptions are such that they are not subject to judicial review by any United States court. I'd say Senator DASCHLE blanketed it completely.

Let us get to the real issue. The real issue is not whether the language in this bill is exempting U.S. courts. The real issue is the Defense of Marriage Act. But the Defense of Marriage Act was voted for overwhelmingly by many folks, on that side of the aisle and of course ours, but now you are claiming a technicality by saying we are violating the Constitution. But we all know that we do not want a handful of judges overturning the will of individual States and millions of Americans.

DOMA relied on the principle of federalism, which is a defined concept in our Constitution, to defend States rights and to preserve the sanctity of marriage. It was a perfect match, at least we thought it was, until we found out several events later that the Supreme Court 1997 decision in Roemer v. Evans overturned a popular referendum in their ruling. Last year in Lawrence v. Texas the Supreme Court ignored a States right to determine its own public policy standard and overturned its previous court ruling, which in turn created a new right out of thin air. For years the Federal Courts have been taking jurisdiction away from Congress. It is only proper that we exercise our constitutional right to limit their jurisdiction.

So I would say to my colleagues, if you are against the Defense of Marriage Act, why do you not argue that and do not use the technicalities of saying we are violating the Constitution because you know that is not true. And I have given you at least nine examples here of where you on that side of the aisle have voted for the same, almost the same language.

Now the gentleman from Massachusetts indicated that in this bill there is unique language we have never seen before. Now Mr. Speaker all of us have heard songs before and lots of times those songs sound the same way. But they do not have the same language or exact words. Those songs may sound the same, but they do not have the same words. Likewise, this bill does the same thing as the other bills I mentioned, but the language may not be the same.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I place into the RECORD the case of Biodiversity Associates v. Cables, which contrary to the gentleman from Florida (Mr. STEARNS) ruled that the Daschle bill did not apply to preclude court of appeals review as the legislation's constitutional validity.

BIODIVERSITY ASSOCIATES V. CABLE

Biodiversity Associates and Brian Brademeyer, Plaintiffs-Appellants, Sierra Club and the Wilderness Society, Plaintiffs, v. Rick D. Cables, in his official capacity as Regional Forester of the Rocky Mountain Region of the U.S. Forest Service; Dale N. Bosworth, in his official capacity as Chief of the U.S. Forest Service; John C. Twiss, in his official capacity as Supervisor of the Black Hills National Forest; U.S. Forest Service, Defendants-Appellees, Larry Gabriel, in his official capacity as Secretary of the South Dakota Department of Agriculture; Black Hills Regional Multiple Use Coalition; Black Hills Forest Resource Association; Meade County, Lawrence County, and Pennington County, all political subdivisions the State of South Dakota, * Defendants-Intervenors-Appellees.

*Mr. Cables, Mr. Bosworth and Mr. Gabriel, who are the successors in office of Lyle K. Laverty, Michael Dombeck and Darrell Cruea, respectively, have been substituted as parties pursuant to Fed. R. App. 34(c)(2).

NO. 03–1002

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

357 F.3D 1152; 2004 U.S. APP. LEXIS 1702

(February 4, 2004, Filed)

Prior History: Appeal from the United States District Court for the District of Colorado. (D.C. No. 99–N–2173).

Disposition: Affirmed.

Counsel: Ray Vaughn of WildLaw, Montgomery, Alabama (Steve Novak of WildLaw, Asheville, North Carolina, with him on the briefs), for Plaintiffs-Appellants.

Kevin Traskos, Assistant United States Attorney (John W. Suthers, United States Attorney, with him on the brief), Denver, Colorado, for Defendants-Appellees.

Diane Best, Assistant Attorney General (Lawrence E. Long, Attorney General; Charles D. McGuigan, Assistant Attorney General, with her on the brief), State of South Dakota, Pierre, South Dakota, for Defendants-Intervenors-Appellees.

Judges: Before Murphy, Circuit Judge, Brorby, Senior Circuit Judge, and McConnell, Circuit Judge.

Opinion By: McConnell.

For many years, Congress has been unable to come to agreement on nationwide legislation to address the dangers of insect infestation and fire in the national forests. In 2002, however, in a rider to a supplemental appropriations act for the war on terrorism, Congress passed legislation applicable to selected sections of the Black Hills National Forest in South Dakota and nowhere else, permitting logging and other clearance measures as a means of averting forest fires. The legislation specifies forest management techniques for these lands in minute detail, overrides otherwise applicable environmental laws and attendant administrative review procedures, and explicitly supersedes a settlement agreement between the Forest Service and various environmental groups regarding management of these lands.

The question presented is whether the extraordinary specificity of this legislation, coupled with its displacement of a settlement agreement, amounts to congressional violation of the Constitution's separation of powers, by invading the province of the executive branch, the judicial branch, or both. We hold that it does not. Article IV, §3, cl. 2 expressly grants Congress ''Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.'' With respect to this power—like most of its enumerated powers—Congress is permitted to be as specific as it deems appropriate. Moreover, settlement agreements between private litigants and the executive branch cannot divest Congress of its constitutionally vested authority to legislate.

BACKGROUND

The first law involved in this case is the law of unintended consequences. Fire suppression efforts conducted over more than a century in large parts of the West have had the unintended effect of transforming forests from savannah-like grasslands studded with well-spaced large, old, fire-resistant trees, into thicker, denser forests. Prior to the arrival of Europeans, these forests experienced frequent, but relatively mild, forest fires caused primarily by lightning and Native American activity. These fires would clear the forest floor of undergrowth and saplings while leaving the larger trees unscathed. The denser forests produced by fire suppression accumulate more combustible fuel and are more vulnerable to infestations, such as mountain pine beetles, and to fires far more intense and devastating than those of the pre-settlement era. Forestry experts are divided as to the response to these conditions.

Some advocate a hands-off approach, allowing fire (outside areas of human habitation) to reconstitute the forests in their natural state; some advocate controlled burns; and some advocate thinning and fuel removal. The role of commercial logging as part of the last approach has been particularly controversial.

From 1983 to 1997, the Beaver Park Roadless Area, a relatively pristine portion of the Black Hills National Forest, was free of logging activity, apparently because the land management plan then in place did not allow it. In 1997, however, the Forest Service approved a new Black Hills National Forest plan revision (the ''1997 Revised Plan''), which allowed logging in a significant portion of Beaver Park's 5,109 acres. It subsequently began preparations for a timber sale in an area called the ''Veteran/Boulder Project Area,'' which included most of the Beaver Park land newly authorized for logging. Especially in a part of the area known as Forbes Gulch, a major purpose of the logging was to counter an infestation of mountain pine beetles. The Forest Service proceeded to clear various administrative hurdles in preparation for the Veteran/Boulder timber sale, issuing a final environmental impact statement on the proposed sale and records of decision approving timber harvest both inside and outside the Beaver Park Roadless Area.

Several environmental groups, including the Sierra Club, the Wilderness Society, and Appellant Biodiversity Conservation Alliance (BCA), objected strenuously to the timber sale. The Beaver Park Roadless Area was one of the last areas in the Black Hills National Forest still eligible for designation as a wilderness, and logging activity would likely disqualify it from being designated as such. The environmental groups were also concerned about the effects that the Veteran/Boulder timber sale would have on the viability of the northern goshawk population in the Forest. Accordingly, they brought administrative challenges to both the particular project and the recently revised plan under which it was approved.

The groups met with mixed success in their administrative challenges. Their challenge to the Veteran/Boulder sale was initially denied in its entirety, though the sale was stayed pending review of the Revised Plan itself. Then, on October 12, 1999, the Chief of the Forest Service upheld the 1997 Revised Plan in most respects, but found that there was inadequate support in the record for the conclusion that the Revised Plan's proposed changes would not threaten the viability of several species, including the northern goshawk. He therefore ordered further research into that question. In the meanwhile, the Forest Service did not stop all pending projects, but instead provided interim directions that would apply until the identified defects in the Revised Plan were remedied. As a result, when the stay on the sale expired, the Forest Service went forward and put the timber out for bid.

The Sierra Club, the Wilderness Society, and BCA brought suit challenging the sale in federal district court, claiming that the Forest Service could not rely on an ''illegal'' plan to justify project-level decisions under that plan. Specifically, they argued that the final environmental impact statement's conclusion that the Veteran/Boulder sale would not affect the viability of the northern goshawk was based on the very findings in the 1997 Revised Plan that had been disapproved.

In the waning days of the Clinton Administration, in September of 2000, the Forest Service signed a settlement agreement with the plaintiff groups, under which it agreed not to allow any tree cutting in the Beaver Park Roadless Area, at least until the Service approved a new land and resource management plan remedying the defects of the 1997 plan. The settlement was approved by the United States District Court for the District of Colorado, which had jurisdiction over the lawsuit because the relevant Forest Service offices were in Colorado.

The process of approving a new plan took much longer than anticipated. The record does not reveal whether the mountain pine beetles of western South Dakota were aware of the settlement agreement or participated in the plan revision process, but it is clear that they did not wait for authorization from Washington before undertaking an expanded program of forest resource exploitation. Just two years after the initial Veteran/Boulder environmental impact statement, the mountain pine beetle infestation in this section of the Black Hills had reached epidemic proportions. According to Forest Service estimates, the pine beetles killed 114,000 trees in 2002, as compared to only 15,000 in 1999. This convinced forest managers that immediate harvesting of deadwood and infested trees, which the settlement agreement prohibited, was necessary to guard against further spread of the infestation and potentially disastrous forest fires.

Given that approval of a corrected resource management plan was still a long way off, the Forest Service and the local South Dakota interests that shared its concerns had a choice: they could either attempt to obtain consent to the tree cutting from the original parties to the agreement, or with the help of South Dakota's congressional delegation, they could attempt to overturn the settlement agreement's prohibition by legislation. The Forest Service began by trying the consensual approach. Perhaps spurred by the threat of intervention from Congress, the signatories to the settlement met with the Forest Service to discuss changing the agreement in light of the mountain pine beetle problem. The Forest Service reached agreement with the Sierra Club and the Wilderness Society, but BCA and Brian Brademeyer, then chair of the Black Hills Sierra Club, refused to agree to proposed modifications in the settlement. Stymied, South Dakota interests turned to Congress for a legislative solution.

For some years, Congress had been considering national legislation that would streamline the process of obtaining environmental approval of logging and other clearance projects in fire- and disease-threatened national forests; but these efforts were caught up in the debate over the role of commercial logging in forest restoration. By limiting legislative action to a narrow geographical area, however, and with the acquiescence of some influential environmental groups and the active support of the state's congressional delegation, Congress was able to reach agreement on a bill that would permit logging and other measures in the Beaver Park Roadless Area. In a rider to an unrelated appropriations bill, Congress enacted into law essentially the terms of the modified agreement negotiated between the Forest Service and the Sierra Club and the Wilderness Society. See Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Acts on the United States, Pub. L. No. 107–206, §706, 116 Stat. 820, 864 (2002) (the ''706 Rider'' or ''Rider''). The Rider, which was signed into law on August 2, 2002, required the Forest Service to take a variety of actions that violated the settlement agreement, see, e.g., id. §706(d)(5), 116 Stat. at 867, and prohibited judicial review of those actions, id. §706(j), 116 Stat. at 868. It also specifically referred to the settlement agreement, and stated that the agreement should continue in effect to the extent it was not preempted by the Rider. See id., 116 Stat. at 869.

After the Rider was passed, BCA and Mr. Brademeyer (hereinafter referred to, jointly, as ''BCA'') went to the federal district court in Colorado to obtain an order requiring continued enforcement of the settlement agreement, claiming that the 706 Rider unconstitutionally trenched on both the executive and judicial branches. The district court denied the motion, and BCA appealed.

DISCUSSION

As a preliminary matter, we must determine the scope of this Court's jurisdiction over this case. Although we would normally have jurisdiction under 28 U.S.C. §1291, the 706 Rider limits that jurisdiction:

''Due to the extraordinary circumstances present here, actions authorized by this section shall proceed immediately and to completion notwithstanding any other provision of law including, but not limited to, NEPA and the National Forest Management Act (16 U.S.C. 1601 et seq.). Such actions shall not be subject to the notice, comment, and appeal requirements of the Appeals Reform Act, (16 U.S.C. 1612 (note), Pub. Law No. 102–381 sec. 322). Any action authorized by this section shall not be subject to judicial review by any court of the United States.''

Rider 706(j), 116 Stat. at 868 (emphasis added). At oral argument, BCA contended that the italicized language does not preclude us from considering the constitutionality of the Rider itself. The government disagrees, arguing that we have jurisdiction at most to determine whether the denial of jurisdiction, not the entire Rider, is constitutional.

In determining the extent of our jurisdiction, we must start with the precise language of the Rider, keeping in mind that such limitations of jurisdiction are to be construed narrowly to avoid constitutional problems. See Johnson v. Robison, 415 U.S. 361, 366–67, 39 L. Ed. 2d 389, 94 S. Ct. 1160 (1974). What is prohibited here is judicial review of ''any action authorized by'' the Rider. Rider §706(j), 116 Stat. at 868. BCA, however, does not seem to be seeking judicial review of any specific actions already taken or soon to be taken by the Forest Service. Rather, it has moved for enforcement of the settlement agreement in the face of the new Congressional legislation. Admittedly, the basis for the lawsuit, and the alleged injury that gives BCA standing, is the prospect of Forest Service action pursuant to the Rider and in violation of the settlement agreement. Yet at this point, no pastor prospective actions of the Forest Service are directly at issue. The question before us is simply whether the settlement agreement has continuing validity in the face of Congress's intervening act.

The situation here is thus different from one in which the court is asked to hold a party who has violated an injunction in contempt. In such a case, the ''actions'' taken by a party to the injunction are directly at issue. BCA's motion is more analogous to a suit for declaratory judgment holding the Rider itself to be unconstitutional. Because BCA seeks judicial review of the congressional act mandating that the settlement agreement be violated, rather than judicial review of the Forest Service's acts authorized by the Rider, the jurisdictional bar does not apply. See Nat'l Coalition to Save Our Mall v. Norton, 348 U.S. App. D.C. 92, 269 F.3d 1092, 1095 (D.C. Cir. 2001). We therefore must reach the question of whether the Rider is constitutional. Because this question is purely legal, our review is de novo. See United States v. Pompey, 264 F.3d 1176, 1179 (10th Cir. 2001).

BCA's chief argument is that the Rider trenches on the Executive by giving the Forest Service marching orders so detailed that

they go beyond merely ''passing new legislation'' to interpreting the law, which is ''the very essence of 'execution' of the law.'' Bowsher v. Synar, 478 U.S. 714, 733, 92 L. Ed. 2d 583, 106 S. Ct. 3181 (1986). However, they never clearly explain what, in their view, separates permissible legislation from impermissible interpretation. The main flaw they find in the Rider is its extreme particularity, making it seem as if their theory is that extreme particularity by itself infringes the Executive's power to enforce and execute the law. At times, though, they make a more limited claim: that while specificity is not per se unconstitutional, at least in this case it is ''indicative'' of the fact that Congress has unconstitutionally ''directed how law is to be implemented,'' rather than (constitutionally) changing the applicable law. Appellants' Reply Br. 5. This more limited claim suggests that it is particularity in combination with some other feature that raises the constitutional problem. We consider each theory in turn.

BCA bases its argument on a handful of cases in which the Supreme Court has held that the legislative branch cannot play a role in the interpretation and execution of the law. See, e.g., Metro. Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc., 501 U.S. 252, 271–72, 115 L. Ed. 2d 236, 111 S. Ct. 2298 (1991); Bowsher, 478 U.S. at 725–26; INS v. Chadha, 462 U.S. 919, 951–52, 77 L. Ed. 2d 317, 103 S. Ct. 2764 (1983); Springer v. Philippine Islands, 277 U.S. 189, 201–02, 72 L. Ed. 845, 48 S. Ct. 480 (1928). There is no basis, however, for BCA's assertion that the sheer specificity of the 706 Rider takes it beyond the realm of Congress's legislative powers. Certainly the cases cited above do not support this position. In each of those cases, Congress sought a role for itself in the execution of the laws, beyond enactment of legislation, through mechanisms such as a one-house legislative veto or the vesting of law-executing powers in officers appointed by, or accountable to, Congress. In Bowsher, the Court held that the Comptroller General, who serves at the pleasure of Congress, could not be the officer who determined what spending cuts would be made in order to reduce the deficit under the Gramm-Rudman-Hollings Act of 1985. 478 U.S. at 717–18, 736. Springer held that it violated separation of powers for members of the legislative branch to be directors of government-owned businesses. 277 U.S. at 202–03. Similarly, Metropolitan Washington Airports struck down an arrangement whereby a board of review composed of members of Congress had authority to veto key acts of the Metropolitan Washington Airport Authority. 501 U.S. at 275–77. Chadha struck down a law that delegated authority to the Attorney General to suspend certain deportations, but allowed either house of Congress acting alone to veto the Attorney General's decisions. 462 U.S. at 923, 944–59. None of these cases, or any others of which we are aware, suggest that Congress is required to speak with some minimum degree of generality, so as to leave play for the Executive to exercise discretion in interpreting the law. Rather, the Constitution expressly leaves it up to Congress to determine how specific it may deem it ''necessary and proper'' for the laws to be. U.S. Const. art. I, §8, cl. 18. The cases cited above have simply forbidden Congress, or its members or servants, from exerting legal authority without observing the formalities for the passage of legislation under the Constitution: ''bicameral passage followed by presentment to the President.'' Bowsher, 478 U.S. at 726 (quoting Chadha, 462 U.S. at 954–55). This is a structural and institutional means of guaranteeing that Congress stays within the bounds of legislating, and is far superior to asking courts to police the shades of gray between the poles of general and specific.

To be sure, the Constitution imposes certain specific constraints on the power of Congress to legislate with overmuch particularity. The Bill of Attainder Clause, U.S. Const. art. I, §9, cl. 3, and the ''uniform Duties, Imposts, and Excises'' Clause, id., are examples. See §8, cl. 1 Nixon v. Adm'r of Gen. Servs., 433 U.S. 425, 468–73, 53 L. Ed. 2d 867, 97 S. Ct. 2777 (1977); United States v. Ptasynski, 462 U.S. 74, 80–85, 76 L. Ed. 2d 427, 103 S. Ct. 2239 (1983). Due process and equal protection principles similarly prevent Congress from acting with respect to specific persons or groups in some contexts, and specificity may be relevant to determining whether Congress has trenched on the Executive's ability to carry out its specifically enumerated executive powers. Nixon, 433 U.S. at 443. But when Congress is exercising its own powers with respect to matters of public right, the executive role of ''taking Care that the Laws be faithfully executed,'' U.S. Const. art. II, §3, is entirely derivative of the laws passed by Congress, and Congress may be as specific in its instructions to the Executive as it wishes. Indeed, as the Supreme Court has noted, Congress may even pass legislation governing ''a legitimate class of one.'' Nixon, 433 U.S. at 472.

In the instant case, none of the Constitution's explicit restrictions on specificity apply. The Property Clause states that ''Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.'' U.S. Const. art. IV, §3, cl. 2. The Supreme Court has ''repeatedly observed that the power over the public land thus entrusted to Congress is without limitations.'' Kleppe v. New Mexico, 426 U.S. 529, 539, 49 L. Ed. 2d 34, 96 S. Ct. 2285 (1976) (internal brackets and quotation marks omitted); see also Wyoming v. United States, 279 F.3d 1214, 1227 (10th Cir. 2002). It would be difficult if not impossible to control the use of federal lands without reference to specific actions affecting specific tracts of land, and we see no reason why Congress should be forced to avoid such directives. See Save Our Mall, 269 F.3d at 1097 (noting that particularity is especially unproblematic when addressing unique public amenities). The Supreme Court's remark in Metropolitan Washington Airports seems relevant here:

''Because National and Dulles are the property of the Federal Government and their operations directly affect interstate commerce, there is no doubt concerning the ultimate power of Congress to enact legislation defining the policies that govern those operations. *Congress itself can formulate the details,* or it can enact general standards and assign to the Executive Branch the responsibility for making necessary managerial decisions in conformance with those standards.'' 501 U.S. at 271–72 (emphasis added).

Thus, BCA is mistaken when it argues that Congress has arrogated power to itself at the expense of the executive branch because it ''specifically ordered the Executive Branch to carry out a duty which had been expressly delegated to the Department of Agriculture, the management of the Black Hills National Forest.'' Appellants' Br. 23. To give specific orders by duly enacted legislation in an area where Congress has previously delegated managerial authority is not an unconstitutional encroachment on the prerogatives of the Executive; it is merely to reclaim the formerly delegated authority. Such delegations, which are accomplished by statute, are always revocable in like manner; they cannot extend the domain reserved by the Constitution to the Executive alone. See Stop H–3 Ass'n v. Dole, 870 F.2d 1419, 1435 n.24 (9th Cir. 1989).

We now turn to consider the view that although the 706 Rider's specificity is unobjectionable in the abstract, it is still unconstitutional because it attempts to mandate specific results without changing the underlying environmental laws. BCA relies for this view chiefly on Robertson v. Seattle Audubon Society, where the Supreme Court upheld a similar provision because it ''compelled changes in law, not findings or results under old law.'' 503 U.S. 429, 438, 118 L. Ed. 2d 73, 112 S. Ct. 1407 (1992); see also Apache Survival Coalition v. United States, 21 F.3d 895, 904 (9th Cir. 1994); Stop H–3 Ass'n, 870 F.2d at 1434 (upholding a statute authorizing construction of a highway despite an environmental regulation because it ''does not interpret [the relevant regulation's] requirements but rather exempts H–3 from them''); Armuchee Alliance v. King, 922 F. Supp. 1541, 1550 (N.D. Ga. 1996).

Far from supporting BCA's position, however, Seattle Audubon rejects an argument very much like its own. The case concerned logging litigation to which Congress responded by passing the Northwest Timber Compromise of 1990, applicable only to timber sales entered before September 30, 1990, in thirteen national forests in the Pacific Northwest. The key section of that legislation stated that ''Congress determines and directs that management of areas according to [new rules set forth in the Northwest Timber Compromise] . . . meets the statutory requirements that are the basis for [the litigation].'' 503 U.S. at 434–35. The Ninth Circuit, below, had held that this did not ''establish new law, but directed the court to reach a specific result and make certain factual findings under existing law in connection with two cases pending in federal court,'' thus encroaching on the judicial branch under United States v. Klein, 80 U.S. (13 Wall.) 128, 20 L. Ed. 519, 7 Ct. C1. 240 (1872). Seattle Audubon Soc'y v. Robertson, 914 F.2d 1311, 1316 (9th Cir. 1990) (Seattle Audubon 1). In reversing, the Supreme Court criticized the Ninth Circuit's focus on the form of the enactment; instead, it looked to the legal effect of the Seattle Audubon provision:

''We conclude that subsection (b)(6)(A) compelled changes in law, not findings or results under old law. Before subsection (b)(6)(A) was enacted, the original claims would fail only if the challenged harvesting violated none of five old provisions. Under subsection (b)(6) (A), by contrast, those same claims would fail if the harvesting violated neither of two new provisions. Its operation, we think, modified the old provisions.'' Seattle Audubon, 503 U.S. at 438.

This case follows a fortiori from Seattle Audubon. Just as in Seattle Audubon, the 706 Rider has the practical effect of changing the scope of the government's legal duties. Before the Rider, the Forest Service was prohibited by law from cutting trees without meeting various requirements of various environmental laws; after the Rider, it is required to cut trees in the Black Hills ''notwithstanding'' those laws. Rider 706(j), 116 Stat. at 868. But the 706 Rider lacks the problematic language—''the Congress determines and directs that management of areas according to [new rules set forth in the Northwest Timber Compromise] . . . meets the statutory requirements that are the basis for [the litigation]''—which the Ninth Circuit construed as interpreting rather than amending the law. Seattle Audubon I, 914 F.2d at 1316. By contrast, the 706 Rider orders that certain actions be taken ''notwithstanding'' the requirements of certain prior-enacted laws, thus effectively replacing the old standards, in this one case, with new ones. Similar statutes have been upheld as constitutionally valid amendments of the underlying law. See Save Our Mall, 269 F.3d at 1097; Apache Survival Coalition, 21 F.3d at 904; Stop H–3 Assn, 870 F.2d at 1434. Thus, we

need not decide whether directing specific actions without changing the law would be an unconstitutional attempt by Congress to usurp the Executive's role in interpreting the law. In accordance with the counsel in Bowsher, Congress has influenced the execution of the law here only ''indirectly—by passing new legislation.'' 478 U.S. at 734 (citing Chadha, 462 U.S. at 958).

Next, BCA claims that the 706 Rider encroaches on the Judiciary, in three ways: (1) by disturbing final dispositions of cases in violation of Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 131 L. Ed. 2d 328, 115 S. Ct. 1447 (1995); (2) by prescribing rules of decision to the Judiciary in pending cases, in violation of United States v. Klein, 80 U.S. (13 Wall.) 128, 20 L. Ed. 519, 7 Ct. C1. 240 (1871); and (3) by vesting review of judicial decisions in the executive branch, in violation of the rule in Hayburn's Case, 2 U.S. (2 Dall.) 409, 1 L. Ed 436 (1792). We reject all three claims.

BCA's first contention, that the 706 Rider impermissibly sets aside a final judicial disposition, depends on a crucial but questionable premise: that the settlement agreement is actually a judicial disposition rather than a mere private agreement between the parties. Although the district court did incorporate the settlement agreement by reference in its order dismissing the suit, it nevertheless preferred the latter characterization in addressing BCA's current request for injunctive relief:

''This case doesn't even rise to the level where the Court executed a consent decree. This is a case where the parties sat down among themselves and settled the case. The more proper analogy here is to an executory settlement contract. It is true that the Court approved the settlement agreement, but that is different from a consent decree.

. . .

. . . As far as I'm concerned, the Court's approval of the settlement agreement is entitled to very, very little weight, because it was negotiated among the parties.''

Tr. of Mot. Hr'g dated Dec. 26, 2002, at 12, App. 405. Nevertheless, because the settlement agreement was a judicial disposition in form if not in substance, we assume for purposes of this appeal that it is entitled to the same constitutional protection that it would have if the court had decided its terms.

Within the scope of its enumerated powers, Congress has authority to enact laws to govern matters of public right, such as the management of the public lands, and authority to change those laws. Even when the Judiciary has issued a legal judgment enforcing a congressional act—for example, by a writ of injunction—it is no violation of the judicial power for Congress to change the terms of the underlying substantive law. The purpose of an injunction is to define and enforce legal obligations, not to freeze them into place. Thus, when Congress changes the laws, it is those amended laws—not the terms of past injunctions—that must be given prospective legal effect. See, e.g., Miller v. French, 530 U.S. 327, 347–50, 147 L. Ed. 2d 326, 120 S. Ct. 2246 (2000); Hall v. Beals, 396 U.S. 45, 48, 24 L. Ed. 2d 214, 90 S. Ct. 200 (1969); System Fed'n No. 91 v. Wright, 364 U.S. 642, 648–650, 5 L. Ed. 2d 349, 81 S. Ct. 368 (1961); Am. Steel Foundries v. Tri-City Cent. Trades Council, 257 U.S. 184, 201–07, 66 L. Ed. 189, 42 S. Ct. 72 (1921).

The Supreme Court applied this principle to dispose of a contention very similar to BCA's as long ago as 1855, in the venerable case of Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421, 15 L. Ed. 435 (1855). In that case, Pennsylvania had previously brought suit to enjoin the construction of a bridge over the Ohio River, which would obstruct access to Pennsylvania's ports. The Supreme Court eventually granted an injunction requiring the bridge to be removed or raised. It reasoned that because Congress had ''regulated the navigation of the Ohio River, and had thereby secured to the public, by virtue of its authority, the free and unobstructed use of the same,'' the Virginia-authorized bridge impeding travel on the Ohio River was ''in conflict with the acts of congress, which were the paramount law.'' 59 U. S. (18 How.) at 430 (summarizing the earlier opinion).

Thereafter, Congress passed a new law authorizing the construction of the bridge and stating that the bridge and one other were ''lawful structures in their present positions and elevations.'' Wheeling Bridge, 59 U.S. (18 How.) at 429. Pennsylvania sued again, claiming that the intervening enactment was an unconstitutional attempt to overturn a final decision of the Judiciary. The Supreme Court disagreed:

''If the remedy in this case had been an action at law, and a judgment rendered in favor of the plaintiff for damages, the right to these would have passed beyond the reach of the power of congress. It would have depended, not upon the public right of the free navigation of the river, but upon the judgment of the court. . . . But that part of the decree, directing the abatement of the obstruction, is executory, a continuing decree, which requires not only the removal of the bridge, but enjoins the defendants against any reconstruction or continuance. Now, whether it is a future existing or continuing obstruction depends upon the question whether or not it interferes with the right of navigation. If, in the meantime, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced. There is no longer any interference with the enjoyment of the public right inconsistent with the law, no more than there would be where the plaintiff himself had consented to it, after the rendition of the decree.''

Id. at 431–32. Central to the Court's analysis was the fact that the right to unobstructed waterways was a ''public right . . . under the regulation of congress.'' Id. at 431. In other words, the plaintiff had no vested property right in an unobstructed waterway. The core violation was against Congress's right to control the waterways, and Pennsylvania's right to an unobstructed waterway was only the derivative right to enjoy whatever degree of navigation Congress saw fit to allow. So long as the will of Congress was to leave the river unimpeded, any impediment was a violation of the public right thus defined. But once Congress changed its mind, the contours of that right changed, and there was no more ground for injunctive relief. If a landowner grants her neighbor a revocable license to use a private road across her property, the neighbor could conceivably obtain an injunction against any third party who prevents him from using that road. However, that does not affect the right of the landowner to revoke the license at any time. Should the license be revoked, the neighbor's right to use the private road ceases, and enforcing the injunction is no longer appropriate.

Wheeling Bridge has remained a fixed star in the Supreme Court's separation-of-powers jurisprudence, and numerous subsequent cases have relied on it. See, e.g., The Clinton Bridge, 77 U.S. 454, 463, 19 L. Ed. 969 (1870) (concluding, on the basis of Wheeling Bridge, that in public rights cases, Congress could not only modify injunctive relief already granted, but also could ''give the rule of decision'' in pending cases); Hodges v. Snyder, 261 U.S. 600, 603, 67 L. Ed. 819, 43 S. Ct. 435 (1923) (noting that the normal rule against disturbing final judgments ''does not apply to a suit brought for the enforcement of a public right, which, even after it has been established by the judgment of the court, may be annulled by subsequent legislation and should not be thereafter enforced''); Sys. Fed'n No. 91, 364 U.S. at 648–650 (holding that it is an abuse of discretion for a district court not to modify an injunction to reflect changes in underlying law); Miller v. French, 530 U.S. at 347–48.

Even Plaut v. Spendthrift Farms, Inc., the principal case on which BCA relies, is careful not to disturb the holding of Wheeling Bridge. There the Supreme Court had previously imputed a uniform nationwide statute of limitations on actions brought under §10(b) of the Securities Exchange Act of 1934, Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 501 U.S. 350, 115 L. Ed. 2d 321, 111 S. Ct. 2773 (1991), and held that the newly established statute of limitations applied to all pending cases in the federal courts. James B. Beam Distilling Co. v. Georgia, 501 U. S. 529, 115 L. Ed. 2d 481, 111 S. Ct. 2439 (1991). Six months later, Congress passed a law changing the statute of limitations for those cases commenced before Lampf to what it would have been had the Supreme Court not imposed a uniform nationwide limitations period, and reinstating all actions dismissed as time-barred if they would have been timely under the limitations period of their local jurisdiction. See Federal Deposit Insurance Corporation Act of 1991, Pub. L. No. 102–242, sec. 476, §27A, 105 Stat. 2236 (codified at 15 U.S.C. §78aa–1 (1988 Supp. V)). The Supreme Court held that this action violated the separation of powers by requiring federal courts to reopen final judgments. Plaut, 514 U.S. at 240. It reasoned that once the judicial branch has given its final word on a case, to allow Congress to reopen the case by legislation would destroy the power of the Judiciary to render final judgments. Id. at 219. Instead, Congress would be in effect a court of last resort to which one could appeal any ''final'' decision of the Judiciary.

In rejecting such an outcome, the Court in Plaut did no more than follow the dicta of Wheeling Bridge itself:

''But it is urged, that the act of congress cannot have the effect and operation to annul the judgment of the court already rendered, or the rights determined thereby in favor of the plaintiff. This, as a general proposition, is certainly not to be denied, especially as it respects adjudication upon the private rights of the parties. When they have passed into judgment the right becomes absolute, and it is the duty of the court to enforce it.

. . .

Now, we agree, if the remedy in this case had been an action at law, and a judgment rendered in favor of the Plaintiff for damages, the right to these would have passed beyond the reach of the power of congress.'' Wheeling Bridge, 59 U.S. (18 How.) at 431 (emphasis added), quoted in Plaut, 514 U.S. at 226. As Plaut itself insists, it does not call the holding of Wheeling Bridge into question at all. 514 U.S. at 232. The disturbed court decision in Plaut definitively resolved a private claim to a certain amount of money, leaving the defendants with an unconditional right to the sum in question; the judgments in this case and in Wheeling Bridge merely prohibited future interference with the enjoyment of a public right that remained revocable at Congress's pleasure. The Supreme Court has since reaffirmed the continued vitality of Wheeling Bridge in Miller v. French. In that case, the Prison Litigation Reform Act had set new limits on the power of courts to give injunctive relief to prisoners, requiring (among other things) that

any injunctive relief granted be both narrowly drawn to correct the violation of federal rights and also the least intrusive means of correcting the violation. 18 U.S.C. 3626(a)(1)(A). The provision at issue in Miller directed that an action to modify or terminate injunctive relief pursuant to the PLRA would act as an automatic stay of any existing injunctive relief if a court did not find that the injunctive relief remained appropriate under the new standards within 30 days. Id. 3626(b)(2).

In upholding the PLRA's automatic stay, the Supreme Court found Wheeling Bridge controlling, distinguishing Plaut because in that case Congress had disturbed final judgments in actions for money damages. Miller, 530 U.S. at 344–45. The Court held that when courts grant prospective injunctive relief, they remain obligated to modify that relief to the extent that ''subsequent changes in the law'' render it illegal. Id. at 347.

This case falls squarely within the principle of Wheeling Bridge. BCA's members' rights with respect to the national forests is a ''public right . . . under the regulation of congress,'' Wheeling Bridge, 59 U.S. (18 How.) at 431, in exactly the same way that the right to unimpeded navigation of the Ohio River was. Both rights are entirely contingent on Congress's continuing will that the federal lands or interstate waterways be managed in a particular way. The settlement agreement in the Veteran/Boulder matter in no way touched on vested private rights. To be sure, the private interests of BCA's members are sufficiently affected to give rise to standing, but the interest they represented in their lawsuit was nothing other than the interest of the public in seeing that Congress's environmental directives are observed by the Forest Service.

BCA's attempts to distinguish Miller and Wheeling Bridge are unavailing. It argues, first, that in those cases, Congress simply changed the law, leaving it for the courts to decide whether to modify their injunctions, whereas here Congress is directly requiring the courts to modify the settlement agreement. We see no such distinction. In those cases, as here, Congress enacted rules in direct conflict with existing legal obligations. In those cases, as here, courts later had to decide whether those previous legal obligations remained enforceable in light of Congress's act.

Second, BCA argues that the 706 Rider specifically refers to a particular settlement agreement it means to supercede, whereas the PLRA provision in Miller ''did not speak directly to any pre-existing judicial ruling or issuance of relief.'' Appellants' Br. 27. The same was true in Wheeling Bridge. There, legislation was targeted at two named bridges, one of which was the subject of the injunction in the case. See 59 U.S. (18 How.) at 429. It is true that in Seattle Audubon, the Court declined to address the question of whether such targeting raised a constitutional problem. 503 U.S. at 441. However, its silence ended four years later in Plaut. There, a concurrence found a constitutional violation precisely because the reopening of dismissed cases ''applied only to a few individual instances.'' 514 U.S. at 243 (Breyer, J., concurring). A majority of the Court rejected that position, describing it as ''wrong in law.'' Id. at 238. The majority concluded that the infringement of the judicial power consisted ''not of the Legislature's acting in a particularized and thus (according to the concurrence) nonlegislative fashion; but rather of the Legislature's nullifying prior, authoritative judicial action. It makes no difference whatever to that separation-of-powers violation that it is in gross rather than particularized.'' Id. at 239 (emphasis in original; footnote omitted); see also id. at 239 n.9 (''While legislatures usually act through laws of general applicability, that is by no means their only legitimate mode of operation.'').

To avoid constant interbranch friction, the lines separating the branches should be clear. As the Supreme Court noted in Plaut, and as BCA's arguments illustrate, it only ''prolongs doubt and multiplies confrontation'' to make the constitutional analysis hinge on the murky distinction between generalized lawmaking and particularized application of the law. 514 U.S. at 240.

It is true that the injunction BCA seeks to enforce differs from the one in Wheeling Bridge in that it is the product of a settlement agreement rather than a product of a judicial declaration of right. Thus, Appellants' claimed right to keep Beaver Park unmolested might be said to rest directly on the terms of their contractual agreement, and only indirectly on public rights provided by the environmental laws. We must therefore consider whether the settlement agreement has interposed a new set of contractual rights that adequately support keeping the injunction in place, making changes to the scope of the underlying public right irrelevant.

A negative answer to that question has been clear since at least 1961, when the Supreme Court decided System Federation No. 91 v. Wright, 364 U.S. 642, 648–650, 5 L. Ed. 2d 349, 81 S. Ct. 368 (1961). In that case, several nonunion railway employees brought a class action against the railroad and various unions for discrimination against them and other nonunion workers. The district court eventually entered a consent decree enjoining the defendants ''from discriminating against the plaintiffs and the classes represented by them in this action by reason of or on account of the refusal of said employees to join or retain their membership in any of defendant labor organizations, or any labor organization.'' System Fed'n No. 91, 364 U.S. at 644. At the time, labor law did not allow collective bargaining agreements to require union shops. 364 U.S. at 645–46.

Later, when the applicable law had changed to allow such contracts, the unions sought modification of the decree to make it clear that it would not prevent them from bargaining for a union shop. Id. The district court refused to modify the injunction; since nothing in the amended law made it illegal for parties to agree not to have a union shop, the court concluded that the parties were stuck with their agreement. Id.

The Sixth Circuit affirmed, but the Supreme Court reversed, holding that the district court's refusal to modify the decree was an abuse of discretion. 364 U.S. at 646, 650–53. The Court reasoned that, under Wheeling Bridge, the district court would have had to modify the decree if it had been the result of litigation instead of consent. 364 U.S. at 650–51. It then concluded that the same principles applied to consent decrees:

''The result is all one whether the decree has been entered after litigation or by consent. . . . In either event, a court does not abdicate its power to revoke or modify its mandate, if satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong. We reject the argument . . . that a decree entered upon consent is to be treated as a contract and not as a judicial act. . . .'' 364 U.S. at 650–51 (quoting United States v. Swift & Co., 286 U.S. 106, 114–15, 76 L. Ed. 999, 52 S. Ct. 460 (1932) (Cardozo, J.)) (some ellipses in original). The Court's reasons are also applicable here:

''The parties cannot, by giving each other consideration, purchase from a court of equity a continuing injunction. In a case like this the District Court's authority to adopt a consent decree comes only from the statute which the decree is intended to enforce. Frequently of course the terms arrived at by the parties are accepted without change by the adopting court. But just as the adopting court is free to reject agreed-upon terms as not in furtherance of statutory objectives, so must it be free to modify the terms of a consent decree when a change in law brings those terms in conflict with statutory objectives. In short, it was the Railway Labor Act, and only incidentally the parties, that the District Court served in entering the consent decree now before us. The court must be free to continue to further the objectives of that Act when its provisions are amended. The parties have no power to require of the court continuing enforcement of rights the statute no longer gives.''
364 U.S. at 651. Put briefly, a settlement agreement or consent decree designed to enforce statutory directives is not merely a private contract. It implicates the courts, and it is the statute—and ''only incidentally the parties''—to which the courts owe their allegiance. The primary function of a settlement agreement or consent decree, like that of a litigated judgment, is to enforce the congressional will as reflected in the statute. The court should modify or refuse to enforce a settlement agreement or proposed decree unless it is ''in furtherance of statutory objectives.'' The agreement or consent decree is contractual only to the extent that it represents an agreement by the parties regarding the most efficient means of effectuating their rights under the statute. It does not freeze the provisions of the statute into place. If the statute changes, the parties' rights change, and enforcement of their agreement must also change. Any other conclusion would allow the parties, by exchange of consideration, to bind not only themselves but Congress and the courts as well.

This principle applies even more clearly here than it did in System Federation itself. There, the original injunction was not inconsistent with the new law; it merely ruled out an option that Congress had since made permissible but not mandatory. If that injunction had to change, then a fortiori the injunction at issue here, which is inconsistent with the 706 Rider, must give way.

Having disposed of the claim that the 706 Rider disturbs the district court's final judgment in violation of Plaut, we turn to BCA's somewhat inconsistent claim that the Rider violates United States v. Klein because it dictates ''rules of decision'' to the district court in a pending case.

Klein involved one episode in a series of conflicts between the Reconstruction Congress and the balking President Andrew Johnson. Various presidential proclamations had offered a ''full pardon, with restoration of all rights of property,'' to certain broad classes, conditioned on taking an oath of loyalty. Klein, 80 U.S. (13 Wall.) at 139–40. In the Abandoned and Captured Property Act, 12 Stat. 820 (Mar. 12, 1863), however, Congress provided that the owner of seized property could sue in the Court of Claims to recover its proceeds only on proof that the owner ''had never given aid or comfort to the rebellion.'' 80 U.S. at 138–39. In United States v. Padelford, 76 U.S. (9 Wall.) 531, 542–43, 19 L. Ed. 788, 7 Ct. C1. 144 (1869) (mem.), the Supreme Court held that a presidential pardon renders the pardoned ''as innocent as if he had never committed the offense,'' and concluded that proof of pardon was equivalent to proof that the claimant had not aided the rebellion. Congress responded to Padelford by passing an appropriations proviso directing the Court of Claims to take the fact of a pardon, with some narrow exceptions, as conclusive proof that the claimant had ''given aid or comfort to the rebellion,'' and

as grounds for dismissing the claimant's suit. Klein, 80 U.S. (13 Wall.) at 142–43. The proviso also removed the Supreme Court's authority to hear appeals of such suits. 80 U.S. at 144–45. In Klein, the administrator of the estate of V.F. Wilson, who had taken the oath and qualified for the pardon, sued to recover the proceeds of Wilson's seized property. Id. at 136, 143. The Supreme Court found the proviso to be unconstitutional, both because it attempted to impair the effect of a presidential pardon and because it ''prescribed rules of decision to the Judicial Department of the government in cases pending before it.'' Id. at 146.

Klein is a notoriously difficult decision to interpret. Read broadly, the ''rules of decision'' language of Klein would seem to contradict the well-established principle that courts must decide cases according to statutes enacted by Congress. See United States v. Schooner Peggy, 5 U.S. (1 Cranch) 103, 109, 2 L. Ed. 49 (1801); Miller, 530 U.S. at 344, 346–47.

In any event, the 706 Rider is very different from the unusual legislation found unconstitutional in Klein. Central to the Court's analysis in Klein was its conclusion that the government's seizure of the private property at issue did not divest its owner of his property rights. See Klein, 80 U.S. (13 Wall.) at 136–39. Thus, the basis of the Klein suit (at least in the eyes of the Klein court) was a private right to property vindicated by a presidential pardon, which Congress was therefore powerless to extinguish. See 80 U.S. at 148. Since Congress could not manipulate these private rights, Klein merely refused to allow Congress to accomplish indirectly (by manipulating the judiciary's interpretation of those private rights) what it could not accomplish directly.

Thus understood, Klein is precisely in accord with Wheeling Bridge, as Klein itself observes. See 80 U.S. (13 Wall.) at 146–47. When Congress does not control the substance of a right, there are limits to its ability to influence the judiciary's determination of that right, either by directing the judiciary to decide a particular way, or by setting aside judicial determinations after the fact. But when rights are the creatures of Congress, as they were in Wheeling Bridge, Congress is free to modify them at will, even though its action may dictate results in pending cases and terminate prospective relief in concluded ones. Thus, Klein's prohibition on prescribing rules of decision in pending cases has no application to public rights cases like this one.

The Supreme Court explicitly made this point in The Clinton Bridge, a case decided only one year before Klein. That case addressed facts almost identical to those in Wheeling Bridge. The only difference was that Congress passed legislation authorizing the bridge in question while the suit over its legality was still pending, not after the injunction issued. See 77 U.S. (10 Wall.) at 462–63. The Court noted that, in so doing, Congress ''gave the rule of decision for the court'' in the pending case. 77 U.S. at 463. While it found that to be unobjectionable under Wheeling Bridge, it warned that ''very different considerations would have arisen'' if Congress had attempted to dictate the rule of decision in a case concerning a ''private right of action.'' Id. Klein must be read as the fulfillment of that narrow warning, not the enunciation of any broader principle.

Furthermore, the Supreme Court has made it clear that Klein does not apply to cases like this one: ''Whatever the precise scope of Klein, . . . its prohibition does not take hold when Congress amends applicable law.'' Plaut, 514 U.S. at 218, quoted in Miller, 530 U.S. at 349 (internal quotation marks and brackets omitted). Because, as we explained in Part II of this opinion, the 706 Rider did ''amend[] applicable law,'' the Klein principle does not apply here.

Last, BCA claims that the 706 Rider violates the rule in Hayburn's Case. Hayburn's Case has come to stand ''for the principle that Congress cannot vest review of the decisions of Article III courts in officials of the Executive Branch.'' Plaut, 514 U.S. at 218. BCA admits that the 706 Rider does not literally authorize Forest Service officials to review judicial determinations. Nevertheless, it maintains that the 706 Rider orders the Executive to ignore and violate judicial orders, and that this is close enough to make out a claim under Hayburn's Case. We disagree. As discussed above, it is well-established that new law can modify old injunctive decrees. Whenever that happens, the new law at least implicitly orders the Executive to ignore the old decrees.

BCA maintains that in such circumstances, Congress's act cannot constitutionally modify an injunction directly. Instead, it claims, any modification must be made by the court itself (though the court may be obliged to do it), and until the court does so, the injunction remains in force. Thus, because the 706 Rider directs the Forest Service to proceed with its tree-cutting activities regardless of whether the court modifies the settlement agreement, it unconstitutionally directs the Executive to ignore an injunction in force. But this is not the lesson of our cases. Wheeling Bridge held, not merely that Congress's legislation made modification of the injunction necessary, but that it rendered the injunction unenforceable. 59 U.S. (18 How.) at 432; Miller, 530 U.S. at 346. Similarly, the provision upheld in Miller v. French went beyond ordering judges to stay prospective relief after 30 days; instead, it stated that a motion to terminate injunctive relief ''shall operate as a stay'' of that relief beginning 30 days after the motion—thus staying the injunctive relief without any action by the court. Miller, 530 U.S. at 331. When Congress is acting within the boundaries set by Wheeling Bridge and Miller, the parties to a modified injunction need not wait upon the court to ratify the congressional change. Thus, we see no violation of Hayburn's Case or any other constitutional principle here.

Viewed realistically, the 706 Rider intrudes on neither executive nor judicial authority. The Rider comports with the current view of executive branch officials regarding management of the national forest. And while the Rider overrides a settlement agreement entered by the district court, that agreement was in fact a private agreement between the parties, in which the Judiciary had little or no independent involvement. To overturn the Rider would thus serve not to vindicate the constitutionally entrusted prerogatives of those two branches, but rather to keep in place a private group's own preferences about forest preservation policy in the face of contrary judgments by the Executive and Congress. True principles of separation of powers prevent settlement agreements negotiated by private parties and officials of the executive branch from encroaching either on the constitutionally vested authority of Congress or on the statutorily vested authority of those officials' successors in office. BCA's claim amounts to the argument that an agreement forged by a private group with a former administration, without serious judicial involvement, can strip both Congress and the Executive of their discretionary powers. The Constitution neither compels nor permits such a result.

The executive branch does not have authority to contract away the enumerated constitutional powers of Congress or its own successors, and certainly neither does a private group. Accordingly, the governance of the Black Hills National Forest must be conducted according to the new rules set by Congress, as Article IV of the Constitution provides.

For the foregoing reasons, the district court's denial of BCA's motion is affirmed.

The Hostettler bill truly is a revolutionary assault on our Bill of Rights. If Congress, for the first time in our history, is able to prevent citizens from having their rights under the constitution heard in federal court, then the Bill of Rights will be little more than a puff of smoke.

Whatever you think of this legislation, or the Defense of Marriage Act, Sen. Daschle's amendment is no precedent. The Hostettler bill is truly unprecedented. For further information, please visit the Committee website: (http://www.house.gov/judiciary-democrats/marriageprotectioninfo.html).

Sincerely,

JOHN CONYERS, JR.,
Ranking Member, Committee on the Judiciary.
JERROLD NADLER,
Ranking Member, Subcommittee on the Constitution.

Mr. NADLER. Mr. Speaker, I place into the RECORD a memo from the Congressional Research Service that says that Congress has never passed any legislation that denies to the Federal courts the jurisdiction to adjudicate the constitutionality of an act of Congress.

CONGRESSIONAL RESEARCH SERVICE
MEMORANDUM

To: House Committee on the Judiciary, Attention: Perry Apelbaum.
From: Johnny H. Killian, Senior Specialist, American Constitutional Law, American Law Division.
Subject: Precedent for Congressional Bill.

This memorandum is in response to your query, respecting H.R. 3313, now pending before the House of Representatives, as to whether there is any precedent for enacted legislation that would deny judicial review in any federal court of the constitutionality of a law that Congress has enacted, whether a law containing the jurisdictional provision or an earlier, separate law. We are not aware of any precedent for a law that would deny the inferior federal courts original jurisdiction or the Supreme Court of appellate jurisdiction to review the constitutionality of a law of Congress.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. It is my intention, Mr. Speaker, to elaborate on the point that was just made.

I have been listening to the debate. I have not heard my colleagues here say that this is unconstitutional. The point is the legislation the gentleman cited, the World War II Memorial, the timber legislation, exempted from judicial review under the terms of the specific act. As in Campaign Finance Reform it did not preclude challenges against the constitutionality of the legislation in question. That is legitimate use of congressional legislative authority.

What you are doing is not adjusting an act. You are saying we are not going to be able to deal with whether or not the laws in question are constitutional. That has never happened before.

I heard the gentleman from Nebraska (Mr. OSBORNE) here a couple of moments ago talk about his lifetime of working with young people. I just left 50 young volunteers who are working in Washington, D.C. neighborhoods. As we were leaving, one of the young women said she woke up this morning listening to what we were going to be debating here today. It made no sense to her and asked, is there any argument that this is being done other than pure political motivation?

This was, I thought, a very perceptive young woman. Her question, I think, answered itself, and I hope we are not to be guilty of undermining these young people's confidence in our activities.

Mr. NADLER. Mr. Speaker, I yield 45 seconds to the distinguished gentleman from New York (Mr. ENGEL).

Mr. ENGEL. Mr. Speaker, I thank the gentleman for yielding me time.

I rise in opposition to this sham. What a shame it is when we have 41 million Americans without health insurance, more than 2 million jobs lost, an additional $2 trillion in debt, that the leadership of this Congress chooses to try again to divert attention to a divisive issue. Having failed to even muster 50 votes in the other body to place in the Constitution language setting one group of Americans aside as second class citizens, this leadership now turns its attention to a full assault on the Constitution itself.

If they cannot amend the Constitution, then attack the balance of power. I keep hearing that activist judges should not change State laws. Five activist judges denied all the voters of Florida the right to have their votes counted, but this bill is far more cynical.

The other side knows it will be thrown out by the Supreme Court. That means they can keep this issue alive for years and years.

Stop this assault. Vote no on H.R. 3313.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Texas (Mr. GREEN).

Mr. GREEN of Texas. Mr. Speaker, I rise in opposition to H.R. 3313.

While I believe the institution of marriage should consist of one man and one woman, and I voted for the 1996 Defense of Marriage Act, I cannot support this bill. The Defense of Marriage Act has to my knowledge not been challenged in the Federal court, and it seems like we are putting the cart before the horse. We should allow our system of checks and balances to work like our Founding Fathers designed it.

Whatever Massachusetts, Vermont and Hawaii does regarding their marriage license does not change how Texas law does marriages.

In Texas we already have a law that states the institution of marriage is one man, one woman. We also have a law that states that Texas does not have to recognize marriages that are performed outside the State of Texas. The Defense of Marriage Act supports our State law. Marriage is a State issue and not a Federal issue. We do not seek marriage licenses in the Federal courthouses.

What this bill is about is continued efforts of this administration and Republicans in Congress to divide our country when we really need unity.

Just today we heard that while our troops are fighting for our country, they are short $12 billion in funding, even with all the supplementals we voted for. Maybe this administration, the Republicans, need to spend more time explaining why our troops waited months for body armor and armor for their Humvees and we are still $12 billion short.

Let us spend time protecting our country and not worry about ''my'' 34 years of marriage. And once again, this administration has the wrong priorities.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Oregon (Mr. WU).

(Mr. WU asked and was given permission to revise and extend his remarks.)

Mr. WU. Mr. Speaker, I want to concede to my colleagues who argue for the constitutionality of the subject legislation that it is constitutional.

This Congress can strip the Supreme Court of much of its jurisdiction, can abolish all appellate courts, and can abolish all district courts, but just because we can do something does not mean that we should do it.

We have heard much about arrogant activist judges. What have arrogant activist judges done? In 1954 they revoked the reprehensible doctrine of separate but equal in Brown v. Board of Education. In 1964 they reestablished the principle of one-person/one-vote in Reynolds v. Sims. In 1967 they respected the sanctity of all marriages, even those across ethnic lines.

Because we can do something does not mean we should. Let us today not hang out the sign on the Federal courthouse door, ''Some Americans Need Not Apply.''

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Arizona (Mr. FRANKS).

Mr. FRANKS of Arizona. Mr. Speaker, I thank the chairman for yielding me time.

Daniel Webster said, Hold on, my friends, to the Constitution and to the Republic for which it stands, for miracles do not cluster. And what has happened once in 6,000 years may never happen again. So hold on to the Constitution, for if it should fall, there will be anarchy throughout the world.

Mr. Speaker, Daniel Webster is no longer with us, but if we could just realize that we will soon no longer be here either and if we do not uphold and defend the Constitution and the foundation of this republic and society itself, which is marriage and the family, generations will lose this beacon of freedom that we have.

Mr. NADLER. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Speaker, on a number of occasions during the 12 years that I have been in this body, I have risen on this floor to chide my colleagues from the Committee on the Judiciary and my colleagues in the House for the arrogant and irresponsible belief that we are somehow smarter than the Founding Fathers, for the belief that process in the system and the form of government that we operate in is less important than the result that we seek on a particular issue.

I think today is the ultimate irresponsible, extreme act in that direction. How arrogant and irresponsible is it to say to our American people that the United States Supreme Court will not have jurisdiction to decide the constitutionality of an issue?

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How extreme is that? It just blows my mind. I have trouble coming to grips with the notion that anybody could believe that this is responsible legislating, whether it is constitutional or not, that we would deprive the United States Supreme Court the authority to determine the constitutionality of an issue and disperse it to 50 different supreme courts of the States and not have one court that would be the ultimate arbiter of constitutionality. How arrogant and irresponsible can we be?

That is exactly what this legislation does today. It says to the American people that the Supreme Court of the United States no longer has the authority to determine constitutional issues. How arrogant, how irresponsible can we be?

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York (Mr. HOUGHTON).

(Mr. HOUGHTON asked and was given permission to revise and extend his remarks.)

Mr. HOUGHTON. Mr. Speaker, I am not going to support this bill. I do not believe it is right. I think court-stripping is wrong. I do not think it is sound; and frankly, I do not think it is going to work. How are we going to resolve the issue between States?

I used to be in business, and Congress could have passed a law in the 1950s when the civil rights issue was heating up that would have prohibited any challenges to the segregated businesses that existed all around me. There never would have been a civil rights law, never would have been a Brown v. Board of Education.

I voted for the Defense of Marriage Act. It defines marriage for a Federal purpose as a legal union between one man and one woman, and that is good enough for me.

Mr. NADLER. Mr. Speaker, I yield such time as she may consume to the distinguished gentlewoman from Wisconsin (Ms. BALDWIN) to close on our side.

(Ms. BALDWIN asked and was given permission to revise and extend her remarks.)

Ms. BALDWIN. Mr. Speaker, with this bill, we face no less than the specter of a sign posted on the Federal courthouse door which reads, ''You may not defend your constitutional rights in this court; you may not seek equal protection here; you may not petition your government for redress here.'' Today, the ''you'' is gay and lesbian American citizens, but who will be next?

Today, the House is considering legislation that were it to become law would do grave damage to our Republic.

I strongly oppose H.R. 3313 and urge all Members to vote against this legislation, and I urge the Members of the majority to reconsider this extreme and radical approach to addressing the issue of same-sex marriage and their concern about so-called judicial activism. Enacting court-stripping legislation would seriously undermine the faith of the American people in this Congress, in the courts, and in the principles of separation of powers.

When writing the Constitution, our Founders wisely decided that the best way to secure our freedoms and liberties was to establish three coequal branches of government: the Congress, the executive, the Supreme Court; and these three branches of government would have different, but overlapping, authorities to ensure that each branch is subject to the checks and balances. Not only will there be times that they will be in disagreement about a particular issue or law; the structure of the Constitution makes these conflicts inevitable.

It is a terrible mistake to strip one branch of government from its involvement in evaluating particular laws, and this is so particularly true when considering the courts whose constitutional and historic role has been to defend our liberties.

Once court-stripping, this door becomes open, where will it stop? Will this language be added to legislation on issues of abortion, guns, prayer, school choice, affirmative action? How about the USA PATRIOT Act? I suspect this is just the tip of the iceberg.

The late Senator Barry Goldwater, a stalwart conservative, said about previous court-stripping attempts in this Congress that it is a frontal assault on the independence of Federal courts and a dangerous blow to the foundations of a free society. I urge my colleagues to reject this unnecessary, unconstitutional and unwise legislation.

Mr. Speaker, today the House is considering legislation that, if it were to become law, would do grave damage to our Republic. I strongly oppose H.R. 3313 and urge all members to vote against this legislation. I urge the members in the majority to reconsider this extreme and radical approach to addressing the issue of same sex marriage and their concerns about so-called judicial activism. In fact, ''court stripping'' is a bad idea in any form. The consequences of enacting H.R. 3313 far exceed the stated objective of the majority and would seriously undermine the faith of the American people in this Congress, in the courts, in the principle of separation of powers, and in the notion of checks and balances.

When writing the Constitution, the founders wisely decided that the best way to secure our freedom and liberties was to establish 3 coequal branches of government—the Congress, the Executive and the Supreme Court. These 3 branches of government have different but overlapping authorities to ensure that each branch is subject to checks and balances. Not only will there be times that they will be in disagreement about a particular issue or law, the structure of the Constitution makes these conflicts inevitable.

In my home State of Wisconsin, our State university, the University of Wisconsin, dedicates itself to the proposition that through ''continual and fearless sifting and winnowing'' . . . ''the truth can be found.'' In the context of our laws, this sifting and winnowing occurs at many points in the process. In Congress, we hold hearings, markups, and floor votes and we offer amendments, we hold conference committees and we issue reports. The Executive proposes legislation, engages in public debate, signs and vetoes legislation. The Court then interprets, evaluates, settles disputes and invalidates laws based on bedrock principles enshrined in our Constitution. Yes, this process can be slow, frustrating, and messy at times. But, it is through the process, which includes the court, that we sift and winnow our laws to improve them and ensure they are fair and just for all Americans.

It is a terrible mistake to try to strip one branch of government from its involvement in evaluating particular laws. This is particularly true when considering the courts, whose constitutional and historic role is to defend our liberties.

Fortunately for our citizens, it is my belief that H.R. 3313 is unconstitutional and, if it ever becomes law, will ultimately be invalidated. However, we should defeat this bill today, no matter what.

Mr. Speaker, during the Judiciary subcommittee on the constitution's hearing on this issue on June 24, the majority and minority each invited legal scholars to address the questions: ''Can Congress do this?'' and ''Should Congress do this?'' On the former question, the 2 witnesses disagreed, although even the majority witness, Professor Martin H. Redish of Northwestern University, noted that ''Congress quite clearly may not revoke or confine Federal jurisdiction in a discriminatory manner.'' But on the latter question, ''Should Congress do this?'' the legal scholars agreed that we should not.

Let me quote Professor Redish's testimony on this question because it is compelling: ''I firmly believe that Congress should choose to exercise this power virtually never.'' There has long existed a delicate balance between the authority of the Federal judiciary and Congress, and the exclusion of substantively selective authority from all Federal courts seriously threatens that balance.''

Once the ''court stripping'' door is open, where will it stop? Will this language be added to legislation on the issue of abortion, guns, prayer, school choice, affirmative action? How about the USA PATRIOT Act? I suspect that this is just the tip of the iceberg.

Like the FMA, the Marriage Protection Act is not needed. DOMA remains the law of the land and its constitutionality has not been successfully challenged in any United States court. Congress must tread lightly when trying to modify the important doctrine of separation of powers that is the basis for our government. The late Sen. Barry Goldwater (R–AZ), a stalwart conservative, said about previous court stripping attempts that ''frontal assault on the independence of the Federal courts is a dangerous blow to the foundations of a free society.'' I urge you to reject this unnecessary, unconstitutional and unwise legislation.

Mr. Speaker, with this bill, we face no less than the specter of a sign posted on the Federal court house door which reads, ''you may not defend your constitutional rights in this court, you may not seek equal protection here, you may not petition your government for redress here.'' Today, the ''you'' is gay and lesbian American citizens. Who will it be next?

Mr. SENSENBRENNER. Mr. Speaker, has the time for the minority expired?

The SPEAKER pro tempore (Mr. GILLMOR). The time has expired on the minority side.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of the time.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Speaker, I believe that this debate has fulfilled the majority leader's admonition that the debate be civil. There are strongly held positions on both sides of this question, and I think that both of them have been very well articulated during the course of this debate.

I firmly believe that this bill is not only constitutional but it is also wise and necessary to prevent court decisions from further tearing apart the fabric of our society.

Forty-two years after the Supreme Court decided Marbury v. Madison, the court in the case of Cary v. Curtis in 1845 upheld the regulation of the judicial power by the Congress, and I would like to quote from that decision: ''Dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress. To deny this position would be to elevate the judicial over the legislative branch of the government, and to give to the Federal judiciary powers limited by its own discretion merely.''

This bill attempts to limit the power of the Federal judiciary to export the decision of a divided court in Massachusetts to the other 49 States which do not have laws granting marriage licenses to same-sex individuals.

The people who have been arguing against this bill, Mr. Speaker, seem to think that the State courts are second-class courts, but we believe that they are equally capable of deciding Federal constitutional questions. Nothing in H.R. 3313 denies the right of a same-sex couple married in Massachusetts to file a petition in State court to have that license and that marriage recognized within that State, and the State courts are perfectly capable of making that determination.

Somehow my colleague from Wisconsin says that this bill slams the

door of the Federal courthouse to people who wish to exercise their constitutional rights. Well, I spent a lot of time in Madison as a law student and as a State legislator, and the current Federal courthouse is just a few blocks away from the Dane County Courthouse, and there are judges there that will have all the jurisdiction they need to adjudicate the claims that the gentlewoman from Wisconsin was talking about, and those judges I think are perfectly capable of adjudicating those claims, notwithstanding the lack of confidence on the part of some of the people who have been arguing against this bill.

The real issue is the issue of marriage, and marriage is the foundation upon which any civilized society has been based, long before the United States of America was established and the Constitution was ratified in 1789.

Marriage is under attack as a result of the 4 to 3 decision of the supreme judicial court of Massachusetts. This bill does not affect what Massachusetts does with that decision.

Under this bill, it will be the legislature and the voters and the judges in Massachusetts, should they change their mind, that will determine whether that 4 to 3 decision stands; but what this bill will do is to prevent the export of that Massachusetts decision to the other 49 States that do not allow marriage licenses to be issued to same-sex couples.

I sincerely doubt that when James Madison wrote the Constitution and when the legislatures of the 13 States at that time ratified the Constitution that they ever dreamed that the Federal judiciary would be used to have a decision that has been made in a single State become national policy.

The way we prevent that from becoming national policy is by passing this bill. I urge an ''aye'' vote.

Mr. HASTINGS of Florida. Mr. Speaker, this morning's papers carry, among others, the following stories:

—The New York Times reports that ''The 9/11 Commission is Said to Sharply Fault Role of Congress''.

—The L.A. Times has a story titled, ''The State Department Seeks Shift in Iraq Effort''.

—The Sun Sentinel reports that the American death toll in Iraq has reached 900.

—The Washington Post covers military recruitment, concluding that the pool of future recruits has dwindled to its lowest level in three years.

—And, all these papers and others have stories on the poor shape of the economy and the hardships that the American people are facing.

So, I ask: don't we have better things to deal with two days before going into recess. Is there any sense of responsibility in this Republican Congress?

This bill, more than anything else, is about the politics of a national election. The White House political machine is in full gear, playing to the lowest denominator to reinvigorate the xenophobic and intolerant wing of the Republican Party.

Recognizing that they lack the votes to pass the discriminatory Federal Marriage Amendment, the Republican House leadership is now focusing on slamming shut federal courthouse doors to gay and lesbian Americans.

This bill is at its core a bar on redress for violations of fundamental rights. If Congress by statute can end run the Bill of Rights, no rights to liberty, due process, or equality under the law are safe. Further, it would set the terrible precedent of barring citizens from challenging government infringement of fundamental rights in federal court.

For more than 200 years the federal judiciary has been a check on legislative and executive action. By eliminating an entire subject from the courts' jurisdiction, this legislation threatens to upset the delicate balance between the branches of the federal government that has served our nation well. Indeed, passage of this legislation would represent one of the broadest attacks on the separation of powers in American history.

Once again, it's proven that the most unpopular and vulnerable members of society are all too often the first targets of government repression. But once the federal courthouse door has been slammed shut to one group, it won't be long before others are similarly excluded.

I am reminded of an incisive quote by Holocaust survivor Ellie Wiesel. He said,

''They came first for the communists, and I didn't speak up because I wasn't a communist. Then they came for the Jews, and I didn't speak up because I wasn't a Jew. Then they came for the trade unionists, and I didn't speak up because I wasn't a trade unionist. Then they came for the Catholics, and I didn't speak up because I was a protestant. Then they came for me, and by that time no one was left to speak up.''

I am here to strongly oppose this legislation.

I can remember of one other group in America that had to wander every county courthouse in the country to try to vindicate their rights under the Federal Constitution.

Blacks have experienced the injustice, abuse, and disgrace that the Republican Party is promoting with this bill. For example, after the Supreme Court's 1954 Brown v. Board of Education decision that school segregation violated the Constitution, racist lawmakers furiously sought to exempt federal courts from ruling on public education laws.

I became a public servant with the express mission of preventing one of the worst chapters of American history from repeating itself.

Therefore, I oppose this rule and the underlying bill, and ask—beg—my colleagues to act responsibly and protect the constitution by voting no.

Ms. SCHAKOWSKY. Mr. Speaker, I rise today in opposition to H.R. 3313, the so-called Marriage Protection Act. This bill would expressly forbid the federal courts, including the Supreme Court, from hearing cases on a Constitutional matter. That not only sounds absurd to me, but I'm sure it confuses American Government students across the country who are learning every day about our system of checks and balances and the role of the courts in our country.

But this bill not only violates the principle of separation of powers, it also grossly violates our equal protection and due process rights. This bill singles out a group of people who simply want to live in peace with the person they love and denies them access to the courts in order to fight for equal rights. If we pass this bill, then I wonder who is next—what group of people is next on the target list for being singled out and denied rights?

It strikes me that this bill is yet another example of how the Republican leadership in this country simply changes the rules when things aren't going their way so that the outcome will shift in their favor, regardless of the effects on our civil rights. We've seen votes held open for hours and funding cut off for popular and critical programs just so the Republican leadership can have their way. And, in this case, the Republican leadership is willing to go so far as to change the Constitutional rules and principles that we have lived by for centuries—the guarantee that any group or individual who feels their rights have been violated can go to court to seek redress—in order to protect a law that we passed eight years ago. This is simply unacceptable, and I urge my colleagues to vote no on H.R. 3313.

Ms. DEGETTE. Mr. Speaker, I rise in opposition to H.R. 3313, the so-called ''Marriage Protection Act.''

I was really tempted to offer an amendment mandating that every Member of Congress watch ''School House Rock'' before they are allowed to cast another vote. If you have kids, you are probably familiar with School House Rock. It is the old, ever-popular kids show that explains how American government works. It imparts information on basic civics in fun and easy to understand terms, for example, how there are three branches of government that provide the check and balances that are the bedrock of our country.

But then I decided that, although more of my colleagues than I ever believed possible desperately need this sort of basic primer on government, it didn't seem fair to waste Members' time, like our time is being wasted today as we are forced to debate and vote on this utterly absurd piece of legislation.

Our Founding Fathers established clear separation of powers between the three branches of government. Rep. HOSTETTLER and the Republican leadership are trying to dictate to our formerly independent judiciary what cases it can or cannot consider. This is a court-stripping measure that could lead to Congress's removal of the courts' jurisdiction any time a controversial measure might come before the federal bench.

The Hostettler bill would ban any federal court, including the Supreme Court, from having jurisdiction over challenges to the Defense of Marriage Act. This would mark a nearly unprecedented effort by one independent branch of the federal government, the Congress, to limit the jurisdiction of the judiciary branch.

This is the Republican leadership's last ditch effort to get a vote on gay marriage in the House to effect the election this fall. We are considering legislation to pre-empt an action that has not taken place. The Defense of Marriage Act, which passed in 1996, is not being challenged. This is a cop out, not a compromise. They know they don't have the votes on the Federal Marriage Amendment so they are grasping at straws.

In Federalist Paper 78, Alexander Hamilton defended the need for an independent judiciary. As the only branch of the federal government not swayed by campaigning, Hamilton asserted that it was the branch best able to protect the Constitution from political meddling by the Congress or the President. He also foresaw just the type of action being attempted by Republicans in Congress today,

warning ". . . there is no liberty, if the power of judging be not separated from the legislative and executive powers.

If this bill, by some miracle were actually to be signed into law, and by an even bigger miracle, was not immediately overturned because of its blatant unconstitutionality, it would be a horrible precedent in preventing the most basic redress available to the American people.

Imagine bill after bill being passed in Congress, with the same language tacked on at the end saying that once this law passes it can never be challenged in the federal courts, including the Supreme Court. Today the issue is gay marriage, but tomorrow the issue could be anything.

This bill is incredibly short-sighted and it goes against the very principles that so many of its supporters purport to honor as public servants. It really would be laughable if it weren't so scary.

I urge a "no" vote on this ridiculous, unconstitutional and frankly un-American bill.

Mr. BEREUTER. Mr. Speaker, this Member voted for the Defense of Marriage Act (DOMA), P.L. 104–199, which defines marriage as "a legal union between one man and one woman as husband and wife" and a spouse as "a person of the opposite sex that is a husband or a wife." It allows each state to determine if it will recognize the same sex marriages sanctioned by other states. Also, it is this Member's view that the legal approval of same-sex marriages is not in the public interest—as contrasted with legislation authorizing civil unions between two people of the same sex. In short, that means this Member opposes same-sex marriages and believes that the Massachusetts Supreme Judicial Court's decision was both ill-advised and harmful.

However, I believe that attempting to strip the jurisdiction of the U.S. Supreme Court to possibly consider this issue is a rather extraordinary step that is an unfortunate and even dangerous precedent for future attempts to justify stripping the jurisdiction of the U.S. Supreme Court on other controversial societal issues. Therefore, this Member voted "no" on H.R. 3313. The rights of the minority must be protected from inappropriate use of power by a majority, and the Supreme Court sometimes is the final protector of the minority; stripping the court of jurisdiction gradually by legislative action will disturb the necessary checks and balances established in the U.S. Constitution.

This Member makes this statement fully acknowledging that judicial activists in both the Federal Government and state governments sometimes badly abuse their position as was the case with the Massachusetts Supreme Judicial Court.

Ms. MCCOLLUM. Mr. Speaker, I rise today in strong opposition to H.R. 3313, the Marriage Protection Act. This dangerous bill would severely undermine our constitutional checks and balances and set a precedent that undermines the independence of the federal judiciary.

Republicans in Congress and the Bush Administration know their domestic and foreign policies are failing—so they are changing the subject. The war in Iraq is a quagmire. Our schools under funded. Our seniors are without the prescription drugs they need and millions of Americans are without jobs.

Despite the many challenges facing our nation, the Republicans have chosen to ignore the real needs of the American people. In the process, they are hijacking our constitutional checks and balances and advancing an extreme right-wing agenda.

For years, key decisions by the courts on the social issues of the day, including school prayer, busing, abortion and the Ten Commandments, have been followed by Republican court-stripping bills to remove the court's authority to hear challenges to such important cases. The Marriage Protection Act is just another example of a power grab that extends Republican control from the White House to Congress to the federal judiciary.

This attack on the Judicial Branch's authority to hear cases based on Legislative and Executive actions is in fundamental contrast to the spirit of our democracy and the U.S. Constitution. Appropriately, most legal scholars have agreed that even if this bill was to become law, it would be unconstitutional. The fact that this legislation has advanced far enough to warrant a vote in the full U.S. House should raise alarm to the extent the Republican Majority will go to advance their right wing agenda.

This legislation should be defeated. The House must send a strong message that we reaffirm our constitutional system of checks and balances between the three branches of government, and we support the basic, civil rights of all Americans—regardless of age, gender, race or sexual orientation. We have a responsibility to protect the Constitution, not render it unnecessary.

Mrs. BONO. Mr. Speaker, I rise against H.R. 3313, the Marriage Protection Act, not because I seek to promote gay marriage but because I believe this bill fails to pass constitutional muster.

Perhaps it is for this reason that Congress has never enacted legislation to prohibit all federal courts, including the Supreme Court, from hearing cases on constitutional matters. It is not within the interest of this institution to begin this practice now. This path can only lead us towards a slippery slope with no clear end in sight.

I understand there are strong feelings on the issue of gay marriage on either side of the debate. I, for one, strongly believe in the sanctity of marriage and that marriage is between one man and one woman. But what this bill does is preclude even the ultimate arbiter of the United States legal system, the Supreme Court, from reviewing a constitutional matter. In fact, under this bill, even those who would seek to overturn a state's gay marriage law would not be able to appeal to the Supreme Court.

Certainly, Congress has stripped statutory questions, like tree cutting, from federal courts. But none of these issues have fallen upon constitutional grounds. Even the nonpartisan Congressional Research Service maintains that "We are not aware of any precedent for a law that would deny the inferior federal courts original jurisdiction or the Supreme Court of appellate jurisdiction to review the constitutionality of a law of Congress."

However, I strongly believe in the concept of "checks and balances." Rest assured, should a federal court begin to exercise judicial activism that hijacks the powers of the other two branches, it is up to those branches of government to check the judicial branch and bring it back into balance. But this isn't the case here. In fact, one could question whether or not Congress, with this bill, would encroach upon the powers of the Supreme Court in having the final say.

As of today, our system of "checks and balances" is working. Until this environment changes or breaks down, the most positive action Congress can take is to let the system work.

Mr. SHAYS. Mr. Speaker, I oppose H.R. 3313, legislation which would prevent our courts from ruling on the constitutionality of the Defense of Marriage Act.

I value our justice system and place great faith in the ability of our courts to ensure the laws we pass are constitutional. The bottom line is, taking the federal courts out of the process by specific legislation is not an appropriate remedy for any issue.

I am sensitive to my colleagues and constituents who oppose gay marriage. But we cannot deny Americans the constitutional rights to which they are entitled and ignore two centuries of judicial precedent, in order to address an issue that should be decided by the states.

I strongly oppose H.R. 3313 and urge my colleagues to do the same.

Ms. HARMAN. Mr. Speaker, in July of 1996, I stood on the House Floor and spoke in opposition to the Defense of Marriage Act. Eight years later, here I am again, standing in opposition to another attempt to divide this nation in an election year and ostracize some of our citizens. Only this time, we're going even further. This time, we are considering legislation that would, for the first time in our Nation's history, seek to exclude a specific group of people from access to the federal court system.

The fact that we are having this debate at this time is as shameful as the debate itself. Our Nation faces many pressing and critical problems: the size of the Federal deficit and its effect on our international competitiveness; threats from rogue nations and terrorists; and an intelligence system that is in desperate need of repair, to name a few. Yet, rather than focusing our energy on protecting our citizens, Congress is debating of a resolution that would take away the rights of some Americans.

There are three really good reasons to vote against H.R. 3313. It's unconstitutional, it discriminates against some Americans, and, for those of you who supported DOMA, it will muddle the definition of marriage and undermine the stated intent of DOMA.

Eight years ago, I warned that the Defense of Marriage Act was an unconstitutional solution in search of a problem. With the measure we are considering today, my colleagues on the other side of the aisle have out-done themselves. H.R. 3313 is the mother of all unconstitutional legislation.

The bill strips the U.S. Supreme Court's original jurisdiction over cases where a state is a party in a DOMA dispute. Original jurisdiction is conferred on the Supreme Court by the Constitution, not by Congress.

Second, this bill is overtly discriminatory. If it were enacted into law, Congress would, for the first time in U.S. history, block a specific group of Americans—same-sex couples and their children—from having full access to the federal court system. It is unconscionable that we would even consider legislation to deny ANY American the right to seek justice through our federal court system.

Finally, we were told that the intent of DOMA was to preserve the traditional definition of marriage. Now we are considering legislation that would make each of the 50 state supreme courts the final authority on the constitutionality of DOMA. This will create a patchwork of state laws on the recognition of marriage, and muddle its definition. Those who support this bill can no longer hide behind the states' rights or the marriage preservation argument. This measure reveals the clear intent of its drafters—to deny certain individuals equal treatment under the law.

I urge my colleagues to stand up and reject this divisive, untimely, and likely unconstitutional bill.

Mr. OBERSTAR. Mr. Speaker, I rise today in opposition to the so-called Marriage Protection Act (H.R. 3313). This bill, contrary to its title, has nothing to do with protecting the institution of marriage. This bill is, in fact, an all-out assault on the U.S. Constitution and our entire system of government. H.R. 3313 has monumentally perilous implications for three basic principles of our democracy—equal protection, due process, and the separation of power between the three branches of government.

This bill discriminates against one class of people, homosexuals, by saying they cannot challenge a law in federal court to determine whether their fundamental rights have been violated. This bill would enable any future majority in Congress to draft laws that would discriminate against any class of people or minority group, and which would then be insulated from a challenge in federal court.

As delineated in the Constitution, the separation of powers doctrine represents the fundamental principle that our federal government consists of three basic and distinct functions, each of which must be exercised by a different branch of government, so as to avoid the arbitrary or excessive exercise of power by any single ruling body. Through this structure, the Framers of the Constitution sought to create an effective, interdependent governmental system which would limit the power vested in any one branch. H.R. 3313, if enacted, would undermine our system of checks and balances, which was carefully crafted by our Founding Fathers to ensure that none of the three arms of government could encroach upon another, or impose its will unilaterally upon the public.

One element of the checks and balances system is the principle of judicial independence, which is so crucial to maintaining our unique democratic system. The Supreme Court's role (under the 1803 case of Marbury v. Madison) is as the final authority on the constitutionality of federal laws. By passing H.R. 3313, Congress would arbitrarily usurp the Supreme Court's power and rightful purpose by appointing itself as both maker and arbiter of the law.

In 1937, President Franklin Delano Roosevelt sent to Congress a bill to reorganize the federal judiciary, which was motivated by the consistent opposition that his New Deal legislation had been encountering in the lower federal courts and the Supreme Court. By increasing the number of judges on the Supreme Court, President Roosevelt hoped to change the balance of opinion of the court. President Roosevelt's proposal met with fiery opposition in Congress—even by those who supported his New Deal policies. Simply put, whether the underlying intent of a legislative initiative is good or bad, if it subverts the Constitution and destroys the independence of the judiciary, it should be defeated.

Over the years, notable conservatives have spoken out against similar court stripping proposals. For example, in 1985, Senator Barry Goldwater stated, ''What particularly troubles me about [court stripping proposals] is that I see no limit to the practice. There is no clear or coherent standard to define why we shall control the Court in one area but not another. The only criterion seems to be that whenever a momentary majority can be brought together in disagreement with a judicial action, it is fitting to control the federal courts.''

Goldwater also said ''those who seek absolute power . . . are simply demanding the right to enforce their own version of heaven on earth, and let me remind you they are the very ones who always create the most hellish tyranny. Absolute power does corrupt and those who seek it must be suspect and must be stopped.''

During the debates on the adoption of the Constitution, its opponents repeatedly charged that the Constitution as drafted would open the way to tyranny by the central government, and they demanded a ''bill of rights'' that would spell out the immunities of individual citizens. The ten amendments to the Constitution, which were enumerated in 1789, have since been expanded to include other democratic principles.

The Equal Protection Clause of the 14th amendment prohibits states from denying any person within its jurisdiction the equal protection of the laws. The question of whether the equal protection clause has been violated arises when a state grants a particular class of individuals the right to engage in activity yet denies other individuals the same right.

Another fundamental principle which is mentioned in the 5th and 14th amendments, due process, requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. In his 1961 dissenting opinion in Poe v. Ullman, Justice Harlan stated, ''[t]he guaranties of due process, though having their roots in Magna Carta's 'per legem terrae' and considered as procedural safeguards 'against executive usurpation and tyranny,' have in this country 'become bulwarks also against arbitrary legislation.' ''

Indeed, this bill, if enacted, has implications that will haunt this body and our entire nation for years to come. Our Founding Fathers, by setting up our government with checks and balances, sought to protect the future of our democracy from the tyranny of the majority. Thomas Paine, in ''The Rights of Man'' said ''every age and generation must be as free to act for itself in all cases as the age and generations which proceeded it. The vanity and presumption of governing beyond the grave is the most ridiculous and insolent of all tyrannies. . . . That which may be thought right and found convenient in one age may be thought wrong and found inconvenient in another. In such cases, who is to decide, the living or the dead?''

In earlier days, narrow-minded legislators have advocated court-stripping to fight policies they opposed, such as desegregation, but those efforts have always been defeated by sensible, rational lawmakers. No other Congress has passed a law that totally eliminates the federal courts' ability to review the constitutionality of a federal law. I pray that this 108th Congress will not be the first.

Mr. ETHERIDGE. Mr. Speaker, I oppose this bill because it sets a dangerous precedent and upsets the delicate balance of power that is the heart of our Constitutional democracy. For more than 200 years, America has flourished under the Constitution of 1789 because the Framers successfully erected a system of checks and balances that assigned to the courts the task of interpreting the laws. This bill would upset that balance by intruding on that process and stripping from the courts the powers set forth by our Founding Fathers.

The implications of this precedent are very serious and go well beyond the boundaries of the current debate. If Congress passes H.R. 3313, what is to stop this Congress or a future Congress from stripping the courts of the duty to hear cases involving gun ownership, the death penalty, property rights, or any other controversial issue? Nothing. And this dangerous precedent would only encourage Congress to undertake such meddling. The notion that this Congress, which cannot even pass a budget or the appropriation bills needed to keep the government running, has better judgment on Constitutional matters than Thomas Jefferson, James Madison and John Marshall, is ludicrous.

Mr. STARK. Mr. Speaker, I rise in outraged opposition to H.R. 3313, the So-Called ''Marriage Protection Act.'' This blatantly unconstitutional piece of legislation speaks volumes about the uncontrollable homophobia of the Republican Party and its desperation to change the subject from the quagmire in Iraq.

The Republicans' fear of the Federal courts is somewhat surprising. The Supreme Court, after all, despite occasionally tempering the Republicans' hatred of minorities, immigrants, the accused, and others who have the gall to insist on their Constitutional rights, has been pretty good to the Republican Party. It gave them the President they wanted and has given them great leeway to run roughshod over the environment and the disabled in the name of States' rights.

Most legal experts agree that this Court would likely uphold the Defense of Marriage Act, and yet the Republicans would rather set a new, frightening precedent of letting 50 different State courts be the final arbiters of our laws. They prefer that State judges, rather than Federal judges confirmed by the Senate, make Constitutional law.

Thankfully, the right wing wasn't in control of the Republican Party back when desegregation and Miranda warnings were before the courts, as there were court-stripping proposals on those subjects, too. They would never think of passing a bill today barring African Americans from seeking the protection of Federal courts, but sadly, gay and lesbian Americans incur their wrath over everything from the breakdown of the family to the continued inability of the Red Sox to win the World Series. Their delusion would be funny if it weren't so reckless and harmful.

Mr. Speaker, this bill is all about re-directing blame. Everyone here realizes that if Congress could just pass whatever laws it wanted and throw in a line to keep them from being held unconstitutional, our Constitution and our Separation of Powers would be rendered meaningless. So let's just admit what this is really about: changing the subject from Iraq and attacking defenseless Americans.

Shame on any Member of this body who will trample on our Constitution just to score a few political points. If the Oath we all took to ''support and defend the Constitution of the United States'' means anything to you, you will ''No'' on this election-year ploy.

Mr. UDALL of Colorado. Mr. Speaker, it is a cliché to say that there is no perfect legislation. But, to use another cliché, this bill seems to be an exception that proves that rule—because it is not only perfectly unnecessary but also a perfectly bad idea.

The bill seeks to prevent any Federal court—including the U.S. Supreme Court—from deciding ''any question pertaining to the interpretation of, or the validity under the Constitution'' of the part of the ''Defense of Marriage Act'' (DOMA) that says no State is required to give legal recognition to a same-sex relationship that is treated as a marriage under the laws of any other State. It also is intended to prevent any Federal court review of the constitutionality of this bill itself.

That would mean that the State courts alone would have the power and responsibility for interpreting two Federal laws. I cannot support that.

My opposition does not mean I think State court judges are not qualified to decide such questions. I have very high regard for their ability and for the vital role that the States and their courts play in our Federal system.

But I have an even higher regard for the fact that each State is a part of a greater whole—of the United States—which make up one nation, based on the principles of ''liberty and justice for all,'' in the words of the Pledge of Allegiance.

And this bill directly attacks that national unity, seeking to replace it with a system in which each of the 50 State supreme courts would be the final authority on important questions involving relations between the States and between the Legislative and Judicial branches of the Federal Government.

This is not only unnecessary—no court, State or Federal, has ruled on DOMA—but both possibly unconstitutional and definitely dangerous.

I say possibly unconstitutional because the Judiciary Committee's report and today's debate show there are strong disagreements about the constitutionality of the bill, even among Members with much greater legal expertise than I can claim.

But while its constitutionality seems doubtful at best, I have no doubt about the bill's dangers and I am convinced that whether or not it is constitutional, it should be rejected.

In reaching that conclusion, I find myself in agreement with our former colleague, the gentleman from Georgia, Bob Barr.

In a letter of July 19th, Mr. Barr notes the potential for the ''chaotic result'' of ''50 different interpretations reached by State supreme courts, with no possibility of the U.S. Supreme Court reversing any incorrect interpretation'' of the Federal laws involved.

But he then goes on to say that the ''principal problem'' with the bill is even worse: ''H.R. 3313 will needlessly set a dangerous precedent for future Congresses that might want to protect unconstitutional legislation from judicial review. . . . The fundamental protections afforded by the Constitution would be rendered meaningless if others follow the path set by H.R. 3313.''

I completely agree with than analysis. And Mr. Barr and I are not alone in that view. In more or less the same terms, it is echoed by many others, including the Leadership Conference on Civil Rights, the Mexican-American Legal Defense and Educational Fund, Legal Momentum, and the Human Rights Campaign.

Of course, this bill does have its supporters, and in fact may attract a majority when we vote today. But if today there is a majority for putting DOMA beyond Federal judicial review, tomorrow there may be a different majority with a different idea of what legislation should be given such status.

Will tomorrow's majority want to protect future gun-control laws from the judges who struck down the Gun-Free School Zones Act? Or will they want to prohibit the Federal courts from ruling on such matters as State immunity from certain lawsuits? Or might they seek to reverse Roe v. Wade or some other Supreme Court decision by passing a new law and prohibiting the courts from reviewing it?

None of us can know the answers to those questions, because nobody knows what the future holds. But I am convinced that what we do today could shape the future in ways that could undermine the checks of the balances of the constitution and thus weaken the restraints on legislative power that protect the liberties of all Americans.

And because I think it would be profoundly unwise to risk so much on such a radical experiment, I will vote against this bill.

Mr. BARRETT of South Carolina. Mr. Speaker, marriage goes to the heart of our families and our society. My home State of South Carolina is one of at least 42 States that have laws on the books defining marriage as the union of a man and a woman. These laws were passed by the State legislature; those elected to represent the views of their constituents. My constituents contact me on a daily basis about this one issue more than any other issue. They want me to ensure marriage between a man and a woman is preserved.

Yet some in this country, elected by no one, believe they have the right to supercede the wishes of my constituents and the constituents of other members here today.

I respectfully disagree. I believe the only way to ensure court action does not override State law is for the House and Senate to take action. I thank Mr. HOSTETTLER for bringing this legislation to the floor of the people's house for debate, it is time we, as elected officials, have an opportunity to give a voice to our constituents' concerns.

Mr. Speaker, I urge my colleagues in the House to vote in favor of H.R. 3313, the Marriage Protection Act and protect the sanctity of marriage.

Ms. WATSON. Mr. Speaker, I rise in very strong opposition to H.R. 3313, the so-called ''Marriage Protection Act,'' a misnomer that would make George Orwell smile. The fact is, just like the Federal Marriage Amendment, this Court Stripping bill is unnecessary, unwise, and serves as little more than a distraction from the many urgent matters facing our Nation.

Like the Federal Marriage Amendment, the Court Stripping bill is not needed. The Defense of Marriage Act remains the law of the land and its Constitutionality has not been overturned in any United States court. Furthermore, H.R. 3313 is a grave threat to the protection and enforcement of civil rights laws, and will erase decades of social progress all in the name of ''marriage protection.''

Historically, the judicial branch has often been the sole protector of the rights of minority groups against the will of the popular majority. Cases such as Brown v. Board of Education come to mind. The Court Stripping bill would deny the courts the ability to hear challenges to a legislation by a specific minority group, in this case gays and lesbians, thus creating a slippery slope where any law could be subject to ''courtstripping.''

This is a serious challenge to our fundamental system of checks and balances. The Court Stripping bill is the first, and undoubtably NOT the last, effort by the Republican Congress to hamstring an independent Federal judiciary. This reckless bill would take away even the Supreme Court's authority to decide on a Federal law.

Those who are advocating the Court Stripping bill today use the argument of ''judicial activism'' in Massachusetts and other States as a justification. Make no mistake about it, these same arguments were also advanced by defenders of segregation in the South in response to the Brown v. Board of Education decision and other decisions such as Loving v. Virginia that invalidated State anti-miscegenation law.

There are so many issues that this Republican-controlled Congress has failed to address. We don't have a budget. We haven't passed all of our appropriations bills we are engaged in, with no end in sight, and our economy has failed to generate the jobs necessary to keep the GDP growing. Meanwhile, this Republican Congress is taking up a divisive, discriminatory, and completely unnecessary legislation just to appeal to their far right base and to drive a wedge into this upcoming election. It is cynical and simply dead wrong.

Mr. Speaker, I urge my colleagues to join me in rejecting this hateful, unconstitutional, and discriminatory legislation.

Mr. BUYER. Mr. Speaker, I rise in strong support of H.R. 3313, the Marriage Protection Act, introduced by my good friend and fellow Hoosier Mr. HOSTETTLER.

In recent years, judicial activism has continued to attack the traditions that have defined this Nation—our pledge of allegiance declared unconstitutional—and now it seems that marriage is its next target.

In 1996, Congress passed the Defense of Marriage Act by a wide margin in this Chamber and in the other body. I cosponsored the Defense of Marrige Act. It was necessary to pass the Defense of Marrige Act to preserve the States their ability to decide for themselves how marriage is to be constituted within their respective borders. To remind this body of the definition of federalism seems elementary, but I fear that a lesson may be needed for those who do not support this legislation.

The Defense of Marrige Act provides that for Fedreal law, marrige shall mean the union of one man and one woman. It further provides that the States do not have to recognize alternative unions established in other States. Since that time, 44 States of our Union have passed laws that provide that marriage shall consist only of the union of one man and one woman. My State of Indiana has done so.

Now, traditional marriage is under attack and the ability of States to protect traditional marriage within their borders is threatened . . . threatened by the judicial branch.

The Marriage Protection Act, H.R. 3313, is a further step to insure that States maintain

the ability to define marriage within their borders and that States are not forced, against the will of their citizens acting through their elected State legislatures, to accept the contortions of marriage legalized in other States. H.R. 3313 would prohibit the lower Federal courts and the Supreme Court from hearing cases that arise under the Defense of Marrige Act.

Congress has clear Constitutional authority to establish the jurisdiction of the lower Federal courts. In Article III, Congress is given the authority to establish the lower courts and to define the appellate jurisdiction under the regulation of Congress. This is part of the checks and balances that our Founding Fathers wove into the Constitution, to ensure that one branch does not exercise power beyond its bounds.

It is unfortunate that circumstances have arisen that have created the need for H.R. 3313. One State in the Nation has declared that ''marriage'' can be applied to relationships other than one man and one woman; and our fear is that the Federal courts will take the action of one State court and apply it to all 50 States. H.R. 3313 is insurance that the action of this State in expanding the definition of marriage does not have to be recognized in other States unless the people of that State agree to do so.

I commend the gentleman from Indiana's 8th district for introducing this legislation and I strongly urge its adoption.

Ms. ESHOO. Mr. Speaker, I come to the floor today to urge my colleagues to vote against this bill. The Marriage Protection Act would strip the jurisdiction of Federal courts to hear cases interpreting the Defense of Marriage Act or the Federal Marriage Statute.

First, this bill is wrong because it will strip Federal courts, including the Supreme Court, of their ability to hear and review Constitutional cases, something that Congress has never done in our history. The courts are an equal branch of our government. Any attempt to weaken their authority undermines a 200-year precedent and severely endangers the separation of powers that our government is based on. The fact that this kind of action has never been undertaken in the history of this great nation speaks to the absurdity of the bill.

Second, this bill is discriminatory. It singles out one group of people and tells them their interests won't be heard by the highest courts in the land This sends a chilling message, not only to the citizens of this country, but to people all over the world that the United States is moving backward, not forward on issues of civil rights.

Mr. Speaker, no legal crisis exists. This bill is all about politics . . . driving a wedge between people on the eve of party conventions and a national election. It's not only cynical, it's a disservice to the people we represent. What we do with this issue will be forever remembered. I urge my colleagues to oppose this bill. by casting a no vote, we say no to discrimination and state our unwillingness to upset the balance of the equal branches of government.

Mr. KIND. Mr. Speaker, I rise in opposition to H.R. 3313, the so-called Marriage Protection Act. I believe Congress should be focused on supporting American troops fighting in Iraq and Afghanistan, helping the eight million Americans who are looking for jobs, and passing a budget laying out our priorities for fiscal year 2005. Instead, we are debating a bill that fails to address the issues that are of the most importance to our citizens and that is blatantly unconstitutional.

H.R. 3313 would strip the Federal courts, including the Supreme Court, of jurisdiction over any cases dealing with the Defense of Marriage Act (DOMA). This would lead to a patchwork of different decisions from various States which would prove to be unmanageable. Furthermore, it would establish a ridiculous precedent. Whenever Congress passes a law, it could merely insert comparable language prohibiting Federal courts from ever reviewing that legislation to ensure it complies with the United States Constitution. In effect, this bill places the actions of Congress above the law. Clearly, this is not what our Founders intended when they established the separation of powers that has worked well for over 200 years.

This bill is unconstitutional in three ways: it violates the principle of equal protection by depriving a group of people of their right to their day in court; it is inconsistent with the due process clause which demands an independent judicial forum capable of determining Federal constitutional rights; and it violates the concept of separation of powers, so crucial to our system of governance.

Grammar school students in my home state of Wisconsin could tell you that the American system of government finds its strength from our system of checks and balances, a concept that was bold and revolutionary when the Constitution was written over 200 years ago and is now embraced by countries around the world. It is this system that keeps the presidency from becoming a dictatorship, the court from becoming an oligarchy, and members of Congress from becoming despots. If we strip the Federal courts of their seminal role in our process of law, we will have rejected the work of James Madison and the other Founding Fathers who wrote the document that is the oldest written constitution in the world still in effect. Furthermore, it jeopardizes all the rights guaranteed in our Constitution, especially the Bill of Rights. It would also allow a future Congress, that may not like gun ownership in our country, to prohibit gun ownership and then strip Federal courts from the ability to review the law to see if it complies with the Second Amendment.

I cannot vote for a bill that would blatantly reject the Constitution, a document which I swore to uphold upon entering Congress. Regardless of our views on particular issues, I believe that each of us in the House of Representatives should respect the Federal courts as an equal branch of government, and I urge my colleagues to reject this bill.

Mr. GRIJALVA. Mr. Speaker, I rise today in opposition to the drastic and shortsighted measure to strip courts of their authority to review the Constitutionality of the Defense of Marriage Act. This is a very clear and easy vote for me, but in no way does that make it insignificant. To the contrary, this is the most important civil rights vote of the year. Congress has not passed a federal court stripping measure since 1868, though it has been attempted on nearly every hot button issue in the past 50 years (prompted by Brown v. Board, Roe v. Wade, Loving v. Virginia, and others), always with the premise of the need to ''limit activist judges.''

Republicans are trying to undermine the legitimacy of these justices because they are not elected. The founders deliberately created an unelected body that would not have to make the political calculations that the President and Members of Congress need to consider in our controversial decisions. Justices are, by design, removed from the political or electoral process to serve lifetime appointments where they can make independent decisions. Naturally, these decisions often come before the public is quite ready for them. Such was the case with the prohibition of interracial marriage. In 1967, the Supreme Court stated that such a prohibition would ''deprive . . . liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment. The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.'' We now look back on the prohibition of interracial marriage as abhorrent and appreciate the court's decision in Loving v. Virginia in helping us reach this realization.

This bill is not about marriage, as the title claims. This bill is about denying a day in court for an entire class of Americans. This is a question of fairness, equality, and social justice. We cannot, in the interest of fairness to all, exclude selected groups of Americans from enjoying equal protection under the law. Furthermore, court stripping is blatantly unconstitutional. It violates the separation of powers, due process, and equal protection clauses in our Constitution.

If you think this is an easy vote because it will never pass constitutional muster to become law, I remind you of the oath we all took the day we were sworn into office. Every single one of us has sworn to ''protect and defend the Constitution of the United States against all enemies, foreign and domestic.'' A vote in favor of this bill is an attack on the very document that we have sworn to defend.

This body is not at liberty to pick and choose which of the laws we pass should be subject to judicial review. The founders created three equal branches of government, a true system of checks and balances that has served us well for over 200 years. The power of one should not outweigh the other or the system will be fundamentally undermined.

I urge my colleagues to vote against this measure to condone discrimination, undermine the Constitution, and disrupt the democratic process.

Mr. UDALL of New Mexico. Mr. Speaker, I rise today to strongly oppose H.R. 3313, the so-called ''Marriage Protection Act.'' There is nothing in this bill that will provide protection to us or to the institution of marriage. On the contrary, this bill will create an extremely dangerous precedent in our legislative system and could cause inculculable harm.

When I was sworn in as a member of this House, I promised to uphold the Constitution of the United States. Every member of this body made the same promise. The Majority's push for passage of this bill sadly signals a step back from that promise and further calls into question the true motivations of the bill's supporters.

The unconstitutionality of this bill is quite clear. The 14th Amendment to the U.S. Constitution reads, ''No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'' By

denying Americans who wish to challenge the Defense of Marriage Act their day in federal court, H.R. 3313 blatantly violates this equal protection clause. The bill singles out a specific group of Americans and tells them that they cannot have their day in court, thereby denying them due process.

Moreover, this bill violates the separation of powers. Our democracy is reliant upon an independent judiciary, and judicial review is a crucial part of our system of checks and balances. By adding a clause to a bill stipulating that cases against it must not be heard by federal courts as H.R. 3313 does, we are overreaching our powers to legislate.

If this bill passes the House today, I ask the leaders in the Majority: What's next? If we enact a bill into law saying that Defense of Marriage Act cases cannot be heard in federal courts, where do we stop? School prayer, gun control, abortion, obscenity—shall we say that none of these issues may be heard in federal court? What issue or group of people will be next?

Broad opposition to this bill from my constituents and colleagues gives me hope that this bill may not make its way to the President's desk. Those opposed include the Lawyer's Committee for Civil Rights Under Law, Human Rights Watch, the American Civil Liberties Union, the Alliance for Justice, and even former Representative Bob Barr, the original sponsor of the Defense of Marriage Act. These groups represent only a small portion of those firmly opposed to this bill.

The fact is, this debate is not about supporting or opposing gay marriage. Rather, it is about the cost of passing a bill that would result in the revocation of constitutional rights for certain Americans. This bill is a drastic, misguided piece of legislation with strictly political aims, and if this bill passes, it will be a tragic day for democracy. I strongly urge my colleagues on both sides of the aisle to vote against this bill, and to preserve the constitutional rights of all Americans.

Mr. MEEHAN. Mr. Speaker, I rise in strong opposition to the so-called Marriage Protection Act, which has nothing to do with protecting marriage.

This bill is nothing more than the latest Republican attempt to divide Americans and distract us from issues that people care about. It is about singling out one group of Americans for unequal justice under law.

Constitutionally, this bill is a non-starter. The Constitution established an independent judiciary to protect every citizen's rights and to check the power of Congress and the executive. Courts exist to protect the rights of all Americans, even those who are often disenfranchised and marginalized.

Unable to amend the Constitution to their liking, the Republican majority is now waging an unprecedented assault on the independence of the judiciary and the separation of powers in our government. If Congress strips the courts of jurisdiction over the Defense of Marriage Act, there is no telling what other issues will be subject to court stripping.

All of us in Congress took an oath to defend the Constitution. This bill is an attack on our most basic constitutional principles—and just as important, a mean-spirited attack on our country's values of fairness, tolerance, and equality.

Earlier this week, the Speaker asserted that Congress doesn't have time this year to implement the recommendations of the 9/11 Commission—urgent measures to protect our security. So why are we here today using our time to divide people for political reasons? Let's reject this cynical political ploy and move on to the real business of the American people.

Ms. HARMAN. Mr. Speaker, in July of 1996, I stood on the House Floor and spoke in opposition to the Defense of Marriage Act. Eight years later, here I am again, standing in opposition to another attempt to divide this nation in an election year and ostracize some of our citizens. Only this time, we're going even further. This time, we are considering legislation that would, for the first time in our Nation's history, seek to exclude a specific group of people from access to the federal court system.

The fact that we are having this debate at this time is as shameful as the debate itself. Our Nation faces many pressing and critical problems: the size of the Federal deficit and its effect on our international competitiveness; threats from rogue nations and terrorists; and an intelligence system that is in desperate need of repair, to name a few. Yet, rather than focusing our energy on protecting our citizens, Congress is debating of a resolution that would take away the rights of some Americans.

There are three really good reasons to vote against H.R. 3313. It's unconstitutional, it discriminates against some Americans, and, for those of you who supported DOMA, it will muddle the definition of marriage and undermine the stated intent of DOMA.

Eight years ago, I warned that the Defense of Marriage Act was an unconstitutional solution in search of a problem. With the measure we are considering today, my colleagues on the other side of the aisle have out-done themselves. H.R. 3313 is the mother of all unconstitutional legislation.

The bill strips the U.S. Supreme Court's original jurisdiction over cases where a state is a party in a DOMA dispute. Original jurisdiction is conferred on the Supreme Court by the Constitution, not by Congress.

Second, this bill is overtly discriminatory. If it were enacted into law, Congress would, for the first time in U.S. history, block a specific group of Americans—same sex couples and their children—from having full access to the federal court system. It is unconscionable that we would even consider legislation to deny ANY American the right to seek justice through our federal court system.

Finally, we were told that the intent of DOMA was to preserve the traditional definition of marriage. Now we are considering legislation that would make each of the 50 state supreme courts the final authority on the constitutionality of DOMA. This will create a patchwork of state laws on the recognition of marriage, and muddle its definition. Those who support this bill can no longer hide behind the states' rights or the marriage preservation arguments. This measure reveals the clear intent of its drafters—to deny certain individuals equal treatment under the law.

I urge my colleagues to stand up and reject this divisive, untimely, and likely unconstitutional bill.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I rise in strong support of H.R. 3313, the Marriage Protection Act. You know it's sad that we're even having this debate. However we are being forced to. Marriage and the American family are under attack by activist groups and they're using wayward judges to chip away at this sacred institution. For the sake of our country, Congress must respond.

This bill would prevent federal courts from forcing states like Texas to recognize same-sex marriages licensed in another state.

Well in Texas, the people have spoken. We have a Defense of Marriage Act on the books. The lone star state only recognizes marriage between a man and a woman, regardless of what other states might do.

However, in light of recent events in Massachusetts and elsewhere, it has become necessary to ensure that the will of the people of Texas isn't circumvented by some unelected judge. And one of the remedies to abuses by federal judges lies in Congress' authority to limit federal court jurisdiction.

Congress shouldn't be afraid to properly exercise checks and balances provided for in the Constitution. It is our responsibility to prevent overreaching by the courts. We've got to reign in these zealous judges who think they can legislate.

Back home we have a popular slogan, ''Don't mess with Texas.'' Well I've got one for this debate, ''Don't mess with marriage!''

Mr. MORAN of Virginia. Mr. Speaker, I rise today in opposition to the so-called ''Marriage Protection Act.''

How marriage is being protected by keeping committed gay and lesbian couples from getting married does not make sense to me. Will it strengthen heterosexual relationships? Reduce promiscuity and unwed pregnancy? Instruct people on the importance of communication to a successful relationship?

No, it would do none of these things.

What it would do is take away Americans right to Due Process and represent a radical departure from our Constitutional and legal tradition in an effort to single out a specific group of American citizens for discrimination. This bill would strip our federal court system of its independence, setting a dangerous precedent and threatening the underpinnings of our free and democratic society.

The Marriage Protection Act precludes federal courts from reviewing the constitutionality of the cross-state recognition section of ''the Defense of Marriage Act.''

The result of this legislation would be that if DOMA is challenged, the 50 State Supreme Courts would each issue a separate and final ruling on the cross-state recognition section of DOMA. The Supreme Court, whose job is to settle conflicting or contradictory state and federal court rulings, would have its hands tied, thus thwarting their ability to resolve the ensuing confusion. What a mess.

If we decide to wall off the federal courts ability to rule on this issue, where will such actions stop? One can easily foresee a number of other hot button social issues with which this country is clearly divided being blocked in a similar fashion from consideration at the federal level.

Furthermore, we already have sufficient legislation to allow individual states the ability to retain and structure marriage laws the way they see fit. While I opposed and continue to oppose the Defense of Marriage Act (DOMA) which passed the House back in 1996, this law is still fully functional and in effect. Since then, it has not been invalidated by any court anywhere in the country.

Mr. Speaker, I am troubled that we are wasting floor time to discuss this issue today. At a time when there are many more pressing matters needing to be discussed and deserving of debate, we are considering ''The Marriage Protection Act,'' a classic example of an election year wedge issue designed for maximum political impact. I implore the House to consider the full implications of this legislation and urge its defeat.

Mr. HONDA. Mr. Speaker, I rise today in strong opposition of the measure before us, H.R. 3313.

Many of my colleagues on this side of the aisle are lawyers by training and they have given us an excellent analysis of the legal problems with this bill.

They have pointed out that by denying the Supreme Court its role as the final authority on the constitutionality of federal laws, the bill unnecessarily and unconstitutionally usurps the Supreme Court's power.

Mr. Speaker, I am not a lawyer. I am a teacher by training and even without the benefit of legal training, I can see the unfairness of this court stripping bill.

What this bill is trying to do is change the rules of the game, only in this case the rules we are talking about are fundamental principles imbedded in our Constitution.

If I were to ask a class of elementary school kids whether they thought it was fair to change the rules so that a federal law, passed by Congress and signed by the President did not have to face the scrutiny of our federal courts—they would all be scratching their heads. They would ask me, ''what about the idea of checks and balances?''

If I mentioned this scenario to some Junior High students they would simply say, ''we see what you are doing, you're rigging the system.'' Teens can be a lot more cynical.

Mr. Speaker, this is not a matter of protecting marriage, it's about protecting the sanctity of separation of powers—and you don't have to be a lawyer to see that.

Mr. STUPAK. Mr. Speaker, I take very seriously my oath of office to the U.S. House of Representatives.

In it, I swear to ''always protect and defend the Constitution of the United States . . . so help me God.''

I will be doing just that when I vote against H.R. 3313. This bill, which strips the courts of their right—and obligation—to hear challenges to federal law, is a direct attack on our U.S. Constitution.

I have long been a supporter of the Defense of Marriage Act that Congress passed in 1996.I believe that marriage should be defined as a union between a man and woman.

Despite my support for DOMA—we cannot as Members of Congress, knowingly vote for legislation that undermines the clearly stated separation of powers between the three branches of government as outlined in the Constitution. This separation of power between the legislative, executive and judicial branches serves as the foundation of our democracy and our system of government.

If we fail today to ''support and defend'' the Constitution, what's next? This legislation sets a terrible precedent!

Will Congress prevent the federal courts, including the Supreme Court, from interpreting civil rights, worker or religious rights laws? Will the courts next be blocked from reviewing actions of the executive branch?

Do we really want to head in a direction where the Constitution and courts reflect only on the political views of the political party that controls the U.S. House, Senate and the Presidency?

I will not use my constituents' vote in the U.S. House of Representatives to undermine our Constitution for blatant election-year politics. And election-year politics is the only reason why this misguided legislation is on the floor. It is truly shameful, as this legislation undermines the integrity and the moral authority of this legislative body to the American people.

Vote ''no'' on H.R. 3313.

Mr. WELDON of Florida. Mr. Speaker, I support H.R. 3313, The Marriage Protection Act. This bill prevents unelected, lifetime-appointed federal judges from striking down the provision of the Defense of Marriage Act. The Defense of Marriage Act overwhelmingly passed in the House and the Senate and was signed into law by President Clinton in 1996.

H.R. 3313 simply provides that cases involving the section of Defense of Marriage Act—that protects states' rights—must be brought in state court. This brings valuable protection to the states and ensures that one state does not have to recognize a same sex marriage granted by another state.

It also keeps federal courts from forcing states to recognize same-sex marriages that other states, such as Massachusetts, have legalized.

This bill is a good first step, but what is ultimately needed in order to protect time-honored, traditional marriage is an Amendment to the U.S. Constitution. Unfortunately, the Senate failed to pass this amendment last week. That vote was 48 to 50, with Senators JOHN KERRY and JOHN EDWARDS failing to vote. It fell short of the number needed to ensure passage so that the American people could consider a Constitutional Amendment.

My constituents in Florida, and the majority of the American people, do not agree with a hand full of activist judges and courts that are redefining marriage in America. They do not agree with the demands of four unelected members of Massachusetts State Supreme Court who have overturned the laws of the State of Massachusetts and sanctioned same sex marriages.

A family headed by a mother and a father has been a basic building block of society for thousands of years, and it is imperative that its integrity be successfully protected from those who wish to re-define marriage by trying to equate other relationships to that of traditional marriage between one man and one woman.

Mr. Speaker, I urge passage of H.R. 3313.

Mr. PAUL. Mr. Speaker, as an original cosponsor of the Marriage Protection Act (H.R. 3313), I urge all my colleagues to support this bill. H.R. 3313 ensures federal courts will not undermine any state's laws regulating marriage by forcing a state to recognize same-sex marriage licenses issued in another state. The Marriage Protection Act thus ensures that the authority to regulate marriage remains with individual states and communities, which is what the drafters of the Constitution intended.

The practice of judicial activism—legislating from the bench—is now standard procedure for many federal judges. They dismiss the doctrine of strict construction as outdated and, instead, treat the Constitution as fluid and malleable to create a desired outcome in any given case. For judges who see themselves as social activists, their vision of justice is more important than the letter of the law they are sworn to interpret and uphold. With the federal judiciary focused more on promoting a social agenda than on upholding the rule of law, Americans find themselves increasingly governed by judges they did not elect and cannot remove from office.

Consider the Lawrence case decided by the Supreme Court last June. The Court determined that Texas has no right to establish its own standards for private sexual conduct, because these laws violated the court's interpretation of the 14th Amendment. Regardless of the advisability of such laws, the Constitution does not give the federal government the authority to overturn these laws. Under the Tenth Amendment, the State of Texas has the authority to pass laws concerning social matters, using its own local standards, without federal interference. But, rather than adhering to the Constitution and declining jurisdiction over a state matter, the Court decided to stretch the ''right to privacy'' to justify imposing the justices' vision on the people of Texas.

Since the Lawrence decision, many Americans have expressed their concern that the Court may next ''discover'' that state laws defining marriage violate the Court's wrongheaded interpretation of the Constitution. After all, some judges may simply view this result as taking the Lawrence decision to its logical conclusion.

One way federal courts may impose a redefinition of marriage on the states is by interpreting the full faith and credit clause to require all states, even those which do not grant legal standing to same-sex marriages, to treat as valid a same-sex marriage licenses from the few states which give legal status to such unions as valid. This would have the practical effect of nullifying state laws defining marriage as solely between a man and a woman, thus allowing a few states and a handful of federal judges to create marriage policy for the entire nation.

In 1996, Congress, exercised its authority under the full faith and credit clause of Article IV of the United States Constitution by passing the Defense of Marriage Act that ensured each state could set its own policy regarding marriage and not be forced to adopt the marriage policies of another state. Since the full faith and credit clause grants Congress the clear authority to ''prescribe the effects'' that state documents such as marriage licenses have on other states, the Defense of Marriage Act is unquestionably constitutional. However, the lack of respect federal judges show for the plain language of the Constitution necessitates congressional action to ensure state officials are not forced to recognize another state's same-sex marriage licenses because of a flawed judicial interpretation of the full faith and credit clause. The drafters of the Constitution gave Congress the power to limit federal jurisdiction to provide a check on out-of-control federal judges. It is long past time we begin using our legitimate authority to protect the states and the people from ''judicial tyranny.''

Since the Marriage Protection Act only requires a majority vote in both houses of Congress and the President's signature to become law, it is a more practical way to deal with this issue than the time-consuming process of passing a constitutional amendment. In fact, since the Defense of Marriage Act overwhelmingly passed both houses, and the President

supports protecting state marriage laws from judicial tyranny, there is no reason why the Marriage Protection Act cannot become law this year.

Some may argue that allowing federal judges to rewrite the definition of marriage can result in a victory for individual liberty. This claim is flawed. The best guarantor of true liberty is decentralized political institutions, while the greatest threat to liberty is concentrated power. This is why the Constitution carefully limits the power of the federal government over the states. Allowing federal judges unfettered discretion to strike down state laws, or force a state to conform to the laws of another state, in the name of liberty, leads to centralization and loss of liberty.

While marriage is licensed and otherwise regulated by the states, government did not create the institution of marriage. In fact, the institution of marriage most likely pre-dates the institution of government! Government regulation of marriage is based on state recognition of the practices and customs formulated by private individuals interacting in civil society. Many people associate their wedding day with completing the rituals and other requirements of their faith, thus being joined in the eyes of their church, not the day they received their marriage license, thus being joined in the eyes of the state. Having federal officials, whether judges, bureaucrats, or congressmen, impose a new definition of marriage on the people is an act of social engineering profoundly hostile to liberty.

Mr. Speaker, Congress has a constitutional responsibility to stop rogue federal judges from using a flawed interpretation of the Constitution to rewrite the laws and traditions governing marriage. I urge my colleagues to stand against destructive judicial activism and for marriage by voting for the Marriage Protection Act.

Mr. TERRY. Mr. Speaker, I rise today in support of H.R. 3313, the Marriage Protection Act. As a cosponsor of this important legislation, I thank Chairman SENSENBRENNER and the leadership for bringing it to the House floor.

H.R. 3313 prohibits any federal court, including the Supreme Court, from hearing challenges to a key provision of the Defense of Marriage Act (DOMA), which will preserve the rights of states to not recognize same-sex unions permitted in other states. I support this limitation of federal court jurisdiction in this area.

I would like to point out, however, that H.R. 3313 does not address the current situation in Nebraska.

In 2000, seventy percent (70 percent) of Nebraska voters approved a state constitutional amendment defining marriage as ''one man, one woman''—and barring civil unions or domestic partnerships. The ACLU is currently challenging this amendment in federal district court. In a preliminary ruling, the federal district judge (Judge Bataillon) indicated sympathy with the ACLU's claim.

As I understand it, H.R. 3313 would not prevent federal courts from striking down state provisions, such as the one approved by Nebraska voters.

For that reason, an amendment to the U.S. Constitution may be required to further protect state statutes and constitutional amendments from challenge in the federal courts. While I will vote for this legislation, it is becoming increasingly clear to me and many of my colleagues that further action may be required by the Congress to protect and defend traditional marriage in America.

Mr. MEEK of Florida. Mr. Speaker, I rise today to voice strong objections to H.R. 3313, the so called Marriage Protection Act. This Act prohibits federal courts, including the Supreme Court of the United States, from hearing cases on the constitutionality of provisions of the Defense of Marriage Act, including those relating to same-sex marriage licenses.

This bill is phony, and it is a sham. The title of the bill itself is false advertising. While claiming to ''protect'' marriage, all the bill does is strip federal courts of jurisdiction so that they cannot even consider whether laws on same-sex marriages are consistent with our United States Constitution. For over 200 years, our Constitution has defined our nation and protected our rights. It is a document of empowerment, not limitation. But the Republican leadership wants to put a fence around it and padlock the gate, and they are doing it for purely political purposes.

The United States Congress should not be in the business of stripping federal courts of their ability to hear particular cases. Such actions, if imposed in the 1960's, could have been used to prevent federal courts from hearing voting rights cases. To limit the power of the courts like this for purely partisan purposes sets a dangerous precedent and is simply intolerable. It would undermine the independence of the judicial branch and run contrary to the vision set forth by our founding fathers in the Constitution.

Even for people who, like myself, believe that marriage is between a man and a woman, this measure does nothing to strengthen or protect those bonds. It seems to me that if a threat exists to marriage, it is that too many of them fail. For every two marriages that occurred in the 1990s, one ended in divorce. The stresses on marriages today are great, but they don't have to do with the jurisdiction of the federal courts. This bill does nothing to deal with problems like affordable housing, quality education and training, daycare for young children, high costs of gasoline, electricity and food, high unemployment rates and underemployment, and the lack of health care coverage and other benefits that place severe strains on many families.

Today, the very nature of the typical American family is changing. Just as families headed by only one adult were rare only a few decades ago but are common today, non-traditional couples are now a widespread fact of American society. Nearly 200 Fortune–500 companies and numerous municipalities and organizations have already recognized this fact on their own and provide benefits to same sex couples. In addition, several municipalities have adopted local ordinances prohibiting discrimination based on sexual orientation in housing and employment.

It is simply unfair to deny law-abiding American citizens the protections of civil law with respect to taxation, inheritance, hospital visits and the like, and it is wrong to shackle the federal courts by preventing them from even considering court cases pertaining to these matters.

For these reasons, I urge my colleagues to defeat this bill.

Mr. HOLT. Mr. Speaker, I rise in opposition to H.R. 3313, which would prevent federal courts from hearing cases related to provisions of the Defense of Marriage Act (DOMA) that allow states to refuse to recognize same-sex marriage licenses issued in other jurisdictions.

The Constitution—perhaps the greatest invention in history—has been the source of our freedom in this great country for more than two centuries. The framework of government it established has allowed our diverse people to live together, to balance our various interests, and to thrive. It has provided each citizen with broad, basic rights.

The judiciary was designed to be the one branch of the federal government that is not influenced or guided by political forces. This independent nature enables the judiciary to thoughtfully and objectively review laws enacted by the legislative branch to ensure that Federal law is in line with the Constitution. Throughout the development of our nation, this check has been vital to protecting the rights of minorities.

The legislation that we are considering today is a political measure that will threaten this precious system of checks and balances. Although the Constitution gives Congress the power to limit the jurisdiction of the Federal judiciary and the appellate jurisdiction of the Supreme Court, I am certain that the founding fathers did not intend for Congress to use this power to change the jurisdiction of the courts over a political issue. This legislation will set a dangerous precedent that Congress can deny the judicial branch the right to review specific pieces of legislation simply because Congress is concerned that the judiciary will find the legislation unconstitutional. This is a clear misuse of Congressional authority and it is a misguided attempt to legislate on a controversial social issue.

In addition to undermining the authority of the judiciary, H.R. 3313 would deprive a minority population—gay men and women—of basic freedoms. This bill would limit their right to due process by barring individuals from challenging the constitutionality of DOMA. Congress should not limit an individual's ability to seek redress in the court system simply because some Members object to the sexual orientation of others.

And if that is not bad enough, H.R. 3313 would set a pattern that would cause unimaginable harm. Today its gay men and women, tomorrow laws dealing with any other area would be exempted for judicial review.

Altering the framework of our government and restricting access to the courts is not the appropriate way to resolve a divisive political issue. I urge my colleagues to vote against this legislation.

Mr. JONES of North Carolina. Mr. Speaker, I am here today with my colleagues in support of H.R. 3315, the Marriage Protection Act. I represent the people of the 3rd Congressional district of North Carolina, a district that has asked me to support and protect the sanctity of marriage between man and woman. Let me read just a small part of a pastoral letter by Bishop Sheridan of Colorado as he explains the history behind our tradition of marriage: ''Every civilization known to mankind has understood marriage as the union of a man and a woman . . . no one can simply redefine marriage to suit a political or social agenda. Once again, we must be clear about this matter. The future of our world depends upon the

strength of the family, the basic unit of our society. The future of the family depends on the state of marriage.''

Mr. Hostettler's bill will give states their Constitutional right to protect traditional marriage. No state should be forced to recognize a same-sex marriage if that state's citizens do not believe in honoring such a union. I stand with the majority of the people in the 3rd district, the citizens of North Carolina and indeed the majority of all Americans when I say that I strongly believe in protecting marriage as an exclusive union between one man and one woman.

I believe the moral future of a our country is dependent upon the Judeo-Christian values that make up the foundation of America, and if America is to survive as a strong nation it must protect those values. This bill is one way Congress can stands up for traditional American values.

I close with a quote from Supreme Court Justice Antonin Scalia in his dissent of the 5–4 case of Lawrence v. Texas: ''But persuading one's fellow citizens is one thing, and imposing one's views in absence of democratic majority will is something else . . . Today's opinion dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as formal recognition in marriage is concerned.

Mr. WAXMAN. Mr. Speaker, I staunchly oppose H.R. 3313, the so-called ''Marriage Protection Act.'' This bill is an attack on our Constitution, an insult to the fundamental freedoms of our society, and a shameful election year stunt by the Republican party.

Sadly, although its hard to imagine, this bill is even worse than the proposed Federal Marriage Amendment. While I also oppose that legislation, and any effort to write discrimination based on sexual orientation into our laws, this measure presents an even deeper constitutional crisis. What this bill attempts to do is strip the federal court system and the Supreme Court of the ability to decide the constitutionality of a law. Regardless of the issue in question, this bill is a flagrant attack on the basic separation of powers enumerated in the constitution and the inherent right of each branch of government to have full power over its sphere of jurisdiction.

Equally troubling is the purpose of the bill—to single out one minority group and argue that they do not have the right to be heard in court on an issue important to them. The idea that the gay and lesbian community somehow doesn't deserve equal protection under the law is an affront to the Bill of Rights and its guarantee that all Americans have a right to due process.

It is no secret that the Bush Administration will stop at nothing to appeal to its conservative base by discriminating against same-sex couples. But it is an embarrassment to our democracy that the Republican party would promote these initiatives as a ploy to distract from the Administration's far-reaching policy failures. One recent e-mail newsletter sent on June 7, 2004 by veteran right-wing conservative Paul Weyrich openly suggested:

''The president has bet the farm on Iraq . . . Given what the continued killing has done to the president's standing in the polls this far, it is a lead-pipe cinch that as we lead up to the first days of November 2004, violence is going to be horrific. . . The only one alternative to this situation: change the subject. . . Ninety-nine percent of the president's base will unite behind him if he pushed the [Federal Marriage] Amendment.''

I opposed the Defense of Marriage Act when it was considered in the House in 1994. Ten years later, I continue to believe that these initiatives against gay marriage do nothing to preserve the institution of marriage, but serve only to fan the flames of intolerance and prejudice. I urge my colleagues to reject this woefully misguided bill and its crude objectives.

Mr. CANNON. Mr. Speaker, today the House of Representatives is acting well within its Constitutional authority in considering H.R. 3313. Currently, many state courts including those in Massachusetts have begun the process of defining marriage through judicial decree. Because of the Constitution's Full Faith and Credit Clause, this judicial activism may be forced upon all the remaining states, including Utah, undermining the traditional definition of marriage and family.

These and other state and federal courts imperial judges are acting in an extra-constitutional fashion and assuming the powers of legislatures.

In Massachusetts, the Supreme Judicial Court of Massachusetts ruled on a 4–3 vote in Goodridge v. Massachusetts Dep't of Health, 798 N.E. 2d 941 (Mass. 2003) that the state's refusal to issue marriage licenses to same-sex couples violated the state constitution. The court found that the traditional definition of marriage, the same definition used throughout history, was evidence of ''invidious'' discrimination. In a follow-up opinion, these same judges stated the current definition of marriage in Massachusetts was a ''stain'' on the state constitution and needed to be ''eradicated''.

On May 17th of this year, the Goodridge decision went into effect and the state of Massachusetts began issuing same-sex marriage licenses. This new and expanded definition of marriage opens many more questions than it answers. What happens if these individuals move to other states after they are married? What benefits and rights must the new jurisdiction accommodate and what other obligations will be thrust on a jurisdiction that does not recognize such unions?

These are difficult and divisive questions, and this is why representatives elected by the people and not the courts should decide them. Those opposed to an open and deliberative debate and public votes by elected legislators have preferred judicial activism instead.

The Defense of Marriage Act, which passed both Houses of Congress and was signed into law by President Clinton, is central to our debate. DOMA was passed to prevent one state from imposing its family law policy on another state. Historically, family law has always been left to the states. However, scholars on both sides of the ideological aisle have stated their Constitutional concerns with the language of DOMA. If DOMA challenges are successful, then one case in one court could conceivably set social policy for the nation.

When the judicial branch loses its moral compass, it is the responsibility of the Congress to exert its authority to keep the judicial branch in check. In this particular circumstance, the Congress has two options. The first is a Constitutional Amendment. The second is assertion of its authority in the Constitution under Article III, Section 2 clause 2 and ''regulate'' the jurisdiction of the federal courts and make ''exceptions'' to their jurisdiction.

I have reservations about amending the U.S. Constitution. But that may be our last resort. As President Bush stated, ''If judges insist on forcing their arbitrary will upon the people, the only alternative left to the people would be the constitutional process.'' I agree with President Bush.

We are debating H.R. 3313, which limits the role of federal courts. This legislation states, ''No court created by an act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, section 1738C.'' The referenced section relates to the DOMA language allowing states to opt to not recognize the same-sex marriages of another state. HR 3313 is simply Congress reaffirming its intent under DOMA and disallowing judicial review.

Some argue that Congress should not limit the jurisdiction of the federal courts. I would like to remind them of the provision Senator Daschle inserted into a Defense Appropriations bill in the 107th Congress that exempted all forest management projects in the Black Hills National Forest from any further NEPA requirements, from administrative appeals, from Endangered Species Act Section 7 consultation procedures, from review by any court, and from court ordered injunctions. I agreed with Senator Daschle and supported this legislation not only because it set a precedent for good forest policy, but also because it is a precedent for Congress's authority to limit the jurisdiction of the courts.

Chief Justice Marshall inferred in Marbury v. Madison that if the Supreme Court identifies a conflict between a constitutional provision and a congressional statute, the Court has the authority to declare the state unconstitutional. It is clear that Congress has the duty and responsibility to make sure that no act promulgated by it exceeds the Constitution.

In this particular case, the Congress is exerting its explicit authority to limit the jurisdiction of the Courts. This cannot be held unconstitutional by the federal courts or the Supreme Court because they cannot hear it. They have no jurisdiction because Congress withholds jurisdiction. It is the natural check on the courts' power that the founding fathers built into our system of checks and balances.

I say with all sincerity to those opposed to this legislation, the spirit of the law is explicit. State family law is for the states to decide. The Supreme Court in a 2004 decision, Elk Grove Unified School District v. Newdow, 124 S. Ct. 2301, 2309 (2004) (citing and quoting In re Burrus, 136 U.S. 586, 593–94 (1890)), reaffirmed this presumption by stating, ''the whole subject of domestic relations . . . belongs to the laws of the State and not to the laws of the United States.'' If the opponents of this legislation deny this reaffirmation of the law, a Constitutional Amendment to protect the definition of marriage is the only alternative.

I urge a ''yes'' vote.

Ms. KILPATRICK. Mr. Speaker, I rise in opposition to House consideration of H.R. 3313. My opposition to the bill is based on my belief that when I took my congressional oath to uphold and protect the United States Constitution

and the people of America, I pledged to represent and protect all three branches of government.

H.R. 3313 purports to prohibit the Supreme Court from serving as the ultimate and final arbiter on legal matters. The legislation is wrongly inspired because it reflects the arrogance of its crafters who are engaged in exercising excessive legislative authority. H.R. 3313 seeks to establish legal precedent that will allow radical ideologues to preclude the ability of the Supreme Court to hear cases and render decisions, in an effort to limit the Court's judicial authority. The consideration of this measure is the initial volley of a frontal assault on the Constitution.

In my consideration of the bill I have continued to be mindful that I subscribe to a personal belief that marriage is a sacred relationship which is directly related to my strong belief in, and support of children. I also believe that children must be protected and supported so that they can thrive and replenish the earth. I worry about the welfare of our children if the Court's authority is eviscerated. If H.R. 3313 is passed, I am afraid that the Supreme Court will be stripped of its judicial authority, and ultimately its ability to fulfill its mandate to render justice.

It is against this backdrop that I oppose H.R. 3313. The legislation is designed to derail the judicial process and the proponents of the bill are trying to justify their efforts by contending that they are trying to stop judicial activism. So I rise in strong opposition to this bill and I encourage my colleagues on both sides of the political aisle to defeat this measure.

Ms. MCCARTHY of Missouri. Mr. Speaker, I rise today in opposition to H.R. 3313. This unwise legislation would circumvent the checks and balances guaranteed in our Constitution by irreparably altering the role of the judicial branch of government. ''The Washington Post'' stated in their July 21 editorial: ''This is as wrong as wrong can be.''

In addition to altering the very foundation of our system of government, H.R. 3313 attempts to abridge the rights of gays and lesbians. Federal courts have played an indispensable role in the enforcement of civil rights laws, often being the sole protector of minority groups, ensuring they are afforded the freedoms guaranteed to all Americans. Enacting this bill would weaken the rights of individuals seeking protection from government through the Federal courts.

This bill would take away the right to judicial review established in the landmark Marbury v. Madison case of 1803. The 200 year old legal precedent set in that case established once and for all that the Federal courts have authority over Federal laws.

The framers of the Constitution intended the balance of power between the branches to protect the minority from the tyranny of the majority. This legislation is not just about same sex marriage, it's about who we are as a country. I urge my colleagues to oppose this obstructionist legislation. As members of Congress it is our responsibility to protect the Constitution that has served us well for more than 200 years and is a model to the world of a government for and by the people.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 734, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 8 of rule XX, this 15-minute vote on passage of H.R. 3313 will be followed by 5-minute votes on suspending the rules and passing H.R. 4056; and suspending the rules and adopting H. Res. 652.

The vote was taken by electronic device, and there were—yeas 233, nays 194, not voting 8, as follows:

[Roll No. 410]

YEAS—233

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Berry
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Boozman
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Carter
Chabot
Chandler
Chocola
Coble
Cole
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
Everett
Feeney
Ferguson
Flake
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kline
Knollenberg
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ross
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—194

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Bass
Becerra
Bell
Bereuter
Berkley
Berman
Biggert
Bishop (GA)
Bishop (NY)
Blumenauer
Bono
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Case
Castle
Clay
Clyburn
Conyers
Cooper
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Emanuel
Engel
English
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Foley
Ford
Frank (MA)
Frost
Gephardt
Gerlach
Gilchrest
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley (OR)
Houghton
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kolbe
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lynch
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rangel
Reyes
Rodriguez
Ros-Lehtinen
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Simmons
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—8

Carson (IN)
Collins
Greenwood
Kirk
Kucinich
Lowey
Paul
Quinn

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. GILLMOR) (during the vote). Members

are reminded that there are 2 minutes remaining in this vote.

□ 1553

Mr. LEWIS of Georgia changed his vote from ''yea'' to ''nay.''

Mr. SANDLIN changed his vote from ''nay'' to ''yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

COMMERCIAL AVIATION MANPADS DEFENSE ACT OF 2004

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 4056, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. MICA) that the House suspend the rules and pass the bill, H.R. 4056, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 423, nays 0, not voting 11, as follows:

[Roll No. 411]

YEAS—423

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—11

Carson (IN)
Collins
Gephardt
Greenwood
Istook
Kirk
Kucinich
Lowey
Paul
Portman
Quinn

□ 1603

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

URGING GOVERNMENT OF BELARUS TO ENSURE DEMOCRATIC, TRANSPARENT, AND FAIR ELECTION PROCESS

The SPEAKER pro tempore (Mr. GILLMOR). The unfinished business is the question of suspending the rules and agreeing to the resolution, H. Res. 652.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa (Mr. LEACH) that the House suspend the rules and agree to the resolution, H. Res. 652, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 421, nays 0, not voting 13, as follows:

[Roll No. 412]

YEAS—421

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth

Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—13

Capuano
Carson (IN)
Collins
Diaz-Balart, L.
Diaz-Balart, M.
Gephardt
Greenwood
Kirk
Kucinich
Lowey
Paul
Portman
Quinn

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. GILCHREST) (during the vote). Members are advised that there are 2 minutes left in this vote.

□ 1610

So (two thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. COLLINS. Mr. Speaker, I was not present for debate on rollcall vote 407, rule providing for consideration of U.S.-Morocco Free Trade (H. Res. 738); rollcall vote 408, to increase disability compensation for veterans (H.R. 4175); rollcall vote 409, expressing that Presidential elections should not be postponed due to terrorist attacks (H. Res. 728); rollcall vote 410, final passage of Marriage Protection Act (H.R. 3313), rollcall vote 411, Commercial Aviation MANPADS Defense Act (H.R. 4056); and rollcall vote 412, expressing the sense of Congress for fair elections in Belarus (H. Res. 652).

Had I been present, I would have voted "yea" for rollcall votes 407, 408, 409, 410, 411, and 412.

PERSONAL EXPLANATION

Mrs. LOWEY. Mr. Speaker, during an absence on July 22, 2004, I regrettably missed rollcall votes 407–412 and other votes. Had I been present, I would have voted in the following manner: rollcall No. 407: "yea"; rollcall No. 408: "yea"; rollcall No. 409: "yea"; rollcall No. 410: "no"; rollcall No. 411: "yea"; rollcall No. 412: "yea".

H.R. 4842—United States-Morocco Free Trade Implementation Act: "yea"; H.R. 4837—Military Construction Appropriations Act for FY05: "yea"; Conference Report on H.R. 4613—DOD Appropriations Act for FY05: "yea"; H. Con. Res. 436—Celebrating 10 years of majority rule in S. Africa: "yea"; H. Con. Res. 418—Diplomatic relations between the U.S. and Japan: "yea"; H. Con. Res. 468—Condemning the attack on the AMIA Center: "yea"; H. Con. Res. 467—Declaring genocide in Darfur, Sudan: "yea"; Stenholm Motion to Instruct on H.R. 1308: "yea".

PERSONAL EXPLANATION

Mr. PORTMAN. Mr. Speaker, today, I was absent attending to a previously scheduled commitment and missed the votes on rollcall No. 411, on H.R. 4056, the Commercial Aviation MANPADS Defense Act; rollcall No. 412, on H. Res. 652, urging the Government of the Republic of Belarus to ensure a democratic, transparent, and fair election process for its parliamentary elections in the Fall of 2004.

Had I been present, I would have voted "yea" on rollcall No. 411, "yea" on rollcall No. 412.

NOTICE

Incomplete record of House proceedings.
Today's House proceedings will be continued in Book II.

United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *108th* CONGRESS, SECOND SESSION

Vol. 150 WASHINGTON, THURSDAY, JULY 22, 2004 *No. 103*

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SAXBY CHAMBLISS, a Senator from the State of Georgia.

The PRESIDING OFFICER. Today's prayer will be offered by our guest Chaplain, Pastor Gene Arey, New Harvest Worship Center, Waynesboro, VA.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

Father God, I come to You today on behalf of the Senators of the United States of America and the people they are called to serve. I thank You that we are one Nation under You, the land of the free and the home of the brave.

I pray for our Senators as they seek Your favor, Your will, and Your righteous blessings for America. I pray that Your guidance, strength, and wisdom will be upon them as they make important decisions and ponder the future of this great Nation. As our Senators complete this session, bring them special favor.

Father, I pray for our President and our civic and military leaders. Grant them the wisdom to discern Your perfect will and to desire to walk in Your ways.

Finally, Lord, I pray for those loved ones who are deployed in harm's way. Please comfort them and protect the military forces stationed around the globe.

In the name of our Lord Jesus, I pray. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAXBY CHAMBLISS 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, July 22, 2004.

To the Senate:

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

TED STEVENS,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

SCHEDULE

Mr. MCCONNELL. Mr. President, this morning the Senate will conduct a period of morning business for up to 60 minutes, with the first 30 minutes under the control of the majority leader and the second 30 minutes under the control of the Democratic leader.

Following morning business, the Senate will resume executive session consideration of Henry Saad to be a U.S. circuit judge for the Sixth Circuit. The order from last night provides for up to three cloture votes beginning at 11 a.m. on the Sixth Circuit nominations. First is on Henry Saad, to be followed by a vote on Richard Griffin and then David McKeague. Therefore, Senators can expect the first votes of the day around 11 o'clock this morning.

Also we will turn to consideration of the defense appropriations conference report when it arrives from the House. We will be monitoring their action on that bill so that we can determine when we may begin debate on that bill this afternoon.

I don't believe there is a need for a great deal of debate on the defense measure; however, we will confer with the Democratic leadership on a time agreement for this afternoon. There are a number of other legislative and executive items we are attempting to clear before we depart for the August adjournment. We will be processing those throughout the day as well.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for statements only for up to 60 minutes, with the first half of the time under the control of the majority leader or his designee and the second half of the time under the control of the Democratic leader or his designee.

RECOGNITION OF THE MINORITY LEADER

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

Mr. DASCHLE. Mr. President, I will use my leader time and ask that it not be taken from the allocated time to our Democratic caucus this morning.

HONORING NATIVE AMERICAN HEROES

Mr. DASCHLE. Mr. President, Americans are united today in concern for the safety and well-being of our men

and women in uniform—especially those who are serving in Iraq and Afghanistan, risking their lives to advance human freedom.

This morning, I would like to speak about the extraordinary service of a group of soldiers from two earlier wars.

We know these men today as ''the code talkers.''

They were Native American soldiers who used the languages of their tribes to send strategic military communications during World Wars I and II. Their impenetrable codes saved the lives of countless American troops in Europe and throughout the Pacific.

The Navajo code talkers are the best-known of these men. Three years ago, they were honored, rightly, with congressional medals.

But the Navajo were not the only code talkers. Soldiers from at least 15 other Indian Nations—including the Cherokee, Choctaw, Comanche, Pawnee, Seminole, Osage, Kiowa, Hopi and other nations—also served as code talkers. And 11 code talkers came from the Lakota, Dakota, and Nakota nations, known to many as the Great Sioux Nation.

Of those 11, nine—John Bear King of the Standing Rock Sioux Tribe; Simon Broken Leg and Iver Crow Eagle, Sr., of the Rosebud Sioux Tribe; Eddie Eagle Boy and Phillip LaBlanc, of the Cheyenne River Sioux Tribe; BapTEEST Pumpkinseed of the Oglala Sioux Tribe; Edmund St. John of the Crow Creek Sioux Tribe; and Walter C. John of the Santee Sioux Tribe of Nebraska—have all passed on.

Charlie Whitepipe is one of the two surviving Lakota code talkers.

In 1941, he enlisted in the United States Army. He was already in training in California when Pearl Harbor was attacked. The following day, he shipped out to Hawaii.

From Hawaii, his unit was sent to the Pacific island nation of New Guinea.

It was in New Guinea that another soldier, from Sioux Falls, told his commanding officer that Charlie Whitepipe would make a good forward observer because—in his words—''the Sioux are stealthy, sneaky, people.''

The characterization angered Whitepipe, but it apparently impressed his commanding officer.

Charlie Whitepipe spent the next 2 years in New Guinea as a forward observer and radio man, moving ahead of his unit and communicating in Lakota with a ship-based partner to direct artillery fire at enemy troops.

In 1944, he was shipped home, suffering from malaria and jungle rot, the result of months spent in water-filled foxholes.

After an honorable discharge, he returned to Rosebud, married, and raised six children with his wife.

He spent 30 years working as a lineman with the rural electric association, helping to bring electricity to the Rosebud Reservation and other parts of rural South Dakota. In his son's words, ''He got up and went to work 6 days a week and on the 7th day, he got up and took his family to church.''

Charlie Whitepipe turned 86 this month. He suffers today from a profound hearing loss caused in part by artillery explosions.

His family remains the center of his life.

Clarence Wolf Guts is the other surviving Lakota code talker.

He enlisted in the Army 7 months after Pearl Harbor with his friend and cousin, Iver Crow Eagle, Sr.

During Ranger training in Alabama, an officer discovered that the cousins could both speak, read, and write Lakota. As Mr. Wolf Guts recalls it, that officer ''thought he'd hit the jackpot.''

Clarence Wolf Guts was assigned to travel with a general in the Pacific, and Iver Crow Eagle was assigned as a radio operator for a colonel.

For the next 3 years, the cousins jumped from one Pacific island to the next, pushing the Japanese back.

They also helped develop a phonetic alphabet based on Lakota that was later used to develop a Lakota code.

One day, as bullets and shrapnel exploded around him, Clarence Wolf Guts whispered a prayer in Lakota:

Bring me home, God, and I will praise your name always.

His prayer was answered.

Clarence Wolf Guts returned safely to Pine Ridge in 1946, married and—like Charlie Whitepipe—raised six children.

Today, at 80, he marches with veterans groups whenever he can.

The Yankton Sioux were among the first Native American soldiers to use a native language to confound enemy troops, in World War I. Through two world wars, no native language or code based on an indigenous American language was ever broken.

What makes the code talkers story even more extraordinary to some is the fact that these men chose to fight for the United States at all.

As young boys, Charlie Whitepipe and Clarence Wolf Guts spoke only Lakota. Like most of the code talkers, however, they were forced to attend schools in which they were forbidden to speak their native language.

Students who broke the English-only rules were punished harshly; many were beaten, some even to death.

It was part of a sad, brutal chapter in our Nation's history in which the United States Government and other institutions tried to strip Indian children of their tribal identities.

Despite that history, despite the failure of the United States Government to honor its treaty obligations and other commitments to tribes, Native Americans have long had a higher rate of military service than any other group in America.

Another young Lakota soldier, Sheldon Hawk Eagle, was laid to rest in the National Cemetery in the Black Hills just before Thanksgiving last year. Like so many Lakota people before him, he died serving this Nation.

This past Fourth of July, I was honored to march with other veterans at a powwow at the Sisseton-Wahpeton Sioux Reservation in South Dakota. Among the veterans who marched with us that day were two members of the tribe who were home on leave from Iraq.

That evening, at our State's annual Fourth of July fireworks celebration at Mount Rushmore, South Dakotans paid special tribute to the Lakota code talkers.

There have been other tributes as well. But there is at least one more honor the Lakota code talkers are due.

I strongly believe that Congress should pass the Code Talkers Recognition Act this year to award our Nation's highest honor, the Congressional Medal, to the Lakota code talkers and all Native American code talkers who served in both world wars.

This is a bipartisan bill. Senator INHOFE introduced it, and I am proud to be a cosponsor, along with my fellow South Dakotan, TIM JOHNSON, and others. A similar bill passed the House in 2002 but was blocked in the Senate by members of the other party.

Historians can debate which code talkers communicated in actual codes and which communicated essential military information using only their native languages. What is beyond debate, however, is the courage of veterans such as Charlie Whitepipe and Clarence Wolf Guts and the extraordinary value of their wartime service to our Nation. Let us work together to pass the Code Talkers Recognition Act this year before we lose any more of these heroes.

Let us also agree that we will honor the service of the code talkers by funding veterans health programs adequately, and ensuring that veterans in tribal communities have reasonable access to VA facilities. Let us also honor our Government's treaty obligations to fund Indian health care, so that tribal veterans and their families are not denied essential care.

Finally, we should honor the code talkers by working to preserve the rich, ancient languages they used to preserve our freedom.

Many of those languages are on the verge of extinction. Of the 300 indigenous languages once spoken in America, only 150 are still spoken today. Of those, only 20 are still spoken by several generations.

Experts warn that without immediate, dramatic action by Native Americans, tribal governments and schools, and the Federal Government to encourage their preservation and perpetuation, Lakota and all of the native languages of America will die by the year 2050.

Language is the most effective means we have to transmit our values, our beliefs, and our collective memories from one generation to the next. For that reason, Native Americans and tribal communities particularly benefit from preserving the languages of their ancestors.

But they are not alone. Imagine how World War II might have turned out had we not had the code talkers.

In 1990, with Senator INOUYE's leadership, Congress established the Native American Languages Act to ''preserve, protect and promote the rights and freedom of Native Americans to use, practice and develop Native American languages.''

Last year, Senator INOUYE introduced amendments to that law to support the creation within tribal communities of immersion schools and language survival ''nests,'' to teach these languages to the next generation.

Let's pass those amendments this year. There is no time to waste.

Let's also work together to adequately fund Indian schools and to include in all Federal education policies the flexibility tribal educators need to include native languages, history and culture in their curriculums.

Indian parents, and tribal leaders and educators, in South Dakota care deeply about this. And President Bush specifically called for such flexibility in the Executive order on Indian education he signed less than three months ago.

Soldiers go to war to give their children the chance to live better lives. What better way can we honor the code talkers than to support schools in which their descendants can learn the native languages that helped to save our Nation?

The result of such efforts will be a healthier, happier Indian population. And who knows what we will all learn in the process?

Mr. President, these remarks have been translated into Lakota by Elizabeth Little Elk, a member of the Rosebud Sioux Tribe. I ask unanimous consent that the Lakota translation of my words be printed in the CONGRESSIONAL RECORD.

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

HONORING NATIVE AMERICAN HEROES, PRESERVING NATIVE AMERICAN LANGUAGES

Tunkasila Mila Hanska Oyate ki lel un gluwitapi. Na taku le ecunkupi ke he, wiyan nahan wicasa le un okicize el un pelo. Iyotan winyan na wicasa kowakatan unpi hel Iraq nahan Afghanistan. Takuwe heciya unpi ki hena oyate ki nawicakinjin pelo.

Le hihani ki taku wan iwowablakin kte ehani wicasa eya makasitomani okicize el apa pelo.

Lena akicita ki tokeske wacinwicayau ki he ta wowiye ki un woglakapi, ho nahan he un wicakpe ota nin pelo.

Sina Gleska Oyate etan Wicasa eya makocesitomani slolwicaya pelo. Ehani waniyetu yamni he han Tunkasila wicasa ki lena wicayuonihan pelo.

Sina Gleska Oyate ki isnalapi sni, nainjeyan lena oyate ki pi Cherokee, Choctaw, Comanche, Pawnee, Seminole, Osage, Kiowa, nahan Hopi akicita he tanpi. Ho, nahan wicasa ake wanji Oceti Sakowin u pelo.

Le ake wanji ki he John Bear King of the Standing Rock Sioux Tribe; Simon Broken Leg and Iver Crow Eagle, Sr. of the Rosebud Sioux Tribe; Eddie Eagle Boy and Phillip LaBlanc of the Cheyenne River Sioux Tribe; Baptiste Pumpkinseed of the Oglala Sioux Tribe; Edmund St. John of the Crow Creek Sioux Tribe; and Walter C. John of the Santee Sioux Tribe of Nebraska—numlala ni unpi. Charlie Whitepipe hecena niun.

1941 he han akicita el ic'icu, hetan California ekta iyeyapi nahan heceya un he han Pearl Harbor tiektiyapi. He ihaniyuhehan Hawaii ekta iyeyapi, ho nahan hetan New Guinea ekta iyeya pelo.

New Guinea ekta un hehan wicasa wan Inyan oblecahan etanhan itancan ki okiyaki na Charlie Whitepipe atunwan ki waste kte cin Lakota ki lila wicasapi sni hanan waecun unspepi yelo. Le wicasa ki waeyo hehan Charlie Whitepipe iyohpi sni cin Lakota ki hececapi sni, eyas itacan ki hecetula ca Charlie Whitepipe waniyutu num atuwan wicasa heca. Ho nahan, Lakota woiye un wata wan el Lakota wan kici woglake.

1944 hehan lila kuje ca glicuyapi.

Charlie Whitepipe gli hahan taicutun na wakanyeja sakpe icahwice.

Ho hetan waniyetu wikcemna yamni Rural Electric Association hel wowasecun. Ta cinca wan atkuku ki anpetu ki oyohi wasecun, ho nahan anpetu wakan canasna tiwahe tawa ki iyuha wakekiye awinca iye.

Wana Charlie Whitepipe waniyetu saglokan ake sakpe. Lehanl wicasa ki le nunhcan natakuni nahun sni icin okicize ekta un, hehanl wanapobiyab ki nuge ki yusicapi. Wicasa ki let tiwahe tawa ki tehkila.

Clarence Wolf Guts injiyan nahahcini un, nahan injiya Lakota woiye nahan woglake un okicize ekta wacinuanpi.

Ta kola ku kici, Iver Crow Eagle, Sr., akicita el ici'cupi.

Alabama ekta eye wicayapi. Heciya itacan ki wanji ablezina Iver nahan Clarence Lakota woglaka nahan wayawa okihipi. Mr. Wolf Guts oglakina akicita itacan ki lila oiyokipi.

Clarence Wolf Guts akicita ota itacan ki omani. Ho nahan, Iver Crow Eagle, Sr., injeyan akicita itaca wan ki cin wasecun. Lena Wicasa ki tahansi kiciyapi.

Waniyetu yamni Iver nahan Clarence wita ecehcel manipi.

Lakota wowiye un wowapi wan kagapi. Le wowapi ki akicita ki unpi. Anpetu wanji Clarence wacekiya, ''Wakan Tanka tanyan waki hantas ohihanke wanjini cecicin kte.''

Clarence wacekiye ki he osi'icu.

Clarence Wolf Guts Pine Ridge ekta Tanya gli. Taicutun nainjiyan wakanyeja sakpe icahwice.

Lehanl waniyetu wikcemna saglokan. Akicita ki mani cansna el opa.

Tuwa tokiya Lakol woiye un okicize el un ki he Ihuntuwan Dakota Oyate ki epi. World War I nahan World War II Lakota woiye okicize el un ki ogahniga sni ca, lial taku ota ecun na eyab okihipi.

Lena wicasa ki toheki lila wohanke ki he lena wicasa ki okicize el unpi, nahan iyeca hena hecunpi.

Charlie Whitepipe nahan Clarence Wolf Guts wakanyeja pu hehan Lakota ecela unspepi. Ho eyas, wana wayapi hehan Lakota woglake okihip sni. Wasicu ecela woglaka okihipi. Lakota woglaka hantas awicapapi naha tehiya wicakowap. Nahan hunh t'api.

Le iwanglakap cansna lila oyohsice na waste sni. Hehan Mila Hanska ki Oceti Sakowin Oyate tehkiya wicakowapi. Lakol wicoh'an ki unkip wacinpi.

Lecel oyate ki owicakowap eyas hecana wicasa na winyan ici'cu. Mila Hanska Oyate okicize wanji el iyab canasna Lakota winyan na wicasa akita el eci'cupi.

Akicita wan Sheldon Hawk Eagle eciyapi ca He Sapa National Cemetary el eyonpap le waniyetu hehan le koskalaka ki okicize el lecala t'e.

Le 4th of July hehan akicita ki manipi ca ob wamani. Le Sisseton-Wahpeton Reservation el mawani. Hehan wicasa num Iraq ekta okicize hetan glipi.

He hanhepi hehan He Sapa ekta akicita wica uonihanpi ca el waun.

Akicita ki wica yuonihanpi ota, ho eyas, Lakota woiye akicita ki hena isnala wicayuonihan wacin.

Taku wan lila iblukcan ki he le akicita eya woiye ki hena Tunkasila wicayuonihan ki waste kte. World War I na World War II makasitomani akicita eya iwaglake ki lena woyuonihan wakantuye ic'u wacin.

Wowapi wan lel awahi, le wowapi tuweki iyuha ikipi kte. Senator Inhofe kici, nahan Tim Johnson awahi. Waniyetu nupa hehan wowapi lecel unkohipi, eyas hunk sam kahinhpeya najinpi.

Akicita eya Charlie Whitepipe na Clarence Wolf Guts oyate ecetkiya waencunpi le un wayuonihan wakantuya wicun'kup waste ke yelo. Lena wicasa ki ecani el un kte sni, ca le waniyetu ki unkigluwitap na wowapi ki le unyuwastepi ki waste ktelo.

Lankun taku ecun'kun kte ki he akicita ki lena taky ewojawab ki hena wicunkub ki waste kte. Akicita okuju tipi hena muza ska iyena yuhap ki waste kte. Lena oyate ki Wolakota wowapi waste kte. Lena oyate ki Wolakota wowapi wanji kici unkagapi. Taku wowapi ki le na eya ki unkinyejan ecunkun waste ke.

Na lena winyan na wicasa ki wicasyuonihanpi ki ta woiye ki un inipi.

Makasitomni lakol woiye ki lila oh'kankoya takuni sni ehani kohta yamni woiye waglakapi le hanl wikcemna num woiye waglapi.

Tuwiki yuha takun ecunp sni tantas lakol wichoh'an nahan lakol woye ki wanic'in kte.

Lakol wicoh'an na lakol woiye ki un wakanyeja ki tan icagapi. Lena ungluzapi ki waste kte. Lecel oyate ki niupi kte.

1990 hehan Senator Inouye wowapi wan lel ahi, ho ca iyuha walakapi, na luwastepi. He wowapi ki Lakota Oyate ki makasitomni lakol wicoh'an na woiye yuwas'ake.

Senator Inouye nakun wowapi lel ahi he owayawa tipi ki lena muza ska wicaku hecel lakol wicoh'an ki wakanyeja ki unspe okte.

Ateyapi Bush wowapi wan caje ki owa. Wowapi wan woiye ke lena tanyan wacin kte, ca wowapi yamni el caje ke owa. Le wowayepi ki waste.

Akicita ki okicize el yapi hecel ta wakanyeja ki tanyan unpi kte, na tiwahe oyunihanpi uncinpi. Le wowapi ki unyunwastepi wacin.

Le ecunkunpi ki hanta taku unkablezap seca?

Mr. DASCHLE. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. ALLARD. I ask the Chair to notify me after 15 minutes of my time has expired.

The ACTING PRESIDENT pro tempore. The Chair will so notify the Senator.

9/11 COMMISSION REPORT

Mr. ALLARD. Mr. President, the report from the National Commission on Terrorist Attacks upon the United States will be coming out today. There has been some dribbling out of information about what that report might contain, but we are not going to know

for sure the full content of that report until we get a briefing. I am excited that a good portion of the report is going to be released to the public. I am always of the belief that we need to have an open dialog about issues and where there are shortcomings so that we can come up with the answers and solutions that will serve us best.

I do not think any one group of people or even one individual has all the answers. So I think the more dialog we can get as a result of this report, the better. But I do think it serves us well to think about where we are today, and how it is we got to where we are.

The President came into office about 3½ years ago. He was elected in 2000. He had not even been in office a full year when all of a sudden we had 9/11. What has emerged is that we have a serious problem with terrorism.

Historically, if we look back through the 1990s, we see that there was an emerging problem, which many of us did not recognize as serious as it turned out to be, and most of us did not realize that a series of events would eventually culminate into 9/11 and eventually a finishing off of the war with Iraq. There was a pattern, in looking back.

By the way, it is always easy to look back and say we should have done this and we should have done that, but it is much more difficult to be prospective and say this is the information that is before us and this is what is going to happen in the future.

What was happening in the 1990s was a persistent pattern of boldness in the size and the number of terrorist attacks that were occurring throughout the world. They started with car bombs, and we still have car bombs today. Then they added attacks on embassies. We had an attack on the Khobar Towers. We had an attack on the USS Cole. We had planes bombed by terrorists. We had a partially successful attack from terrorists in New York, and then all of a sudden it built up to the ultimate, which was the 9/11 attack in this country which brought down the Twin Towers in New York, and there was also an attack on the Pentagon, which is the first time this country had been attacked on its own soil since Pearl Harbor.

This was very much an awakening for the Congress, as well as the American people. This President should be commended for rising to the challenges of 9/11, and I think we have the right President in office at the right time. He sent a strong message to the world that was important to send, and that message was that we are not going to tolerate terrorism, and if there are any other countries that are going to support terrorist attacks, either directly or indirectly, they are going to be considered part of the problem as we resolve these issues related to terrorism.

As a result, he had to take some very strong stances. We had to take some very strong positions.

Eventually, what evolved is that Afghanistan was the center. The President dealt first with Afghanistan. Afghanistan was pretty much the center of a lot of the terrorist activities. The Government had been taken over by the terrorists. Afghanistan as a country was being used as a training ground for terrorists who were exporting terrorism throughout the world.

Today, Afghanistan is now a democracy, moving toward more freedom for its people, and getting terrorism under control. It has some challenges with economic growth, but I think President Karzai has done a tremendous job. This all happened because of strong action by this President in moving forward.

We saw that many of these terrorist groups, al-Qaida, for example, had their origins in Saudi Arabia. We saw many terrorist groups that were raising money through Saudi Arabia. Today, Saudi Arabia has recognized the problem and taken some very strong actions. They are working with the United States to control terrorism within their own country.

We have Libya and Muammar Qadhafi, who was exporting terrorism and actually attempting to develop a nuclear weapons program in his own country. Now he has backed off and said, look, we want to work with the United States. He has come out and publicly opposed terrorism. He has given up his nuclear program. The nuclear inspectors can now go into his country and look for nuclear materials.

We have made remarkable progress in Afghanistan. I know we have remarkable progress in Saudi Arabia. We have made remarkable progress in Libya. Even in North Korea we seem to sense more willingness on their part at least to sit down with the United States and negotiate with the United States on how it is we can move toward a more peaceful environment.

Finally, that brings us to Iraq. I think that is another remarkable achievement for this administration. Even though there are some differences of opinion about how this should have been handled, the fact is a large majority of the Senate, working with the President and working with the United Nations, realized terrorism was a problem and Iraq was a part of this problem.

The President decided to invade Iraq and Saddam Hussein. It was a good decision. I need to remind Members this war started actually before then. It started under his father, the first President George Bush. The first President George Bush had to deal with an invasion by Saddam Hussein into the country of Kuwait. He soundly defeated Saddam Hussein. Saddam Hussein agreed to sign a treaty and in that treaty he agreed to allow inspectors into his country. He agreed to many provisions that were being stipulated by the United Nations. He agreed to certain no-fly zones.

We attempted to enforce those no-fly zones as he was constantly shooting at our planes. After the first conflict, Saddam Hussein ignored what he had agreed to with the first President George Bush. Then we had the United Nations inspectors going in and looking for nuclear materials, weapons of mass destruction, and they were kicked out of that country.

The Congress and the United Nations all agreed this was an unstable situation and something needed to be done with Saddam Hussein. So George Bush, who is now our President, made the right decision in saying we need to go into Iraq and we need to deal with this unstable situation because it is a persistent threat to world peace. If we do not deal with the problem now, it is only going to get worse with time. I have to say this President has done a great job. He has the support of the American people.

Now this national commission on terrorist attacks upon the United States is going to reveal some shortcomings and we are going to need to address those. Our Nation has a leader who has made it clear that winning the war on terror is the defining moment for the civilized world.

Since September 11, 2001, President Bush has taken some bold steps to ensure the safety and security of the United States, specifically against terrorist organizations and the nation states that support them. Specifically, since President Bush has taken office, the United States, under his leadership, has overthrown two terrorist regimes, rescued two nations and liberated over 50 million people, captured or killed close to two-thirds of known senior al-Qaida operatives, captured or killed 45 of the 55 most wanted in Iraq, including Iraq's deposed dictator, Saddam Hussein, who is now sitting in jail, hunted down thousands of terrorist and regime remnants in Iraq, disrupted terrorist cells on most continents and likely prevented a number of planned attacks. This is an astounding record of accomplishment for our commander in chief and his national security staff.

We also have to recognize the phenomenal job of our men and women in our military services. They have been phenomenal and I do not think we can repeat that enough. We are very fortunate to have their dedication and commitment, not only of the men and women who are serving in these services, but their families and their communities back home who support them.

The United States went to war in Afghanistan and Iraq risking significant loss of life and treasure to protect our way of life. Our goals are clear and twofold: Destroy the nexus of terrorism and weapons of mass murder that personify the two ousted regimes and create in their stead stable democratic states able to participate in the modern world community.

We succeeded in our first goal, having killed or captured perpetrators and supporters of the enemy terrorists. The courageous people of Afghanistan and Iraq are making remarkable progress toward adoption of constitutional reforms to secure momentum toward

lasting democratic independence. Nevertheless, we still have work to do.

The Senate Select Committee on Intelligence report on Iraq's weapons of mass destruction clearly identified what we have all known for some time, our intelligence has not performed in as desirable a way as we would like and in some cases has raised some issues about some of the decisions we had to make in this Congress.

As a former member of the Senate Intelligence Committee, I say to my colleagues that few employees in the Federal Government are as dedicated as those who work for our intelligence agencies. They are hard-working individuals who believe their work is critical to our Nation's national security, and they provide us good information. As policymakers, we also have to recognize the information they give us is not always absolute. A lot of time it is a little bit of information here, a little bit of information there, and we have to put it together and say this is a likely event that is going to happen or this is likely what is happening. It is not absolute in many regards, and we have to treat it that way.

I think that is the way the President treated it, and I think that is the way the Congress has looked at much of the information that we received right after 9/11 and how terrorism is affecting us. That is why it was so frustrating to learn our intelligence agencies did not connect many of the dots in regard to September 11 and again failed to provide reliable information on Iraq's weapons of mass destruction programs.

We clearly have a considerable amount of work to do. As the Senate Intelligence Committee recommended, we need to improve the process by which analysts, collectors, and managers fuse intelligence and produce judgments for policymakers, but that is not new. We have been facing this problem for some time. I am glad we are taking it more seriously. We need to greatly enhance almost every aspect of the intelligence community's human intelligence efforts. We need to address the tendency to build upon the judgments of previous assessments without including the uncertainties in those assessments.

I will note the Senate Intelligence Committee's report did conclude that the intelligence community's judgments regarding Saddam Hussein's government's link to terrorist organizations were reasonable. Equally important was the Senate Intelligence Committee's conclusion that the exaggeration of the intelligence on Iraq's weapons of mass destruction capabilities was not the result of political pressure.

As we prepare for the 9/11 Commission's report, I think it is appropriate that we thank the people who served on the Commission for their service to this country. Their service will go a long way to helping our Nation prevent future attacks.

I yield the floor.

The PRESIDING OFFICER (Mr. TALENT). Who seeks recognition?

Mr. MCCONNELL. Mr. President, I rise to make remarks today on two important subjects with which we are currently dealing in the Congress.

The PRESIDING OFFICER. The Senator from Kentucky.

SETTING THE RECORD STRAIGHT

Mr. MCCONNELL. Mr. President, ''Did the Bush administration manipulate intelligence about Saddam Hussein's weapons program to justify an invasion of Iraq?'' This is the central question posed by discredited Ambassador Joe Wilson in his July 6, 2003, oped published by the New York Times.

Wilson alleged the answer to the question was ''yes'', and a political firestorm ensued. Indeed, the year-long furor over the infamous 16 words stemmed from Mr. Wilson's disproved claims.

Many of the President's fiercest critics have since argued the Bush administration misled the country into war, a truly incendiary charge.

Lord Butler's comprehensive report includes the real 16-word statement we should focus on. Here is what he had to say:

> We conclude that the statement in President Bush's State of the Union address . . . is well founded.

It is well founded. Yet the New York Times threw its hat into the ring early and ran an editorial on July 12, 2003 amplifying Wilson's irresponsible claim and flaming the fires of this pseudo-scandal. This is what they had to say:

> Now the American people need to know how the accusation got into the speech in the first place, and whether it was put there with an intent to deceive the nation. The White House has a lot of explaining to do.

Will the New York Times, which printed 70 stories that repeated Joe Wilson's claims, now retract this editorial? Will it acknowledge on the editorial page the truth about Joe Wilson?

Rather than displaying caution and restraint, too many American politicians raced, like the New York Times, to echo this outrageous allegation.

Early into the fray was the senior Senator from North Carolina. On July 22, 2003, Fox News played a clip from one of Senator EDWARDS' rallies in which he repeats Wilson's attacks on the President's honesty. Senator EDWARDS claims:

> Nothing is more important than the credibility of the president of the United States and the words that come out of his mouth at the State of the Union are, in fact, the responsibility of the president.

According to the correspondent at the rally:

> Edwards blasted the president's 16-word State of the Union sentence on British intelligence information that Iraq sought nuclear weapons material from Africa.

Now a candidate for the Vice Presidency, Senator EDWARDS will have many media opportunities to set the record straight about his view of the President's State of the Union speech. In the name of fairness, I sure hope he will.

Not to be outdone, the Senior Senator from Massachusetts, Senator KENNEDY, delivered an attack on the Bush administration this January. Senator KENNEDY repeated Wilson's distortions, and claimed:

> The gross abuse of intelligence was on full display in the president's State of the Union address last January, when he spoke the now infamous 16 words. . . . And as we all know now, that allegation was false. . . . President Bush and his advisers should have presented their case honestly.

When will Senator KENNEDY acknowledge that the President's claim was ''well founded?'' The junior Senator from Massachusetts has also accused the President of misleading the country. An Associated Press report from 2003 includes an exchange between Senator KERRY and a woman on the campaign trail. Here is how it went.

> When a woman asked whether U.S. intelligence on Iraq was doctored, Kerry replies that Americans were ''clearly misled'' on two specific pieces of intelligence. ''I will not let him off the hook throughout this campaign with respect to America's credibility . . .

That is the junior Senator from Massachusetts. Let me quote another AP report about Senator KERRY from last summer:

> Kerry said Bush made his case for war based on U.S. intelligence that now appear to be wrong—that Iraq sought nuclear material from Africa.

Now that Joe Wilson's claims have been completely discredited, the junior Senator from Massachusetts has a chance to set the record straight. But will he?

I mentioned yesterday the distinguished Minority Leader had repeated Joe Wilson's discredited claims on the Senate Floor. Just last month, Senator DASCHLE said:

> Sunlight, it's been said, is the best disinfectant. But for too long, the administration has been able to keep Congress and the American people in the dark . . . serious matters, such as the manipulation of intelligence about Iraq, have received only fitful attention.

The bipartisan Senate Intelligence Report reached the following conclusions that directly refute the serious charges made by the President's critics:

> Conclusion 83. The Committee did not find any evidence that Administration officials attempted to coerce, influence, or pressure analysts to change their judgments related to Iraq's weapons of mass destruction capabilities.
>
> Conclusion 84. The Committee found no evidence that the Vice President's visits to the CIA were attempts to pressure analysts, were perceived as intended to pressure analysts by those who participated in the briefings on Iraq's WMD programs, or did pressure analysts to change their assessments.

Let us not allow honesty to become a casualty of the campaign season.

My colleagues now have an opportunity—and I am sure they will take

it—to set the record straight about their support of Mr. Wilson's outrageous claims. In the name of fairness, will they?

NOMINATIONS TO THE SIXTH CIRCUIT COURT

Mr. MCCONNELL. Mr. President, on another matter, we will be voting later this morning on the nominations of Henry Saad, David McKeague, and Richard Griffin to the Sixth Circuit Court of Appeals.

As this chart shows, the Sixth Circuit covers Michigan, Ohio, Kentucky, and Tennessee.

For the last 2 years, the Sixth Circuit has been trying to function with 25 percent of its seats empty. That vacancy rate is, as it has been, the highest vacancy rate in the Nation. Not surprisingly, the Judicial Conference has declared all four of these vacant seats to be ''judicial emergencies.''

For the last 3 years, I have taken to the floor to decry the crushing burden under which the Sixth Circuit operates. The years change but one seemingly immutable fact remains: The Sixth Circuit remains the slowest circuit in the Nation by far. According to the Administrative Office of the Courts, last year the Sixth Circuit was a full 60-percent slower than the national average. According to the AOC, the national average for disposing of an appeal is 10½ months, but in the Sixth Circuit it takes almost 17 months to decide an appeal. That means in another circuit, if you file your appeal at the beginning of the year, you get your decision around Halloween. But in the Sixth Circuit, if you file your appeal at the same time, you get your decision after the following Memorial Day, over a half a year later. If you can believe it, each year the disparity between the Sixth Circuit and its sister circuits gets worse.

In 2001 and 2002, the Sixth Circuit was the slowest circuit in the country, just like last year. In those years, the average time for decision was 15.3 and 16 months, respectively, but last year the delay jumped up to almost 17 months. So clearly my constituents and the other residents of the circuit are suffering more and more as the years go by.

What is the reason for this sorry state of affairs? An intra-delegation dispute from years ago when nearly a quarter of the current Senate wasn't even here. Nor, I might add, was the current President around for that dispute either. He, too, has nothing to do with it.

This dispute drags on year after year. As I understand it, although only two seats were involved in this dispute, six nominees, including four circuit nominees, continue to be bottled up.

Frankly, I don't know whose fault it was it has been so long. But I do know that neither the 4 million people in Kentucky, nor the 6 million people in Tennessee, nor the 11 million people in Ohio—nor their Senators—were any part of it.

They are all suffering for it, though, as are the 10 million people from Michigan.

The Michigan legislature has in fact passed a resolution calling on us, the U.S. Senate, to confirm these nominees. I ask consent that a copy of this resolution from the Michigan State Senate be printed in the RECORD.

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

SENATE RESOLUTION NO. 127

Whereas, The Senate of the United States is perpetuating a grave injustice and endangering the well-being of countless Americans, putting our system of justice in jeopardy in Michigan and the states of the Sixth Circuit of the federal court system; and

Whereas, The Senate of the United States is allowing the continued, intentional obstruction of the judicial nominations of four fine Michigan jurists: Judges Henry W. Saad, Susan B. Neilson, David W. McKeague, and Richard A. Griffin, all nominated by the President of the United States to serve on the United States 6th Circuit Court of Appeals; and

Whereas, This obstruction is not only harming the lives and careers of good, qualified judicial nominees, but it is also prolonging a dire emergency in the administration of justice. This emergency has brought home to numerous Americans the truth of the phrase ''justice delayed is justice denied''; and

Whereas, Both of Michigan's Senators continue to block the Judiciary Committee of the United States Senate from holding hearings regarding these nominees. This refusal to allow the United States Senate to complete its constitutional duty of advice and consent is denying the nominees the opportunity to address any honest objections to their records or qualifications. It is also denying other Senators the right to air the relevant issues and vote according to their consciences. This is taking place during an emergency in the United States 6th Circuit Court of Appeals with the backlog of cases; and

Whereas, We join with the members of Michigan's congressional delegation who wrote Chairman Orrin Hatch on February 26, 2003, to express their concern that ''if the President's nominations are permitted to be held hostage, for reasons not personal to any nominee, then these judicial seats traditionally held by judges representing the citizens of Michigan may be filled with nominees from other states within the Sixth Circuit. This would be an injustice to the many citizens who support these judges and who have given much to their professions and government in Michigan''; and

Whereas, We are concerned about the Sixth Circuit as a whole, a circuit court understaffed, with 4 of its 16 seats vacant, knowing that the Sixth Circuit ranks next to last out of the 12 circuit courts in the time it takes to complete its cases. Since 1996, each active judge has had to increase his or her number of decisions by 46%—more than three times the national average. In the recent past, the Sixth Circuit has taken as long as, 15.3 months to reach a final disposition of an appeal. With the national average at only 10.9 months, this means the Sixth Circuit takes over 40% longer than the national average to process a case; and

Whereas, The last time the Sixth Circuit was this understaffed, former Chief Judge Gilbert S. Merritt said that it was handling ''a caseload that is excessive by any standard.'' Judge Merritt also wrote that the court was ''rapidly deteriorating, understaffed and unable to properly carry out their responsibilities''; and

Whereas, Decisions from the Sixth Circuit are slower in coming, based on less careful deliberation, and, as a result, are less likely to be just and predictable. The effects on our people, our society, and our economy are far-reaching, including transaction costs. Litigation increases as people strive to continue doing business when the lines of swift justice and clear precedent are being blurred; and

Whereas, President Bush has done his part to alleviate this judicial crisis. Over the past two years, he has nominated eight qualified people to the Sixth Circuit Court of Appeals, with three of them designated to address judicial emergencies. Four of these nominees continue to languish without hearings because of the obstruction of the two Michigan Senators; Now therefore, be it

Resolved by the Senate, That we memorialize the United States Senate and Michigan's United States Senators to act to continue the confirmation hearings and to have a vote by the full Senate on the Michigan nominees to the United States 6th Circuit Court of Appeals; and be it further

Resolved, That copies of this resolution be transmitted to Michigan's United States Senators and to the President of the United States Senate.

Mr. MCCONNELL. Mr. President, that is 31 million people, who continue to suffer because our colleagues on the other side refuse to confirm any of these four Michigan nominees to the Sixth Circuit.

Indeed, two of the seats we are talking about were not even involved in this dispute. President Clinton never nominated anyone to the seat to which Henry Saad was nominated. That vacancy arose on January 1, 2000.

And the seat to which David McKeague was nominated did not even become vacant until the current Bush administration on August 15, 2001.

So what the Senators from Michigan seek to do is hold up one-fourth of an entire circuit because of a past intra-delegation dispute about two of these six seats, the genesis of which occurred many years ago.

As to disputes on judicial nominees, the Senators from Michigan do not have a monopoly on disappointment. There are several Republican nominees who were nominated by George H.W. Bush, who waited a year or more for a hearing, and who never got one. I note Sixth Circuit nominee John Smietanka, D.C. Circuit nominee John Roberts and Fourth Circuit nominee Terry Boyle, just to name a few.

The remedy for disappointment is not to take out your frustration on the populace of an entire circuit. Nor is it to demand that a President cede his constitutional power to another branch. It is to do what this President has done: re-nominate the person when your party is in the Oval Office.

Let us be clear. We are not talking about any particular problems with the nominees, including Judge Saad, who would be the first Arab-American on any Federal circuit court and who has been endorsed by both the Chamber of Commerce and the United Auto Workers. That is a pretty tall order.

Quite frankly, it wouldn't matter who from Michigan the President put in the slot: if his name were Henry Ford rather than Henry Saad the result would be the same—my colleagues from Michigan would filibuster the nominee.

Why? Presumably because the Michigan Senators didn't get to pick Judge Saad or other Michigan nominees to the Sixth Circuit.

What we are talking about, then, is Senators wanting to adorn themselves with the power of co-nomination.

Let us get back to first principles. Democrat Senators do not get to pick circuit court judges in Republican administrations. In fact, Republican Senators—myself included—do not get to pick circuit court judges in Republican administrations.

The Constitution gives the power to the President, and the President alone, to nominate. We all know as a matter of custom that Senators have a good deal of influence over who gets to be a district judge but little or no influence over who gets to be a circuit judge. Presidents of both parties have been unwilling to delegate the picking of circuit court judges to Senators. It is a Presidential prerogative and we shouldn't rewrite the Constitution to allow Senators—especially those of the opposite party—to nominate judges.

By tradition, the President may consult with individual Senators. But the tradition of ''consultation'' does not transform individual Senators into co-Presidents.

The President is not required to share his constitutional power with Senators, or with a ''non-partisan'' commission for that matter.

We have started a new precedent around here by filibustering judges; this is something that I and the vast majority of the Republican caucus opposed during the Clinton administration and refused to engage in, although Republicans had profound differences with many Clinton nominees.

In fact, 95 percent of the current Senators who never voted for a judicial filibuster are Republicans.

Let me say that again.

Ninety-five percent of the current Senators who never voted for a judicial filibuster are Republicans.

Our Democrat friends have started this troubling precedent. They have filibustered seven nominees and are now approaching double digits.

If my Democrat friends want to set another precedent, namely that Senators in opposite parties get to pick a President's circuit court nominees, I have news for you: this precedent may well be used when there's a Democrat in the Oval Office whether that is next year or next decade.

In closing, I don't get to pick Republican circuit nominees, and I don't think Democrats should get to do so in a Republican administration either. That is the President's job.

The Senate may establish a contrary precedent today. But if it does, I and other Republican Senators may invoke it the next time there is a Democrat in the White House. So I urge my Democrat friends to be wary of the steps they are taking because they are leading us down a dangerous path from which there may be no return.

The PRESIDING OFFICER. The Senator from Nevada.

APPROVAL OF JUDGES

Mr. REID. Mr. President, I can remember a famed lawyer named Melvin Belli who came to Las Vegas to try a case. The law at the time was you had to associate with a local attorney. Belli was very articulate and was so good at speaking to the court and the jury. When he finished, the Las Vegas lawyer stood and said, well, what he meant to say. This same lawyer said: When in doubt, wave your arms, scream and shout.

I think that is what we heard today on the Senate floor.

But what is really present in the Senate is the fact that we have approved 199 judges. We have turned down 6. There are crocodile tears that really are not necessary.

In this situation, if we followed the Republican rule established by the Thurmond rule, there would be no judges approved during the month of July. But we have indicated that we would be willing to approve judges during the month of July, and we have done that. I have spoken to a number of Republican Senators who indicated we would do that. The situation involving these three involve not only substance but procedure—199 to 6. That is the rule.

On behalf of Senator DASCHLE, I ask unanimous consent Senator LANDRIEU be recognized for 10 minutes and Senator SCHUMER be recognized for 15 minutes.

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

The Senator from Louisiana is recognized.

COLONEL JON M. ''JAKE'' JONES

Ms. LANDRIEU. Mr. President, I rise today to honor an exemplary soldier, a loyal American, a loving father, and a devoted husband. Our friend and neighbor, Colonel Jon Jones passed away on June 6 after a courageous battle with brain cancer that he waged on his own terms. Until the week of his death, Jon lived life to the fullest and did not allow cancer to define him or to diminish his dream. Rather, he chose to be a husband, father and soldier until the end. His death has been a profound loss to his colleagues in the Army, his neighbors, his friends, and especially to his family. I say to his wife Cynthia, to his two children Nick and Lena, who are here with us today, our Nation is grateful for your family's service and sacrifice.

Jon was born and raised in California. His mother was a teacher, and the influence she had on him was apparent throughout his life. He attended high school outside of Sacramento, and graduated from Cal State at Sacramento. He went the extra mile to participate in the ROTC program at UC-Davis, because his own school had abolished ROTC during the Vietnam war.

He graduated in 1980 as a distinguished military graduate and was commissioned as a regular Army military intelligence officer. He met Cynthia while he was in officers' basic course in Arizona, and they married in 1981. His career in the Army took Cynthia, Nick, and Lena to Turkey, Germany, and South Korea; and his last deployment was to Kuwait and to Iraq.

Jon died two weeks shy of serving 24 years in the U.S. Army and only 12 days from his change of command. For almost 2 years he successfully led the Army's only deployable echelons-above-corps contingency force protection military intelligence brigade. The men and women who served under him, as well as his colleagues and senior officers, testified to his leadership in a time of war. One soldier called it a privilege to be under Colonel Jones' command, and described his strength and leadership as going well beyond what this soldier had seen in any other military officer.

Throughout the war, in addition to his mission, Jon's focus was on the health, welfare, and safety of every soldier and civilian who served with him. When his brigade was deployed for 9 months to support Operation Enduring Freedom and Operation Iraqi Freedom, he succeeded in that mission and brought every one of his soldiers home.

A month after bringing his brigade home, Jon was diagnosed with an aggressive brain tumor. He was entitled to retirement, but he chose instead to stay in the Army. As he told a colleague: ''Quitting was not an option.'' Another person might have headed for the shore and waited for his time in comfortable surroundings, but this was not the path for Jon Jones.

At the time of his diagnosis, he had a battalion preparing to redeploy to Iraq, and the thought of leaving them went against everything he stood for. In fact, in the months preceding his death, in between his own treatments and surgeries, Jon went to Kuwait and Iraq several times to support and bolster his troops.

Before he passed away, Jon was nominated for the Distinguished Service Medal, for unparalleled dedication to duty. This citation states that his accomplishments will have a lasting effect on national security formulation at the highest levels. Later today, in a room near this distinguished Chamber, Jon's widow Cynthia will accept this medal on her husband's behalf.

Jon's commanding generals, some of whom are also with us today, accepted his decision to stay in the Army and continue in command throughout his treatments. Perhaps they would have

encouraged a lesser officer to retire, but Jon was too valuable a soldier to lose. Unfortunately, the Army, and especially the military intelligence community, realizes every day how valuable COL Jake Jones was. Perhaps the words of one of his fellow officers said it best when he stated:

Jake Jones did more than command a Brigade in war. He commanded the respect and confidence of his peers, his superiors, and his soldiers. He had a special aura about him—a calming presence that bespoke competence and reason.

All of the virtues that made Jon a good soldier also made him a devoted husband and father. In a career that takes you away from your family for extended periods of time, he made it home for his children's birthdays and other special events. The only birthday of Nick's he ever missed was last year when duty to country called him to stay in Iraq. He made it home in time for Lena's birthday last year, and only God's call home kept him from making that commitment this year.

He was driven to be a good example to his children and to make them proud. This drive contributed to his desire to continue in command even as he fought his own personal battle with a fierce enemy. Although his time with Nick and Lena was inexplicably cut short, I know the love he gave them and the lessons he taught them will shore them up, inspire them, and comfort them throughout their lifetime.

Mentor, hero, charismatic leader, humble individual, inspiring commander, confident, patient, steadfast, stalwart, a rock—these are a few of the descriptions used to communicate the man he was. Jon had the determination and perseverance to accomplish any task with which he was presented.

The role in life he cherished the most, after the role of father, was that of a mentor, whether to his soldiers or to his children. He simply loved to teach. Having been raised by a mother who was a teacher, he paid her the greatest compliment a child can give a parent: He followed in her footsteps. He taught those of us who knew him how much fun it was to live, and that quitting was not an option.

Jon Jones was a friend of our family, a neighbor, and an inspiration to all who knew him. His death is our Nation's loss. Rarely does a soldier so capable and so completely committed step forward to answer the call to service. And rarely has a family been so blessed to have such a father and husband.

May it be recorded this day that the people of the United States are grateful to COL Jon Jones for his years of service in the U.S. Army. His memory will live on in the hearts and minds of the many who knew him, admired him, followed him, and loved him.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Louisiana yields the floor.

The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I ask to be recognized to speak in morning business.

The PRESIDING OFFICER. The Senator is recognized.

THE 9/11 COMMISSION REPORT

Mr. SCHUMER. Mr. President, I am going to speak on two issues: first, the imminent release of the final report of the 9/11 Commission, and then on the three judges we are voting on shortly.

First, on the imminent release of the report: First, I thank the commissioners. They have done an incredible job. In this town, racked by partisanship, to come up with bipartisan recommendations is an amazing accomplishment in itself. But when you look at what the recommendations are and the thoroughness with which the Commission investigated the mistakes that were made in the past, the report assumes even greater magnitude.

We will have a real challenge in Washington, at each end of Pennsylvania Avenue, to make sure these recommendations are implemented.

The area I want to touch on right now is homeland security, but I do want to say the reforms that were recommended, in terms of intelligence gathering, were right on the money. Many of us were puzzled after 9/11, learning that the FBI knew this little piece of information and an agent in another part of the FBI knew another piece, and the CIA knew this piece and that piece. The question was, why weren't these pieces tied together, which might have drawn the picture of what was going to happen? And I underline the word ''might.'' Who knows if it would have? But it certainly would have given us better odds.

The reason, as the Commission unveiled, is very simple: These intelligence agencies do not talk to one another. They regard the intelligence they have gathered, their work product, as so valued that they do not want to give it up to another agency. The recommendations of the Commission are outstanding—outstanding—in terms of requiring the intelligence agencies to talk to one another.

I am very pleased the Commission did not engage in the blame game or finger pointing but, rather, looked at the facts—just the facts, ma'am; that seems to be their underlying view—and then looked at recommendations based on those facts so that another 9/11, God forbid, would never happen again.

There is a particular area that has not received too much focus that I want to mention today. That is homeland security. The Commission's report shows that while mistakes were made in intelligence gathering and while mistakes after September 11 have certainly been made in fighting the war overseas—we need a strong foreign policy, a muscular foreign policy to fight terrorism—those are mistakes of commission. In a brave new world, a post-September 11 world, anyone is going to make certain mistakes. The mistakes that have been made on homeland security, on protecting our Nation from another terrorist attack, are mistakes of omission. We are simply not doing enough. That is what the Commission's report is going to reveal when they release it at 11:30. I have been briefed on it already, and I guess many Members are being briefed today.

To win this war on terror—it is the same as a good sports team. We need a good offense, we need a good defense. Most of the focus has been on the offense. There has been verbiage devoted to homeland security, but the actual dollars, the actual focus, the actual changes that have to be made are not being made, plain and simple.

The bottom line is that in area after area, when billions of dollars are required, the administration recommends and Congress allocates tens of millions of dollars. They do not do nothing. They don't want to say we are not putting any money into port security, rail security, truck security, or improving security at the borders. But they do the bare minimum essential to get away with saying we are doing something.

It is frustrating to me, particularly coming from New York and knowing too many of the people who were lost on September 11, that we are not fighting a war—it is a war on homeland security—the way we are fighting a war overseas in Iraq and Afghanistan. What is interesting is the technology is there. We know how to detect nuclear materials which, God forbid, might be shipped into this country. We know how to detect explosives if somebody were to walk into a railroad station or Disney World or somewhere else loaded with explosives that they might detonate. We know how to make our truck security more secure so people cannot use truck bombs. We know how to tighten up the borders.

The question is twofold: will and money. We are not doing either. As we stand here today, what are we doing in the Senate? We are debating three judges from Michigan who we know will not pass in a controversial and partisan way while Homeland Security appropriations languish. It has not been brought to the Senate. Why? What are our priorities? This is not a Democrat or Republican issue. This is not a liberal or conservative issue. This is an American issue. We want to preserve our homeland security. We want to make people secure. We want to make people safe.

Over and over again, we are not doing what we should be doing. The number of bills introduced and even passed out of committee to tighten homeland security are too many. It is not just homeland security legislation, it is legislation on ports, legislation on borders. Over these past few months, the Senate has been occupied by partisan political issues when nonpartisan and bipartisan issues that are far more important related to homeland security languish.

I hope the Commission's report is a clarion call. Let's get our act together. Again, this is not a partisan issue. This should not instigate fighting with one another. We should just do it.

I wish the White House in their budgets had allocated more money. When people in the Senate, both Democrat and Republican, said, We need to do this, that, and the other, had the President said, Yes, sir, right on—but we do not have that. We do not have leadership on homeland security. That is what the Commission's report shows.

Being a great leader and being a strong leader does not just mean fighting wars overseas in this brave new post-September 11 world; it means tightening things up at home. The bottom line is simple: Why aren't we protecting our airplanes from shoulder-held missiles which we know the terrorists have? Why aren't we saying more than 5 percent of the big containers that come to our ports on the east coast, the west coast, the gulf coast, should be inspected to see if they might contain materials that could hurt us? Why aren't we doing more to protect the borders? My State of New York has a large northern border. They have not allocated the dollars, the bottom line is they do not have enough manpower at the borders to prevent terrorists from sneaking in. They are doing a great job with the resources they have, but Lord knows they don't have them. We are not doing any of these things.

I point out one other thing the Commission has mentioned—here, Congress is as much to blame as the White House—and that is the allocation of homeland security funds. The Commission is very strong on this issue. The moneys that go to police, fire, and the others who are our first responders—we learned in New York how valuable they were. The report today will show the number of people who died below where the planes hit the World Trade Center towers was few—too many, but few—because of the great job the police and the firefighters did. Yet we are treating that money as pork barrel.

My State has greater needs than, say, the State with the smallest population, Wyoming. Yet Wyoming gets much more money on a per capita basis. To the credit of the administration, that did not happen the first year we allocated homeland security money. Mitch Daniels, a true conservative, the head of OMB, says he does not want to waste these dollars. He is sending dollars to the places of greatest need. I might have wanted more dollars, but at least the dollars that were allocated were allocated fairly. But now we have slipped away from that. Frankly, we do not hear the voice of Tom Ridge, who was the successor as we created a new Homeland Security Department, saying, allocate this money fairly. We do not hear the voice of the President, and we do not hear the voices of the House and Senate.

This wonderful report is very critical of what our Nation is doing on homeland security. It is saying we are not doing enough in area after area. I hope and pray this report will be a wakeup call. We do not want to be in the ''what if'' situation. God forbid there is another terrorist attack and the next morning we say: What if? What if we had done the job? What if the attack was by shoulder-held missiles? And we say: What if we had done the job. What if the attack was from ships and ports? We say: What if we had done the job on port security or on the rails? Or because someone got across our borders and shouldn't have? We do not want to be in a ''what if'' situation.

JUDICIAL NOMINATIONS

Mr. SCHUMER. Mr. President, my colleague from Michigan is here, and I know she will probably want to speak on the three votes on judges.

The first point I make is, I would much rather be debating the Homeland Security bill than these judges. Where are our priorities in this body? What are we doing? We have had weeks and weeks where many have called for bringing Homeland Security appropriations to the Senate. Instead, we have been debating all the political footballs. I know it is a Presidential election year, I know it is election season, but some things should have a higher calling.

On this particular issue, I make one point before yielding the floor to my colleague from Michigan. Anyone who thinks this is a tit-for-tat game at least misreads the Senator from New York. Were there bad things done on judges when Bill Clinton was President by the Republican-controlled Senate? You bet. But that does not motivate me in terms of what we ought to do in the future.

What motivates me is that in the issue of appointing judges—and I remind the American people that now 200 judges have been approved and 6 have been rejected. My guess is the Founding Fathers, given that they gave the Senate the advice and consent process, would have imagined a greater percentage should be rejected.

I am always mindful of the fact that one of the earliest nominees to the U.S. Supreme Court, Mr. Rutledge, from the neighboring State of the Presiding Officer, South Carolina, nominated by President George Washington, was rejected by the Senate because they didn't like his views on the Jay Treaty. That Senate, which had a good number of Founding Fathers in it—the actual people who wrote the Constitution, many of them became Senators the next year or two—didn't have any qualms about blocking a judge they thought was unfit.

Now all of a sudden when this body stops 6 of 200, we hear from the other end of Pennsylvania Avenue: That is obstructionist.

That is not obstructionist. That is doing our job. The Constitution didn't give the President the sole power to appoint judges. It was divided. In fact, for much of the Constitutional Convention the Founding Fathers thought the Senate ought to appoint the judges and only at the last minute did they say the President, with the advice and consent of the Senate.

This President—regretfully, in many instances—has not consulted the Senate. The two Senators from Michigan—they happen to be of a different party than the President but we know they enjoy working with the other party—were not consulted. I know it can be done. We have done it in my State of New York. We don't have a single vacancy in either the district courts or the Second Circuit because finally, after I said I was not going to allow judges to go through unless I was consulted, the White House came and consulted, and there is a happy result. All the vacancies are filled. The judges tend to be conservative, but they are mainstream people. I may not agree with them on a whole lot of issues, but they have all gone forward. In Michigan we have had no consultation.

Today when I vote against these three nominations, I am not just backing up two Senators from Michigan; I am defending the Constitution. That is what all of us who vote this way will do. Because for the President to say on judges, it is my way or the highway, no compromise, is just not what the Founding Fathers intended. It is not good for America. It tends to put—whoever is President—extreme people on the bench instead of the moderate people we need.

I regret that we have come to vote on these judges, but I have no qualms that I will vote and recommend to my colleagues that we vote against all three.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. DOLE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. REID. Would the Chair advise the Senator from Nevada what the status of the floor is at this time?

The PRESIDING OFFICER. There are 2 minutes remaining under morning business.

Mr. REID. I yield that time back.

The PRESIDING OFFICER. Time is yielded back.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF HENRY W. SAAD TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 705, which the clerk will report.

The assistant legislative clerk read the nomination of Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Under the previous order, the time until 11

a.m. shall be equally divided between the chairman and the ranking member or his designee.

Mr. REID. Madam President, on behalf of Senator LEAHY, I designate 5 minutes to the Senator from Michigan, Mr. LEVIN. If there is any time remaining on our side, following his presentation, the Senator from New York is yielded the remainder of the time.

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

The Senator from Michigan.

Mr. LEVIN. Madam President, the issues which we are going to vote on today relate to a principle. The principle is that we should provide hearings to people who are nominated by Presidents. When those hearings are denied in order to preserve vacancies so that a subsequent President can make the appointments, that is wrong. That is what happened with Clinton appointees to Michigan judgeships. Two women, highly qualified, were appointed. One was denied a hearing over 4 years, the longest time in the history of the Senate, never given a hearing by the Judiciary Committee. The second nominee, highly qualified, was denied a hearing for over a year and a half by the Judiciary Committee.

This happened in a number of States. It happened to a nominee from Ohio, whose name was Markus, who testified as to why he was denied a hearing because he asked the Republicans on the Judiciary Committee who were in the majority as to why he was never given a hearing. He was nominated for an Ohio vacancy to the Sixth Circuit. There are four States in our circuit: Ohio, Kentucky, Tennessee, and Michigan. He testified in front of the Judiciary Committee as to what happened, why he was never given a hearing.

. . . Senator DEWINE and his staff and Senator HATCH's staff and others close to him were straight with me. Over and over again they told me two things: There will be no more confirmations to the 6th Circuit during the Clinton Administration, and this has nothing to do with you; don't take it personally—it doesn't matter who the nominee is, what credentials they may have or what support they may have.

. . . On one occasion, Senator DEWINE told me ''This is bigger than you and it's bigger than me.'' Senator KOHL, who had kindly agreed to champion my nomination within the Judiciary Committee, encountered a similar brick wall. . . . The fact was, a decision had been made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could go to Bush rather than to Clinton nominees.

That is not an acceptable tactic. It should not be allowed to succeed. That is the fundamental issue with these nominees, as to whether that tactic of denying hearings—in one case for over 4 years and another case for a year and a half, to two highly qualified women appointed by President Clinton—is going to work. Senator STABENOW and I are determined that it should not work. But we are also determined to try to accomplish a bipartisan solution.

There is a rare opportunity here, because of the number of vacancies to the Sixth Circuit—there are four Michigan vacancies on the Sixth Circuit—to have a bipartisan solution. Two have been proposed to the White House. Senator STABENOW and I have proposed that there be a bipartisan commission appointed in Michigan to make recommendations on these nominations. Whether these two women succeed in getting those recommendations is not the point and it is not assured. We don't know. Recommendations would not be binding upon the President, nor on the Senate. They are simply recommendations. That has been rejected by the White House.

When Senator LEAHY was the chairman, when Democrats were in the majority in the Senate, he made a suggestion, a proposal to the White House as to how to solve this problem. The White House rejected that one as well.

Senator STABENOW and I have pursued bipartisan solutions to this deadlock. We are going to continue to pursue solutions. But what we will not do and the Senate should not do, in terms of the principle involved here of denying hearings year after year after year to nominees in the Judiciary Committee in order to keep those seats vacant so the next President can make the appointment, this principle, it seems to me, is not in all of our interests.

Even Judge Gonzales has acknowledged there were wrongs. He said: That was wrong. That was wrong to deny Judiciary Committee hearings. That is not right.

And he is right. We are going to try to correct that wrong. It can be corrected in a bipartisan way. But for these nominations to simply be approved and for cloture to be invoked is not the way to achieve a bipartisan solution.

One final comment, if I have another minute. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 1½ minutes remaining.

Mr. LEVIN. I thank the Presiding Officer.

Madam President, for over 4 years, we made efforts to get hearings first for Judge White, who is a court of appeals judge in Michigan, and for Kathleen McCree Lewis, who is a noted appellate lawyer from Michigan in the Sixth Circuit. Two pages of efforts were made to get hearings. I am not going to read them all. All I can say is, month after month after month Senator DASCHLE, Senator LEAHY, and others pleaded with the Republican majority, the majority leader, and the chairman of the Judiciary Committee for hearings. We came to the floor and made speeches, even after the blue slip was returned from Senator Abraham.

There is a blue-ship issue here because Senator Abraham did not originally return the blue slip on these judges. But even after the blue slip was returned, there were no hearings provided.

There is a huge issue always, whether blue slips were returned or returned with objections, whether two Senators from a State who have objections should be overridden and the nomination should proceed. That is an issue which affects all of us, and all of us should give a great deal of thought as to whether, if two Senators from a State object to a nominee, that nomination should proceed. That gets to the advise and consent clause of the Constitution. But when blue slips are returned, which is the case with these two judges, there was still a refusal to hold hearings. That is unacceptable. That tactic should not work, and I hope cloture will not be invoked on these three nominations.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. LEAHY. Madam President, the handling of the nominations of Henry Saad, Richard Griffin, and David McKeague in the Judiciary Committee and here on the Senate floor sets an unfortunate precedent, and will be long remembered in the annals of this Chamber for the double standard it embodies. In collusion with a White House of the same party, the Senate's Republicans have engaged in a series of changed practices and broken rules. The home-State Senators of these nominees opposed proceeding on them any further until and unless they are able to reach a bipartisan solution with the White House, but their interests have been disregarded. In the process Republicans have trampled on years of tradition, practice and comity. This sort of behavior may not easily be repaired, but must be exposed.

Before I discuss the specifics of the Michigan nominations, I would like to review the recent history of Republican rule breaking, bending, and changing with regard to nominations for lifetime judicial appointments. Over the last 3½ years, the good faith efforts of Senate Democrats to repair the damage done to the judicial confirmation process over the previous 6 years has been sorely tested and met with nothing but divisive partisanship. Rule after rule has been broken or twisted until the process so long agreed upon is hardly recognizable anymore.

The string of transparently partisan actions taken by the Senate's Republican majority took a wrong turn in January of last year. It was then that one hearing was held for three controversial circuit court nominees, scheduled to take place in the course of a very busy day in the Senate. There was no precedent for this in the years that Republicans served in the majority and a Democrat was in the White House.

Then, two of the nominees from that hearing were voted out of the committee in clear violation of committee rules. Despite his prior statements acknowledging the proper operation of rule IV in February, which should operate to preserve the minority's right to debate, the chairman declared that Rule IV no longer applied. I spent months working to reach an agreement

to move forward the nominees voted out in violation of rule IV and reach an understanding that this important rule would not be violated again. However, in connection with the nomination of William Pryor to the Eleventh Circuit the chairman again overrode the rights of the minority in order to rush to judgment on a controversial circuit court nominee. The assurances given to us that minority rights would be respected and the Senate would not take up nominations sent to the Senate floor in violation of our rights were broken.

The Republican majority also supported and facilitated the unprecedented renomination and consideration of Priscilla Owen to a seat on the U.S. Court of Appeals for the Fifth Circuit, for which she already had been rejected by the Judiciary Committee. That, too, was unprecedented.

The other rule breaking I want to discuss is the one directly relevant to the Michigan nominees. It is the tradition of the ''blue-slip,'' the mechanism by which home-State Senators were, until the last 2 years, able to express their approval of or opposition to judicial nominees from their home States.

For many years, at least since the time of Judiciary Committee Chairman James Eastland, the committee has sought the consent of a judicial nominee's home-State Senators by sending them a letter and a sheet of blue paper asking whether or not they approve of the nominee. This piece of paper, called a blue slip, formalized a courtesy long extended to home-State Senators. It was honored without exception when Chairman HATCH chaired the Judiciary Committee during the Clinton administration. Not once during those six years when the committee was considering the nominations of a Democratic President, did the chairman proceed on a nominee unless two approving, or positive blue slips had been returned. One non-returned blue slip, let alone one where a Senator indicated disapproval of the nominee, was enough to doom a nomination and prevent any consideration. For that matter, it seemed that so long as one Republican Senator had an objection, it was honored, even if they were not home-State Senators like Senator Helms of North Carolina objecting to an African-American nominee from Virginia, or Senator Gorton of Washington objecting to nominees from California.

When President Clinton was in office, the chairman's blue slip sent to Senators, asking their consent, said this:

> Please return this form as soon as possible to the nominations office. No further proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home state senators.

When President Bush began his term, and Senator HATCH took over the chairmanship of this committee, he changed his blue slip to drop the assurance he had always provided Republican Senators who had an objection. He eliminated the statement of his consistent practice in the past by striking the sentence that provided: ''No further proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home state senators.'' Now he just asks that the blue slip be returned as soon as possible, disregarding years of tradition and respect for the interests of the home-State Senators. Can there be any other explanation for this other than the change in the White House? It is hard to imagine.

This change in policy has worked a severe unfairness on the interests of Senators LEVIN and STABENOW. They objected to the nominations of Henry Saad, Richard Griffin, and David McKeague for reasons they have explained in detail. From the very beginning, they have been crystal clear with the President and the White House about their objections, and they have done everything possible to reach a compromise. Their concerns ought to be respected, not rejected in favor of partisan political rule-bending.

This is not the first time the blue slip rule has been broken. Last year the Judiciary Committee, under Republican leadership, took the unprecedented action of proceeding to a hearing on President Bush's controversial nomination of Carolyn Kuhl to the Ninth Circuit, over the objection of Senator BOXER. When the senior Senator from California announced her opposition to the nomination at the beginning of a Judiciary business meeting, I suggested that further proceedings on that nomination ought to be carefully considered and noted that the committee had never proceeded on a nomination opposed by both home-State Senators once their opposition was known. Nonetheless, in one in a continuing series of changes of practice and position, the committee was required to proceed with the Kuhl nomination, and a divisive vote was the result. The Senate has withheld consent to that nomination after extended debate.

Continuing with the Saad nomination, and going further with Griffin and McKeague, the committee made more profound changes in its practices. When a Democratic President was doing the nominating and Republican Senators were objecting, a single objection from a single home-State Senator stalled any nomination. There is not a single example of a single time that Chairman HATCH went forward with a hearing over the objection or negative blue slip of a single Republican home-State Senator during the years that President Clinton was the nominating authority. But now that a Republican President is doing the nominating, no amount of objecting by Democratic Senators is sufficient. Republicans overrode the objection of one home-State Senator with the Kuhl nomination. Republicans outdid themselves when they overrode the objections of both home-State Senators and forced the Saad, McKeague and Griffin nominations out of committee.

We will hear a lot of arguments from the other side about the history of the blue slip, and of the practices followed by other chairmen, including Senator KENNEDY and Senator BIDEN. What I doubt we will hear from the other side of the aisle is the plain and simple truth of the two conflicting policies the Republicans have followed. While it is true that various chairmen of the Judiciary Committee have used the blue-slip in different ways—some to work unfairness, and others to attempt to remedy it—it is also true that each of those chairmen was consistent in his application of his own policy—that is, until now.

In addition, I think the Senate and the American people need to recall the party-line vote by which Senate Republicans defeated the confirmation to the District Court in Missouri of an outstanding African-American judge named Ronnie White. In connection with that vote, a number of Republican Senators who voted against Judge White justified their action as being required to uphold the role of the Missouri home-State Senators who opposed the nomination. Any Senator who voted against the nomination of Ronnie White and does not vote with Senators LEVIN and STABENOW today will need to find another explanation for having opposed Judge White or explain why suddenly the rules that applied to Judge White do not apply today.

I know Republican partisans hate being reminded of the double standards by which they operated when asked to consider so many of President Clinton's nominees. I know that they would rather exist in a state of ''confirmation amnesia,'' but that is not fair and that is not right. The blue slip policy in effect, and enforced strictly, by Republicans during the Clinton administration operated as an absolute bar to the consideration of any nominee to any court unless both home-State Senators had returned positive blue slips. No time limit was set and no reason had to be articulated.

Remember also that before I became chairman in June of 2001, all of these decisions were being made in secret. Blue slips were not public, and they were allowed to operate as anonymous holds on otherwise qualified nominees.

A few examples of the operation of the blue slip process and how it was scrupulously honored by the committee during the Clinton Presidency are worth remembering. Remember, in the 106th Congress alone, more than half of President Clinton's circuit court nominees were defeated through the operation of the blue slip or other such partisan obstruction.

Perhaps the most vivid is the story of the United States Court of Appeals for the Fourth Circuit, where Senator Helms was permitted to resist President Clinton's nominees for 6 years. Judge James Beaty was first nominated to the Fourth Circuit from North Carolina by President Clinton in 1995,

but no action was taken on his nomination in 1995, 1996, 1997, or 1998. Another Fourth Circuit nominee from North Carolina, Rich Leonard, was nominated in 1995, but no action was taken on his nomination either, in 1995 or 1996. The nomination of Judge James Wynn, again a North Carolina nominee to the Fourth Circuit, sent to the Senate by President Clinton in 1999, languished without action in 1999, 2000, and early 2001 until President Bush withdrew his nomination.

A similar tale exists in connection with the Fifth Circuit where Enrique Moreno, Jorge Rangel and Alston Johnson were nominated but never given confirmation hearings.

Perhaps the best documented abuses are those that stopped the nominations of Judge Helene White, Kathleen McCree Lewis and Professor Kent Markus to the Sixth Circuit. Judge White and Ms. Lewis were themselves Michigan nominees. Republicans in the Senate prevented consideration of any of President Clinton's nominees to the Sixth Circuit for years.

When I became chairman in 2001, I ended that impasse. The vacancies that once plagued the Sixth Circuit have been cut in half. Where Republican obstruction led to 8 vacancies on that 16-judge court, Democratic cooperation allowed 4 of those vacancies to be filled. The Sixth Circuit currently has more judges and fewer vacancies than it has had in years.

Those of us who were involved in this process in the years 1995–2000 know that the Clinton White House bent over backwards to work with Republican Senators and seek their advice on appointments to both circuit and district court vacancies. There were many times when the White House made nominations at the direct suggestion of Republican Senators, and there are judges sitting today on the Ninth Circuit and the Fourth Circuit, in the district courts in Arizona, Utah, Mississippi, and many other places only because the recommendations and demands of Republicans Senators were honored.

In contrast, since the beginning of its time in the White House, this Bush administration has sought to overturn traditions of bipartisan nominating commissions and to run roughshod over the advice of Democratic Senators. They attempted to change the exemplary systems in Wisconsin, Washington, and Florida that had worked so well for so many years. They ignored the protests of Senators like Senator BOXER who not only objected to the nominee proposed by the White House, but who, in an attempt to reach a true compromise, also suggested Republican alternatives. And today, despite the best efforts of the well-respected Senators from Michigan, who have proposed a bipartisan commission similar to their sister state of Wisconsin, we see the administration has flatly rejected any sort of compromise.

The double standards that the Republican majority has adopted obviously depend upon the occupant of the White House. The change in the blue slip practice marks only one example of their disregard for the rules and practices of committees and the Senate. In the Judiciary Committee, the Republican majority abandoned our historic practice of bipartisan investigation in the Pryor nomination, as well as the meaning and consistent practice of protecting minority rights through a long-standing committee rule, rule IV, that required a member of the minority to vote to cut off debate in order to bring a matter to a vote. Republicans took another giant step in the direction of unbridled partisanship through the hearings granted Judges Kuhl, Saad, Griffin and McKeague.

During the past year and a half we have also suffered through the scandal of the theft of staff memoranda and files from the Judiciary computer by Republican staff, a matter which is now under criminal investigation by the Department of Justice. It is all part of a pattern that has included bending, changing and even breaking this committee's rules to gain partisan advantage and to stiffen the White House's influence over the Senate.

The partisan Republican motto seems to be ''by any means necessary.'' If stealing computer files is helpful, do it. If rules protecting the minority are inconvenient, ignore them. If traditional practices are an impediment, break them. Partisan Republicans seem intent on turning the independent Senate into a wholly-owned subsidiary of the Presidency and our independent Federal judiciary into an activist arm of the Republican Party.

Senate Republicans are now intent on violating ''the Thurmond Rule'' and the spirit of the cooperative agreement reached earlier this year by which 25 additional judicial nominees have been considered and confirmed. The Thurmond Rule dates back at least to July 1980 when the Reagan campaign urged Senate Republicans to block President Carter's judicial nominees. Over time, Senator Thurmond and Republican leaders refined their use of and practices under the rule to prevent the consideration of lifetime judicial appointments in the last year of a Presidency unless consensus nominees. Consent of the majority and minority leaders as well as the chairman and ranking member of the Judiciary Committee came to be the norm. The agreement earlier this year on the 25 additional judicial nominees considered and confirmed was consistent with our traditions and the Thurmond Rule.

Senate Republicans abused their power in the last year of President Clinton's first term, in 1996. They would not allow a single circuit court nominee to be considered by the Senate that entire session and only allowed 17 noncontroversial district court nominees confirmed in July. No judicial nominees were allowed a vote in the first 6 months of that session or the last 5 months of that Presidency.

In 2000, we had to work hard to get Senate Republicans to allow votes on judicial nominees, even in the wake of searing criticism of their obstructionism by the Chief Justice of the United States Supreme Court. After July 4, 2000, the only judicial nominees confirmed were by consensus.

In stark contrast to their practices in 1996 and 2000, the Republican leadership of the Senate is now seeking to force the Senate into confirmations of judicial nominees they know to be highly controversial. That is wholly inconsistent with the Thurmond Rule and with their own past practices. Republican partisans seem intent on another contrived partisan political stunt. They insist on staging cloture votes on judicial nominees late in a Presidential election year knowing that they have broken rule after rule and practice after traditional practice just to force the controversial nominations before the Senate. They are manufacturing confrontation and controversy. Like the President, they seek division over cooperation with respect to the handful of most controversial judicial nominees for lifetime appointments.

Reports this week are that the Republican leadership is setting up unilaterally to change the Senate's historic rules to protect the minority. According to press accounts, some Republicans leaders are planning to have Vice President CHENEY, acting as President of the Senate, declare that the Senate's longstanding cloture rule is unconstitutional and then have his fellow party members sustain that partisan power grab. When this radical might-makes-right approach was advocated last year, some Republican had reservations about sacrificing the Senate's rights to freedom of debate. Traditional conservatives who understand the role of the Senate as part of the checks and balances in our Constitution recognized the enormity of damage that would be caused to this institution by empowering such a partisan dictatorship. From this week's reports, sensible Senate Republicans are being cast aside and overridden by the most strident.

Norm Ornstein observed: ''If Republicans unilaterally void a rule that they themselves have employed in the past, they will break the back of comity in the Senate.'' Republicans call this the so-called ''nuclear action,'' because it would destroy the Senate as we know it. It is unjustified and unwise. It is ironic that Republicans blocked nearly 10 times as many of President Clinton's judicial nominees as those of President Bush denied consent. Apparently, clearly Republican partisans will apparently stop at nothing in their efforts to aid and abet this White House in the efforts to politicize the Federal judiciary.

Both of the Senators from Michigan are respected Members of the Senate. Both are fair-minded. Both are committed to solving the problems caused

by Republican high-handedness in blocking earlier nominees to the Sixth Circuit. Both of these home-State Senators have attempted to work with the White House to offer their advice, but their input was rejected. They have suggested ways to end the impasse on judicial nominations for Michigan, including a bipartisan commission along the lines of a similar commission in Wisconsin. This is a good idea and a fair idea. I am familiar with the work of bipartisan screening commissions. Vermont and its Republican, Democratic and Independent Senators had used such a commission for more than 25 years with great success. I commend the Senators representing Michigan for their constructive suggestion and for their good faith efforts to work with this White House in spite of the administration's refusal to work with them.

Some Senators have said we need to forget the unfairness of the past on nominations and start on a clean slate. But the way to wipe that slate clean is through cooperation now, and moving forward together—not with the petulant, partisan unilateralism that we have seen so often from this administration.

Although President Bush promised on the campaign trail to be a uniter and not a divider, his practice once in office with respect to judicial nominees has been more divisive than those of any President. Citing the remarks of a White House official, The Lansing State Journal reported, for example, that the President is simply not interested in compromise on the existing vacancies in the State of Michigan. It is unfortunate that the White House is not willing to work toward consensus with all Senators.

Under our Constitution, the Senate has an important role in the selection of our judiciary. The brilliant design of our Founding Fathers established that the first two branches of Government would work together to equip the third branch to serve as an independent arbiter of justice. As columnist George Will has written, ''A proper constitution distributes power among legislative, executive and judicial institutions so that the will of the majority can be measured, expressed in policy and, for the protection of minorities, somewhat limited.'' The structure of our Constitution and our own Senate rules of self-governance are designed to protect minority rights and to encourage consensus. Despite the razor-thin margin of recent elections, the Republican majority is not acting in a measured way but in disregard for the traditions of bipartisanship that are the hallmark of the Senate.

When there was a Democratic President in the White House, circuit court nominees were delayed and deferred, and vacancies on the Courts of Appeals more than doubled under Republican leadership from 16 in January 1995, to 33 when the Democratic majority took over part way through 2001.

Under Democratic leadership, we held hearings on 20 circuit court nominees in 17 months. Indeed, while Republicans averaged 7 confirmations to the circuit courts every 12 months for the last President, the Senate under Democratic leadership confirmed 17 in its 17 months with an historically uncooperative White House.

With a Republican in the White House, the Republican majority shifted from the restrained pace it had said was required for Clinton nominees, into overdrive for the most controversial of President Bush's nominees. In 2003 alone, 13 circuit court judges were confirmed. This year more hearings have been held for nominees in just 5 months than were held in all of 1996 or all of 2000. One hundred and ninety-eight of President Bush's nominees have been confirmed so far—more than in all 4 years of President Reagan's first term, when he had a Republican Senate to work with, more than in the Presidency of the first President Bush and more than in the last term of President Clinton.

Many of the 198 nominees who have been confirmed for this President have proceeded by consensus out of committee and on the Senate floor. I would have hoped that the scores of nominees agreed upon by home-State Senators of both parties, voted out of committee unanimously and confirmed without opposition in the full Senate would have been a lesson for the President. I would have hoped that the Michigan Senators' principled and reasoned opposition to the way the Sixth Circuit nominations have occurred would have been a starting point from which to reach a compromise. But, as with so many other nominees and so many other issues, compromise was not forthcoming from this White House. Instead, they have refused to acknowledge the wrong done to President Clinton's nominees to the very same court, and they have refused to budge. It is a shame.

The Judiciary Committee has now reported more than 200 of President Bush's judicial nominees. Most have been reported with the support of Democratic Senators. Some have been contentious and some have been so extreme that they have not garnered bipartisan support and have been problematic. We have demonstrated time and again that when we unite and work together we make progress. Republicans have too often chosen, instead, to seek to pack the courts and tilt them out of balance and to use unfounded allegations of prejudice to drive wedges among Americans for partisan political purposes.

We have more Federal judges currently serving than at any time in our Nation's history and we have succeeded in reducing judicial vacancies to the lowest level in decades. Even Alberto Gonzales, the White House Counsel, conceded that: ''If you look at the total numbers, I think one could draw the conclusion that we've been fairly successful in having a lot of the president's nominees confirmed.'' The Republican leader in the Senate has termed our efforts ''steady progress.'' The White House would be even more successful if they would work with us to resolve this situation in the Sixth Circuit.

Senate Democrats had demonstrated our good faith in confirming 100 of President Bush's judicial nominees in our 17 months in the Senate majority. We have now cooperated in the confirmation of more judicial nominees for President Bush than President Reagan achieved working hand in hand with a Republican Senate majority. We have already confirmed more judges this Congress than were confirmed before the presidential elections in 1996. We fulfilled our commitment in accord with the agreement reached with the White House to consider 25 additional judicial nominees already this year. We have demonstrated not only our willingness to cooperate but we have done so to achieve historic confirmation numbers and historically low numbers of judicial vacancies. I have come to recognize that no good deed we do in correcting the Republican abuses of the past goes unpunished.

Unfortunately, this President has also chosen to nominate for some important circuit court seats some candidates who on their merits are not deserving of lifetime appointments. It appears that Judge Saad is one of those nominees. Clearly the Senators from Michigan have grave concerns.

I also have concerns about the nominee, his legal judgment, and his ability to be fair. While Judge Saad was an attorney his practice primarily consisted of defending large corporations against employees' claims of race discrimination, age discrimination, sexual harassment and wrongful termination. A review of Judge Saad's cases on the Michigan Court of Appeals raises concerns because he frequently favored employers in complaints brought by workers, even in the face of extremely sympathetic facts.

For example, in Cocke v. Trecorp Enterprises, a young Burger King employee was aggressively and repeatedly sexually harassed and assaulted by her shift manager. More than once, she reported this treatment to her other shift managers who promised to take care of it. The trial court prevented her case from going to the jury but Judge Saad dissented from an appellate decision reversing the trial court. Judge Saad ignored the legal standard of review followed by the majority and would have protected the corporation from responsibility for the shift manager's notorious and unlawful behavior.

Also, in Coleman v. Michigan, a female corrections officer brought a sexual harassment suit against her employer, the State of Michigan. This officer was assaulted and nearly raped by an armed prisoner. According to the officer's complaint, after this terrible attack, her supervisor insinuated that she provoked the attack because of her attire. The supervisor made the officer

come to his office on a regular basis to check the appropriateness of her clothing and he frequently called her to discuss personal matters, such as her relationship with her boyfriend. Despite these serious allegations, the trial court granted summary disposition in favor of the State of Michigan. Judge Saad joined in the Michigan Court of Appeals' per curiam opinion affirming the trial court's grant of summary disposition. The corrections officer appealed his decision to the Michigan Supreme Court, which reversed and held that her claims constituted sufficient evidence to go to trial.

In another case, Fuller v. McPherson Hospital, a jury who heard live testimony was persuaded to conclude that a woman had endured sexual harassment from her immediate supervisor and other superiors. The trial court vacated the jury findings because it found that the plaintiff had not complained of the harassment while working at the hospital. On appeal, the panel reinstated the jury's finding of sexual harassment but Judge Saad dissented. Unfortunately, his dissent in this case was only two sentences and failed to address his colleagues' legal conclusions.

I cannot speak in open session about all concerns but I can note a temperament problem, as evidenced by an e-mail he sent, a copy of which he mistakenly sent to Senator STABENOW as well. In Judge Saad's e-mail he displays not only shockingly bad manners, but appalling judgment and a possible threatening nature.

In the e-mail exchange, Judge Saad is writing to someone named Joe, forwarding him a copy of another e-mail sent by Senator STABENOW in response to a letter of support for Saad's nomination. In her response Senator STABENOW politely and reasonably explains the basis for her continuing objection to the nomination, explaining that she understands the writer's ''concerns and frustrations,'' thanking them, and offering her help in the future. Apparently this type of courteous explanation was too much for Judge Saad. Here is what he wrote in response to the Senator's explanation:

> She sends this standard response to all those who inquire about this subject. We know, of course, that this is the game they play. Pretend to do the right thing while abusing the system and undermining the constitutional process. Perhaps some day she will pay the price for her misconduct.

I know that Senator STABENOW does not need me to defend her, and I doubt that sort of personal threat concerns her, but I think Judge Saad's message deserves some attention. It shows a shocking lack of good judgment, a pronounced political viewpoint, and a total absence of respect for the process undertaken by Senators of good faith and good will.

As soon as they saw this e-mail message, both Michigan Senators wrote to the President's Counsel, Alberto Gonzales, alerting him to the offensive comments. While I do not believe Judge Gonzales or the President ever responded, 2 weeks later Judge Saad did get around to sending a ''non-apology.'' He wrote:

> I write regarding your and Senator LEVIN's recent letter to Alberto R. Gonzales, Counsel to the President (a copy of which you sent to me), relating to an e-mail message that I meant to send only to a close personal friend of mine. Unfortunately, this e-mail, which commented on my pending nomination, was inadvertently sent to your office. I regret that the e-mail was sent to you and certainly apologize for any personal concern this may have caused you. I have a great deal of respect for our political institutions and meant no lack of respect to you.

He cannot bring himself to say he is sorry for his words, to apologize for accusing a Senator of abusing the system she so respects, or even for expressing the hope that she would ''pay for her conduct.'' Instead he is sorry that he was caught, and if what he said may have caused Senator STABENOW ''personal concern.''

Apart from all of the procedural problems with this nomination, I have serious concerns about giving lifetime tenure to someone with this stunning lack of judgment.

I also have concerns about parts of the record of Richard Griffin. As a judge on the Michigan Court of Appeals since 1989, Judge Griffin has handled and written hundreds of opinions involving a range of civil and criminal law issues. Yet, a review of Judge Griffin's cases on the Michigan Court of Appeals raises concerns. He has not been shy about interjecting his own personal views into some of his opinions, indicating that he may use the opportunity, if confirmed, to further his own agenda when confronted with cases of first impression.

For example, in one troubling case involving the Americans with Disabilities Act (ADA), Doe v. Mich. Dep't of Corrections, Judge Griffin allowed the State disability claim of disabled prisoners to proceed, but wrote that, if precedent had allowed, he would have dismissed those claims. Griffin authored the opinion in this class action brought by current and former prisoners who alleged that the Michigan Department of Corrections denied them certain benefits on the basis of their HIV-positive status. Although Judge Griffin held that the plaintiffs had stated a claim for relief, his opinion makes clear that he only ruled this way because he was bound to follow the precedent established in a recent case decided by his court. Moreover, he went on to urge Congress to invalidate a unanimous Supreme Court decision, written by Justice Scalia, holding that the ADA applies to State prisoners and prisons. He wrote, ''While we follow Yeskey, we urge Congress to amend the ADA to exclude prisoners from the class of persons entitled to protection under the act.''

In other cases, he has also articulated personal preferences that favor a narrow reading of the law, which would limit individual rights and protections. For example, in Wohlert Special Products v. Mich. Employment Security Comm'n, he reversed the decision of the Michigan Employment Security Commission and held that striking employees were not entitled to unemployment benefits. The Michigan Supreme Court vacated part of Judge Griffin's decision, noting that he had inappropriately made his own findings of fact when ruling that the employees were not entitled to benefits. This case raises concerns about Judge Griffin's willingness to distort precedent to reach the results he favors.

In several other cases, Judge Griffin has gone out of his way to interject his conservative personal views into his opinions. The appeals courts are the courts of last resort in over 99 percent of all Federal cases and often decide cases of first impression. If confirmed, Judge Griffin will have much greater latitude to be a conservative judicial activist.

It is ironic that Judge Griffin's father who, as Senator in 1968, launched the filibuster of the nomination of Supreme Court Justice Abe Fortas to serve as Chief Justice. Former Senator Griffin led a core group of Republican Senators in derailing President Johnson's nomination by filibustering his nomination on the floor of the United States Senate. Eventually, Justice Fortas withdrew his nomination. I know that the Republicans here will call any attempt to block Judge Griffin's nomination ''unconstitutional'' and ''unprecedented,'' but his father actually helped set the precedent for blocking nominees on the Senate floor.

Finally, I turn to David McKeague, his record, and questions. In particular, I am concerned about Judge McKeague's decisions in a series of cases on environmental issues. In *Northwoods Wilderness Recovery* v. *United States Forest Serv.*, 323 F.3d 405 (6th Cir. 2003), Judge McKeague would have allowed the U.S. Forest Service to commence a harvesting project that allowed selective logging and clear-cutting in areas of Michigan's Upper Peninsula. The appellate court reversed him and found that the Forest Service had not adhered to a ''statutorily mandated environmental analysis'' prior to approval of the project, which was dubbed ''Rolling Thunder.''

Sitting by designation on the Sixth Circuit, Judge McKeague joined in an opinion that permitted the Tennessee Valley Authority (TVA) broadly to interpret a clause of the National Environmental Policy Act in a way that would allow the TVA to conduct large-scale timber harvesting operations without performing site-specific environmental assessments. *Help Alert Western Ky., Inc.* v. *Tenn. Valley Authority*, 1999 U.S. App. LEXIS 23759 (6th Cir. 1999). The majority decision in this case permitted the TVA to determine that logging operations that covered 2,147 acres of land were ''minor,'' and thus fell under a categorical exclusion

to the environmental impact statement requirement. The dissent in this case noted that the exclusion in the past had applied only to truly ''minor'' activities, such as the purchase or lease of transmission lines, construction of visitor reception centers and on-site research.

Judge McKeague also dismissed a suit brought by the Michigan Natural Resources Commission against the Manufacturer's National Bank of Detroit, finding that the bank was not liable for the costs of environmental cleanup at sites owned by a ''troubled borrower.'' See *Kelley ex rel. Mich. Natural Resources Comm'n* v. *Tiscornia*, 810 F. Supp. 901 (W.D. Mich. 1993). The bank took over the property from Auto Specialties Manufacturing Company when it defaulted on its loans. The Natural Resources Commission argued that the bank should be responsible for taking over the cost of cleanup because it held the property when the toxic spill occurred, but Judge McKeague disagreed.

In *Miron* v. *Menominee County*, 795 F. Supp. 840 (W.D. Mich. 1992), Judge McKeague rejected the efforts of a citizen who lived close to a landfill to require the Federal Aviation Administration to enjoin landfill cleanup efforts until an environmental impact statement regarding the efforts could be prepared. The citizen contended that if the statement were prepared, the inadequacies of a State-sponsored cleanup would be revealed and appropriate corrective measures would be undertaken to minimize further environmental contamination and wetlands destruction. Holding that the alleged environmental injuries were ''remote and speculative,'' Judge McKeague denied the requested injunctive relief.

In *Pape* v. *U.S. Army Corps of Engineers*, 1998 U.S. Dist. LEXIS 9253 (W.D. Mich.), Judge McKeague seems to have ignored relevant facts in order to prevent citizen enforcement of environmental protections. Dale Pape, a private citizen and wildlife photographer, sued the U.S. Corps of Army Engineers under the Federal Resource Conservation and Recovery Act of 1976 (RCRA), alleging that the Corps mishandled hazardous waste in violation of RCRA, destroying wildlife in a park near the site. Despite the Supreme Court's holding in Lujan v. Defenders of Wildlife that ''the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing,'' and even though RCRA specifically conferred the right for citizen suits against the government for failure to implement orders or to protect the environment or health and safety, Judge McKeague dismissed the case, holding that plaintiff lacked standing to sue.

Judge McKeague found plaintiff's complaint insufficient on several grounds, in particular plaintiff's inability to establish which site specifically he would visit in the future. Plaintiff had stated in his complaint that he ''has visited the 'area around' the RACO site 'at least five times per year' and that he has made plans to vacation in 'Soliders Park' located 'near' the RACO site in early October 1998, where he plans to spend his time 'fishing, canoeing, and photographing the area.''' Comparing Pape's testimony with that of the Lujan plaintiff, who had failed to win standing after he presented general facts about prior visits and an intent to visit in the future, Judge McKeague rejected Pape's complaint as too speculative, based on the Court's holding in Lujan that:

> [Plaintiffs'] profession of an ''intent'' to return to the places [plaintiffs] had visited before—where they will, presumably, this time, be deprived of the opportunity to observe animals of the endangered species—is simply not enough to establish standing. . . . Such ''some day'' intentions—without any description of concrete plans, or indeed, even any specification of when the some day will be—do not support a finding of the ''actual or imminent'' injury that our cases require.

In concluding that ''the allegations contained in plaintiff's first amended complaint fail to establish an actual injury because they do not include an allegation that plaintiff has specific plans to use the allegedly affected area in the future,'' Judge McKeague seemed to ignore completely the detailed fact description that Pape submitted in his amendment complaint. The judge further asserted that there was no causal connection between the injury and the activity complained of, and that, in any case, the alleged injury was not redressable by the suit.

On another important topic, that of the scheme of enforcing the civil and constitutional rights of institutionalized persons, I am concerned about one of Judge McKeague's decisions. In 1994, (*United States* v. *Michigan*, 868 F. Supp. 890 (W.D. Mi. 1994)), he refused to allow the Department of Justice access to Michigan prisons in the course of its investigation into some now notorious claims of sexual abuse of women prisoners by guards undermines the long-established system under the Constitutional Rights of Institutionalized Persons Act. That law's investigative and enforcement regime is unworkable if the Department of Justice is denied access to State prisons to determine if enough evidence exists to file suit, and Judge McKeague's tortured reasoning made it impossible for the investigation to continue in his district.

I know that concern for the rights of prisoners who have often committed horrendous criminal acts is not politically popular, but Congress enacted the law and expected its statute and its clear intent to be followed. It seems to me that Judge McKeague disregarded legislative history and the clear intent of the law, and that sort of judging is of concern to me.

I also note my disappointment in his answer to a question I sent him about a presentation he made in the fall of 2000, when he made what I judged to be inappropriate and insensitive comments about the health and well-being of sitting Supreme Court Justices. In a speech to a law school audience about the impact of the 2000 elections on the courts, Judge McKeague discussed the possibility of vacancies on the Court over the following year. In doing so he felt it necessary to not only refer to—but to make a chart of—the Justices' particular health problems, and ghoulishly focus on their life expectancy by highlighting their ages. He says he does not believe he was disrespectful, and used only public information. There were other, better ways he could have made the same point, and it is too bad he still cannot see that.

The people of the Sixth Circuit deserve better than this. And the American people, the independent Federal judiciary, the U.S. Senate, all deserve better than the double standard that is now squarely on display for all to see.

Mr. SCHUMER. Madam President, I yield the time remaining to me to the Senator from Michigan.

The PRESIDING OFFICER. All time has expired on the Democratic side.

Mr. LEVIN. Parliamentary inquiry: I thought there was 15 minutes on each side.

The PRESIDING OFFICER. There is 7 minutes on each side.

Mr. SCHUMER. Madam President, I ask unanimous consent, since nobody is here and we are voting at 11, that Senator STABENOW be given 4 minutes to discuss this issue.

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

Ms. STABENOW. I thank the Chair. Madam President, I thank my colleague and friend from New York.

I rise to support the distinguished senior Senator from Michigan, my friend and colleague, who has spoken very eloquently about what we are about to vote on.

Today we will be asked to vote to close debate and proceed to a final vote on three judges who have been nominated by the President to the Sixth Circuit in Michigan. We are asking that colleagues vote no and give us an opportunity to work out this situation in a bipartisan way. We have been very close. I appreciate Chairman HATCH's efforts to work with us, Senator LEAHY, and others who have worked with us and proposed bipartisan solutions. I still believe we can develop a solution if we do not proceed with this vote today. If we do not vote for cloture, I believe we can continue to work together in a bipartisan way to resolve this issue.

It is always difficult when the President nominates people for the bench. Oftentimes people will say: Why not give the President his nominees? We know this is different from the Cabinet. I have voted to give the President his team, his Cabinet, because they are with him for his 4-year term, and they are part of his team. Except for those few exceptions I believed were too extreme, I supported individuals I personally would not select to be in a Cabinet, but it is his team.

In the case of the judiciary, this is the third branch of Government. As we learn from reading simple high school government books, in the beginning of the debate of our Founders, those at the Constitutional Convention gave the full authority to the Senate. Then there was further discussion and they said possibly the President should appoint the third branch of Government. In the end, they said this is so important that this judiciary, this third branch of Government, be independent of the other two branches that we are going to split the authority in half. We are going to give half to the President of the United States to make nominations, and the other half to the Senate to consult and to confirm.

Our concern is that in the case of Michigan, working together has not been happening. It is not about two Senators; it is about the people we represent. We represent 9 million people in the State of Michigan whose voices are heard through our input to the President.

My distinguished colleague from New York spoke about the fact that he and his colleague from New York, opposite parties of the President, have worked with him and have had agreement on judges they believe were mainstream, who were appropriate for the bench, and they have been able to work together to do that.

Why in New York and not Michigan? Why in California and not Michigan? Why in Washington but not Michigan? Why in Wisconsin but not Michigan?

The issue for us today on behalf of the people of our State is we are asking for the same consideration, the same ability to have input about people who will serve us long past this President, people who will serve us long past the next President, people who have lifetime appointments and make decisions that affect our lives in every facet of the laws that affect us, from the workplace to the home to the environment to civil rights. These judges make decisions that affect each of us, and it is our responsibility to be involved and make sure we are working with the White House, whoever that is, to have the very best choices that are balanced and mainstream and will continue on long beyond most of us who are serving in the Senate.

This is important, and it is with great disappointment that I rise today to ask for a ''no'' vote on cloture because we have been attempting to work this out now for almost 3 years. Unfortunately, this move to get this vote at this time does not help us get to a fair bipartisan conclusion. It is an effort that will only get in the way of that happening.

I ask colleagues to join with us in saying no to the motion to close debate and invoking cloture, and I ask colleagues to give us an opportunity, that same opportunity that anyone on this floor would ask, the same opportunity that others have been given, to work together with this White House to develop recommendations on the Sixth Circuit and nominees we all believe are in the best interest of the people of Michigan and in the best interest of the people of the country.

I yield back my time, Madam President, and 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. HATCH. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HATCH. Madam President, as chairman of the Judiciary Committee, I will take a couple of minutes before the vote to express my views with regard to Judge Saad. There is no question in my mind that Judge Saad is competent, decent, and honorable—a person of great temperament, great legal ability and great capacity. That is what all of the people who know him best say. He also has a ''very good'' recommendation from the American Bar Association. So he has fit the bill there.

The real problem has been in the prior administration, we were unable to get two judges through, Judge Helene White and Kathleen McCree Lewis, both of whom are nice people. I tried to do my best to get them through, but we could not because there was zero consultation at the time, and by the time we got to the end, it got into another set of problems and, frankly, they did not get confirmed.

The two Senators from Michigan have been very upset about that, and if I were to put myself in their shoes I would feel the same way, perhaps.

The fact of the matter is these are three excellent people who could do a very good job on the bench, and Judge Saad certainly in this particular case is very capable of doing the job. So are Judge Richard Griffin and Judge David W. McKeague. I will continue to work to try and resolve the problems that exist with the Michigan Senators, but these people deserve up-or-down votes and should have up-or-down votes.

Some have said if two Senators are against a nomination in their State, that should be the end of it. That is not true, and it never has been with regard to a circuit court of appeals nominees. Every administration has guarded its right to nominate and put forth circuit court of appeals nominations, and in most cases at least one or two of the Senators have been cooperative in helping.

In this particular case, both Senators feel aggrieved because of the prior two judges and in the process have had some difficulty with Judge Saad. I assure the Senate that Judge Saad is an excellent person. He deserves this position. There is no question about Griffin and McKeague. They are two excellent judges and have great reputations in the State of Michigan. They deserve to be voted up or down today. I hope the people will vote for cloture. It is the right thing to do.

We should not be filibustering Federal judges. It has never been done before, and I recommend to all of our colleagues to vote for cloture in all three cases.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 11 a.m. having arrived, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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 Executive Calendar No. 705, Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit, Vice James L. Ryan, retired.

Bill Frist, Orrin Hatch, Lamar Alexander, Charles Grassley, Mike Crapo, Pete Domenici, Lincoln Chafee, Mitch McConnell, Ted Stevens, George Allen, Lindsey Graham, John Warner, Jeff Sessions, John Ensign, Trent Lott, Jim Talent, Pat Roberts.

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 Executive Calendar No. 705, the nomination of Henry W. Saad, of Michigan, to be United States Circuit Court Judge for the Sixth Circuit, shall be brought to a close.

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The yeas and nays resulted—yeas 52, nays 46, as follows:

[Rollcall Vote No. 160 Ex.]

YEAS—52

Alexander	Dole	Miller
Allard	Domenici	Murkowski
Allen	Ensign	Nickles
Bennett	Enzi	Roberts
Bond	Fitzgerald	Santorum
Brownback	Frist	Sessions
Bunning	Graham (SC)	Shelby
Burns	Grassley	Smith
Campbell	Gregg	Snowe
Chafee	Hagel	Specter
Chambliss	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Talent
Collins	Kyl	Thomas
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	McCain	
DeWine	McConnell	

NAYS—46

Akaka	Dorgan	Lieberman
Baucus	Durbin	Lincoln
Bayh	Feingold	Mikulski
Biden	Feinstein	Murray
Bingaman	Graham (FL)	Nelson (FL)
Boxer	Harkin	Nelson (NE)
Breaux	Hollings	Pryor
Byrd	Inouye	Reed
Cantwell	Jeffords	Reid
Carper	Johnson	Rockefeller
Clinton	Kennedy	Sarbanes
Conrad	Kohl	Schumer
Corzine	Landrieu	Stabenow
Daschle	Lautenberg	Wyden
Dayton	Leahy	
Dodd	Levin	

NOT VOTING—2

Edwards	Kerry

The PRESIDING OFFICER. On this vote, the yeas are 52 and the nays are 46. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

NOMINATION OF RICHARD A. GRIFFIN TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, 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 Executive Calendar No. 789, Richard A. Griffin of Michigan, to be U.S. circuit judge for the Sixth Circuit.

Bill Frist, Orrin Hatch, Lamar Alexander, Charles Grassley, Mike Crapo, Pete Domenici, Lincoln Chafee, Mitch McConnell, Ted Stevens, George Allen, Lindsey Graham, John Warner, Jeff Sessions, John Ensign, Trent Lott, Jim Talent, Pat Roberts.

Mr. HATCH. Mr. President, I am pleased that we are considering the nominations of Judge Richard Griffin and Judge David W. McKeague, who have been nominated by President Bush to serve on the United States Court of Appeals for the Sixth Circuit. These individuals each have a sterling resume and a record of distinguished public service. So I rise today to express my enthusiastic support for the confirmation of Judge Richard Griffin and Judge David W. McKeague to the Sixth Circuit Court of Appeals.

It is unfortunate that we have to continue coming to the floor to vote on cloture motions, to end debate on these nominations, rather than the Senate being able to vote up or down on the merits of the nomination. This unprecedented abuse of the process, by filibuster, to prevent a majority of the Senate from exercising its will is truly disturbing. What is going on is a hijacking of the constitutional process of advice and consent.

This abuse of the process isn't just being used on these two nominees. Unfortunately, we have now reached double-digit filibusters. There are ten judicial nominees who have been subjected to a filibuster. They are Miguel Estrada, D.C. Circuit; Priscilla Owen, 5th Circuit; William Pryor, 11th Circuit; Charles Pickering, 5th Circuit; Carolyn Kuhl, 9th Circuit; Janice Rogers Brown, D.C. Circuit; Williams Myers, 9th Circuit; Henry Saad, 6th Circuit; David McKeague, 6th Circuit; and Richard Griffin, 6th Circuit. In addition to these ten individuals, there are five additional Circuit Court nominations that are threatened to be filibustered—Claude Allen, 9th Circuit; Terrence Boyle, 4th Circuit; Susan Neilson, 6th Circuit; Brett Kavanaugh, D.C. Circuit; and William Haynes, 4th Circuit.

These individuals being filibustered represent a cross section of America and include men and women as well as members of various minority groups. And they are decent individuals with outstanding records in the law, in public service and in their States and communities.

It appears that these nominations are being tied up as some sort of payback for the way President Clinton's nominees were treated. However, a review of the record will demonstrate that this contention is without merit. What is happening is the creation of a stalemate for political purposes.

The current controversy surrounding the nomination of Henry Saad to be United States Circuit Judge for the Sixth Circuit dates back a decade. At the end of President George H.W. Bush's administration two Michigan nominees to the federal courts were denied hearings by the Democratic Senate and failed to attain confirmation. Those nominees were John Smientanka and Henry Saad, whose nomination we are considering again today.

As President Clinton named his nominees to fill judicial vacancies, there was no expectation, let alone demand, that the two previous nominees be renominated by a new administration. Accordingly, President Clinton did nominate Michigan nominees to both the Sixth Circuit and the district courts. In fact, nine of those nominees were confirmed. A majority were confirmed during Republican control of the Senate.

Two nominees, Helene White and Kathleen McCree Lewis, failed to attain confirmation. The primary circumstance for their failed nomination was the lack of consultation with one of the home State senators. In his letter to then White House Counsel Beth Nolan, Senator Abraham wrote to express his astonishment and dismay that President Clinton forwarded the nomination for a Sixth Circuit seat without any advance notice or consultation.

What was particularly troubling was that Senator Abraham had worked with the previous White House Counsel, Mr. Ruff, to improve the consultation process. In fact, despite previous difficulties, Senator Abraham had fully cooperated with the administration in advancing the nominations of a number of Michigan nominees. Unfortunately, the situation again deteriorated and the White House reverted to its previous pattern of lack of consultation. In fact, Senator Abraham was not consulted and in fact was told by the White House Counsel that despite earlier representations, the administration felt under no real obligation to do anything of the kind.

Because of the White House's lack of consultation, the nominations of the two individuals did not move forward. This was consistent with my well stated policy, communicated to Mr. Ruff, that if good faith consultation has not taken place, the Judiciary Committee will treat the return of a negative blue slip by a home state Senator as dispositive and the nominee will not be considered.

At the end of the Clinton presidency, the nominations of Ms. White and Ms. Lewis were returned to the President unconfirmed. Their renomination was urged by Senators LEVIN and STABENOW at the beginning of President Bush's administration. During the spring and summer of 2001, there was considerable consultation by the President with the Michigan Senators regarding nominations to judicial vacancies, and the Sixth Circuit in particular.

While the White House protected its constitutional prerogative to nominate individuals to the judiciary, there was an offer to consider nominating both of the two individuals to Federal judgeships in Michigan in an effort to advance the process. These overtures were not only rebuffed, but in fact holds were requested to be placed on all Sixth Circuit nominations.

This was an unfortunate escalation of the dispute, and was particularly unfair to other States in the Sixth Circuit. In addition, this left the circuit at half-strength. Fortunately, we have been able to confirm non-Michigan judges to the circuit court.

I regret that the cycle of acrimony and partisanship has escalated over the past decade. I believe the Bush administration made a good faith offer and regrets that the compromise was not accepted. However, even as the Judiciary Committee gives appropriate consideration to the views of home State senators, it is not in the public interest to permit this partisan obstructionism to continue.

So let me summarize regarding the treatment of Michigan judicial nominees. During the current Bush presidency the Senate has confirmed no Michigan judges. Six nominations are pending. During the Clinton presidency the Senate confirmed nine Michigan judges. Although two Michigan nominees were left unconfirmed at the end

of the Clinton presidency, two nominees were also left without hearings at the end of President Bush's term in 1993. During the first Bush presidency the Senate confirmed six Michigan judges. Two nominations were returned to the President.

So for those who like to keep score, the Michigan judge tally is as follows: Current President Bush: 0–6; President Clinton: 9–2; former President Bush: 6–2. The record is clear that previous Presidents were treated fairly by the Senate. It is time to give President Bush the same courtesy and move forward with his Michigan Judges to the Sixth Circuit and the District Courts. We can begin by approving the cloture motions we will vote on today for Henry Saad, Richard Griffin, and David McKeague.

Yesterday I spoke about the qualifications of Henry Saad. I would like to say a few words about the qualifications of the other two nominees whom we are voting on today.

Judge Griffin has exceptional qualifications for the Federal appellate bench. After graduating from the University of Michigan Law School in 1977, Judge Griffin spent 11 years in the private practice of law first as an associate at Williams, Coulter, Cunningham, Davison & Read from 1977–1981, then as a partner from 1981–1985. In 1985, Judge Griffin founded the firm Read & Griffin, in Traverse City, MI.

During his private practice Judge Griffin specialized in automobile negligence, premises liability, products liability, and employment law. Additionally, he provided pro bono legal services as a volunteer counselor and attorney with the Third Level Crisis Center. In 1988, Judge Griffin was elected to the Michigan Court of Appeals. He was elected to retain his seat in 1996 and again in 2002.

Judge Griffin was first nominated to this position by President George W. Bush on June 26, 2002. He was renominated to this seat on January 7, 2003. He is universally respected as one of the best judges in Michigan. He is not a controversial nominee. Yet he has been waiting for a vote for over 750 days because my colleagues on the other side of the aisle are, once again, playing politics with the Federal judiciary.

Judge Griffin has an exemplary record that includes service as both a committed advocate and an impartial jurist. The American Bar Association has rated him well qualified for this position. Although the ABA rating used to be the gold standard as far as my Democratic colleagues were concerned, I am only half joking when I say that an ABA rating of well qualified seems to have become the kiss of death for President Bush's judicial nominees. Miguel Estrada, Carolyn Kuhl, David McKeague, William Haynes, Charles Pickering and Priscilla Owen, all received Well Qualified ratings from the ABA, and all are, or were, being filibustered by Democrats. Judge Griffin deserves to fare better, and I certainly hope we can give his nomination an up-or-down vote on the Senate floor.

Simply put, Judge Griffin—along with the other qualified nominees to the Sixth Circuit—deserves a vote. I urge my colleagues to do what is right and join me in supporting his confirmation to the Sixth Circuit Court of Appeals.

Judge David McKeague has also been nominated to serve on the Sixth Circuit Court of Appeals. Judge McKeague was first nominated to fill a Federal judgeship in 1992, when the first President Bush nominated him for a seat on the United States District Court for the Western District of Michigan. The Judiciary Committee voted him to the floor with several other district court nominees en bloc, without any objection, and the full Senate confirmed him to the Federal bench by unanimous consent. Since 1992, he has served with distinction in the Western District of Michigan, and since 1994 has regularly been designated to sit on panels and draft appellate opinions for the Sixth Circuit Court of Appeals.

On November 8, 2001, President Bush nominated Judge McKeague for a seat on the Sixth Circuit, the position for which we are considering him today. When no action was taken on his nomination during the 107th Congress, President Bush renominated him to the Sixth Circuit on January 7, 2003. As with the other nominees, it is time for the Senate to vote up or down on this nomination.

In Judge McKeague, we have a jurist with impressive credentials who will honor his hometown of Lansing and serve with great distinction as a Sixth Circuit judge, as he already has for more than a decade as a Federal district judge in western Michigan.

Judge McKeague graduated from the University of Michigan in 1968 and then attended the University of Michigan Law School. Upon his graduation from law school in 1971, he joined the law firm of Foster, Swift, Collins & Smith, P.C., in Lansing, MI, and in 1976 was elected a shareholder and director of the firm. Judge McKeague served on the firm's executive committee in various offices, and was chairman of the firm's government and commerce department, from 1979 until his confirmation to the Federal bench in February 1992, where he serves as a judge on the U.S. District Court for the Western District of Michigan.

Since 1994, Judge McKeague regularly has participated by designation on, and authored appellate opinions for, panels of the U.S. Court of Appeals for the Sixth Circuit. So he already has considerable experience in handling Federal appellate cases—in fact, I understand that none of the decisions he has authored for the Sixth Circuit have been reversed—and I am certain that experience will serve him well once he is handling cases full time on the Sixth Circuit.

Judge McKeague has been active as a member of several community, local, and professional organizations, including the Judicial Conference of the United States, the Federal Judicial Center, the Michigan State and Ingham County bar associations, the board of directors of a community museum that provides science education for children, Junior Achievement, which provides business education to high school students, and Camp Highfields, a private facility that provides housing and counseling for troubled youth. He has also been active as a member of the Wharton Center for the Performing Arts Advisory Council, the American Inns of Court, the Catholic Lawyers Guild, and the Federalist Society for Law and Public Policy Studies. While in private practice and since his service on the Federal bench began, he has directed and participated in numerous seminars, moot court competitions, and trial advocacy programs at high schools, universities and law schools throughout Michigan. In addition, prior to his confirmation to the Federal bench, he served 6 years in the United States Army Reserve. Since 1998, he has also served as an adjunct professor of law at Michigan State University's Detroit College of Law, where he teaches Federal jurisdiction.

Judge McKeague is a distinguished and well-respected Federal judge who, in the words of one of his current colleagues on the Federal district court, ''let the law and the facts take him where they take him.'' He will make an outstanding addition to the Sixth Circuit, and I urge my colleagues to vote for his confirmation.

Let me make something absolutely clear: We need to vote on these nominations because it is critical that these Sixth Circuit vacancies are filled as expeditiously as possible.

The Sixth Circuit has a vacancy rate of 25 percent, and the four vacancies are all deemed judicial emergencies by the Administrative Office of the U.S. Courts. Among the twelve United States Courts of Appeal, the Sixth Circuit is last in the timeliness of its disposition of cases. For the 12-month period ending September 30, 2003, the median time interval from filing of Notice of Appeal to final disposition was 16.8 months. This was nearly 10 months longer than the Fourth Circuit Court of Appeals which was the fastest court that year at 7 months. By comparison, the average disposition time for appeals in all Circuits was about 10½ months.

Mike Cox, the Attorney General for the State of Michigan, wrote to the committee last year:

> My office alone has over 430 cases currently pending before the Sixth Circuit Court of Appeals. Those cases range the gamut of the law, from habeas matters involving horrendous murders to cases involving matters of broad public policy. . . . [O]n behalf of the citizens of my state, I urge you to quickly approve Judge Saad's nomination, and begin easing the vacancy crisis that has lingered far too long at the Sixth Circuit.

District judges and U.S. attorneys within the Sixth Circuit have publicly stated that the vacancy rate in the Sixth Circuit has slowed the administration of justice. Accordingly, nine members of Michigan's Congressional delegation have written to the Judiciary Committee, expressing their deep concern over the persistence of the Michigan vacancies and urging us to confirm President Bush's Michigan nominees. Under such circumstances, with the understanding that we will continue to work to resolve the Michigan Senators' concerns, we simply must move forward on these nominations and confirm Judge Saad, Judge Griffin, and Judge McKeague to the Sixth Circuit.

I yield the floor.

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

The question is, Is it the sense of the Senate that debate on the nomination of Richard A. Griffin, of Michigan to be United States Circuit Judge for the Sixth Circuit shall be brought to a close.

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The yeas and nays resulted—yeas 54, nays 44, as follows:

[Rollcall Vote No. 161 Ex.]

YEAS—54

Alexander	Dole	McConnell
Allard	Domenici	Miller
Allen	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Fitzgerald	Nickles
Brownback	Frist	Roberts
Bunning	Graham (SC)	Santorum
Burns	Grassley	Sessions
Campbell	Gregg	Shelby
Chafee	Hagel	Smith
Chambliss	Hatch	Snowe
Cochran	Hutchison	Specter
Coleman	Inhofe	Stevens
Collins	Kyl	Sununu
Cornyn	Lincoln	Talent
Craig	Lott	Thomas
Crapo	Lugar	Voinovich
DeWine	McCain	Warner

NAYS—44

Akaka	Dodd	Leahy
Baucus	Dorgan	Levin
Bayh	Durbin	Lieberman
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Nelson (FL)
Breaux	Harkin	Pryor
Byrd	Hollings	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden
Dayton	Lautenberg	

NOT VOTING—2

Edwards	Kerry

The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. REID. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

NOMINATION OF DAVID W. MCKEAGUE TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The 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 Executive Calendar No. 790, David W. McKeague, of Michigan, to be U.S. circuit judge for the Sixth Circuit.

Bill Frist, Orrin Hatch, Lamar Alexander, Charles Grassley, Mike Crapo, Pete Domenici, Lincoln Chafee, Mitch McConnell, Ted Stevens, George Allen, Lindsey Graham, John Warner, Jeff Sessions, John Ensign, Trent Lott, Jim Talent, Pat Roberts.

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 the nomination of David W. McKeague, of Michigan, to be United States Circuit Judge for the Sixth Circuit, shall be brought to a close.

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from New Hampshire (Mr. GREGG) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 44, as follows:

[Rollcall Vote No. 162 Ex.]

YEAS—53

Alexander	Dole	Miller
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Campbell	Hagel	Smith
Chafee	Hatch	Snowe
Chambliss	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Kyl	Sununu
Collins	Lincoln	Talent
Cornyn	Lott	Thomas
Craig	Lugar	Voinovich
Crapo	McCain	Warner
DeWine	McConnell	

NAYS—44

Akaka	Dodd	Leahy
Baucus	Dorgan	Levin
Bayh	Durbin	Lieberman
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Nelson (FL)
Breaux	Harkin	Pryor
Byrd	Hollings	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden
Dayton	Lautenberg	

NOT VOTING—3

Edwards	Gregg	Kerry

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. REID. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I ask unanimous consent to speak as if in morning business.

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

GENOCIDE IN SUDAN

Mr. FEINGOLD. Mr. President, I rise to join my colleagues in expressing my continued grave concern about the situation in Darfur, Sudan. For months now, Members of Congress have come to the floor to express their outrage at the situation in Darfur. All credible evidence indicates that what is unfolding in Darfur is genocide. Already, an estimated 30,000 civilians have been killed. More than 130,000 refugees have fled to Chad, and more than 1 million people have been displaced.

Numerous credible reports document the widespread use of rape as a weapon against female civilians. Entire communities have been razed, mosques destroyed, and wells poisoned, guaranteeing that a grave humanitarian crisis will continue to unfold for many months or even years. And now reports indicate that terrified survivors are being forced to return to their homes, which have been utterly destroyed, in a context of serious insecurity by Government officials who apparently view their own suffering citizens as something like a source of embarrassment.

Those of us who have followed developments in Sudan for many years see a horrifying familiarity in this crisis. The Government of Sudan has deliberately provoked a humanitarian catastrophe before in an attempt to repress dissent, and so for months now Members have come to the floor to speak out about this crisis.

I have written and spoken to administration officials, to U.N. officials, and to European officials to call for action and a firm unified message to Khartoum. I have raised the issue, as have

many colleagues, in numerous Senate Foreign Relations Committee hearings. This April, my colleague, Senator BROWNBACK, and I introduced S. Con. Res. 99 condemning the actions of the Sudanese Government. I have joined many of my colleagues in supporting Senator DEWINE's effort to direct urgently needed funds to Darfur for humanitarian relief, and I am a cosponsor of S. Con. Res. 124 acknowledging the genocide that is unfolding in Darfur, and I commend the leadership of Senators CORZINE and BROWNBACK, the sponsors of this legislation.

This is a tremendously difficult and complex situation. I commend the Secretary of State for traveling to Darfur to raise the profile on this issue. I commend the efforts of the USAID to respond to the urgent humanitarian needs in CHAD and IDPs in Darfur.

The administration can and must do more. First, the President needs to put in charge a senior official who can speak authoritatively to Khartoum and to key regional players, someone who is focused on Sudan exclusively each and every day. It is almost inexplicable that this has not been done to date.

Since our former colleague, Senator Jack Danforth, left his post as the President's special envoy for Sudan to serve as U.S. Ambassador to the United Nations, it appears that no one has been in charge of this issue on a day-to-day basis while this genocide unfolds. What kind of signal does this send about our seriousness? We need someone senior, with knowledge of the African and Arab worlds, put in place today to coordinate U.S. policy and deliver authoritative U.S. messages on a daily basis, to seize on fleeting opportunities, eliminate any confusion, match available resources with urgent needs, and constantly hold the Sudan Government's feet to the fire.

We also need serious thinking today about how to improve the security situation in Darfur. To date, the Government of Sudan has utterly failed to honor its commitments to disarm the janjaweed and to stop their brutal campaign.

Our strategy cannot simply consist of waiting for them to act. This is the same regime that orchestrated this misery in the first place. We cannot leave them in the driver's seat. So even as we push diplomatically for meaningful action from Khartoum, even as we do the hard work of building a strong, unified multilateral coalition to send a clear message about the serious consequences that will result from continued intransigence, we must develop plans to help people in spite of the Government of Sudan's policies. That means finding a way to provide security for Darfur's vulnerable populations and for the humanitarian organizations working to assist them.

We need to be working now to collect testimony and evidence so that those responsible for atrocities in Darfur can be held accountable for their crimes. This must not be an afterthought. It is a central part of our obligation. And in addition to appropriately and sensitively collecting testimony, we should be making plans today to develop strategies to reach the survivors of rape in Darfur with medical assistance, counseling, and community-based support strategies to help address issues of stigma.

Ultimately, we need to think about underlying issues of political disenfranchisement that stoked the initial conflict in Darfur. The North-South peace process made real progress, and I applaud the efforts of the many African, European, and American diplomats who worked so hard to help the parties come to agreement. But the process only created real political space for two entities, the Government of Sudan and the Sudanese People's Liberation Movement of the South. Neither the South nor the North are monolithic. We need to think today about political accommodations that can give the disenfranchised a voice in determining their own destiny.

I share the outrage of my colleagues. But I know that the people of Darfur—the malnourished children, the victims of rape, the broken families struggling to survive—this people need more than our outrage. They need our action.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded and I be permitted to speak as in morning business.

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

CAMPAIGN FINANCE REFORM

Mr. FEINGOLD. Mr. President, when major and hard-fought legislation nears enactment, the rhetoric on this floor can get a little overheated. Supporters of the measure sometimes overstate the importance of the legislation or exaggerate its benefits. Opponents make doomsday predictions of what will happen if the bill becomes law. Only the passage of time can answer those arguments, but by the time that answers are available, the Senate has often has moved on to other battles.

Today, I want to take a few minutes on the floor to call the attention of my colleagues and the American people to some promising indications that the doomsday predictions of opponents of the McCain-Feingold bill have not come to pass. As we told the Senate at the time, McCain-Feingold will not solve every problem in our campaign finance system, and it hasn't. Lately, there has been significant controversy over so-called ''527 organizations,'' which the FEC has permitted to operate in violation, I believe, of the Federal Election Campaign Act of 1974.

Nonetheless, McCain-Feingold is working as it was intended to work. It closed the political party soft money loophole, and it has restored some sanity to a system that had truly spun out of control over the last several elections. While it is still too early to reach a final conclusion, it appears that the cynics and the doubters were wrong. And that is good news for the American people.

When the Senate considered the McCain-Feingold bill in March 2001, we had just finished a hotly contested Presidential election in 2000. Nearly $500 million of soft money was raised in that election by the two political parties, almost double what was raised in the 1996 election. Nearly two-thirds of that total was given by just 800 donors, who contributed over $120,000 each to the parties. The biggest donors contributed far more than that. The most generous soft money donor, AFSCME, gave almost $6 million, all to the Democratic party. SEIU gave a total of $4.3 million, mostly to the Democrats. AT&T gave a total of $3.7 million to the parties, the Carpenters and Joiners Union $2.9 million, Freddie Mac and Philip Morris, $2.4 million. Then we had the ''double givers''—companies that gave money to both parties. In 2000, there were 146 donors that gave over $100,000 in soft money to both of the political parties.

The appearance of corruption created by this avalanche of soft money was overwhelming. The public knew it; and we all knew it in our hearts. And the Supreme Court knew it when it upheld the McCain-Feingold bill against constitutional challenge in the case of McConnell v. FEC. The Court stated the following:

> As the record demonstrates, it is the manner in which parties have sold access to federal candidates and officeholders that has given rise to the appearance of undue influence. Implicit (and, as the record shows, sometimes explicit) in the sale of access is the suggestion that money buys influence. It is no surprise then that purchasers of such access unabashedly admit that they are seeking to purchase just such influence. It was not unwarranted for Congress to conclude that the selling of access gives rise to the appearance of corruption.

In this election cycle, I am happy to report, political party soft money is no more. Not reduced, not held in check, not capped—it is just gone. I consider this one of the most significant developments in American politics in the last 50 years. In 2002, a colleague told me on this floor that he had just finished making an hour of calls asking for large soft money contributions. He said he felt like taking a shower. Now, many of my colleagues, including some who did not support our bill, tell me how happy they are to not have to make those calls any more. That's a huge change in how we spend our time, and how we relate to people who have a big stake in what we do on this floor.

But what about the political parties? When we were debating McCain-Feingold, we had a real difference of opinion on how the bill would affect the parties. On one side were Senators who

argued passionately that the bill would kill the political parties.

One Senator said the following during our debate:

This legislation seeks, quite literally, to eliminate any prominence for the role of political parties in American elections.

This legislation favors special interests over parties and favors some special interests over other special interests. Equally remarkable is the patchwork manner in which this legislation achieves its virtual elimination of political parties from the electoral process.

The same Senator claimed:

But under this bill, I promise you, if McCain-Feingold becomes law, there won't be one penny less spent on politics—not a penny less. In fact, a good deal more will be spent on politics. It just won't be spent by the parties. Even with the increase in hard money, which I think is a good idea and I voted for, there is no way that will ever make up for the soft dollars lost.

There isn't any way, he said, that they will ever make up for the soft dollars lost.

Twenty months after the McCain-Feingold bill went into effect as the law of the land, our two great political parties are alive and well. Apparently they do have something to offer to the American people other than fundraisers for lobbyists. A new study by Anthony Corrado and Tom Mann of the Brookings Institution reports that through the first 18 months of the 2004 election cycle, the national party committees raised $615 million in hard money alone, which was more than the $540 million that they had raised in hard and soft money combined at a comparable point in the 2000 election cycle. Let me say that again. As of June 30, the parties had raised more in hard money in this election cycle than they had raised in hard and soft money combined at a similar point in the 2000 cycle.

Remember the Senator who said there was ''no way'' that the parties could make up for the soft money they would lose under the McCain-Feingold bill. Well it turns out that Senator was wrong.

The parties are not just surviving, they are thriving. And they are doing this not just by taking advantage of the increased contribution limits instituted by McCain-Feingold. Corrado and Mann state the following:

While these increases in the contribution limits have provided the parties with millions of additional dollars, the growth in party funding in 2004 is largely the result of a remarkable surge in the number of party donors. Both parties have added hundreds of thousands of new small donors to their rolls.

The numbers are truly astonishing. The Republican National Committee has added a million new donors. The NRCC added 400,000 new contributors in 2003. The DNC has recruited more than 800,000 new small donors through direct mail alone. And these numbers don't include any new online contributions in 2004. And, of course, they don't include the hundreds of millions of dollars in hard money raised by the two major party presidential candidates.

The parties are stronger than they were before not just because they have raised more money than in 2000. Small contributors are a much better indicator of strength than big contributors. Small contributors volunteer, they are involved, they vote, and they inspire others to contribute and vote. I believe McCain-Feingold saved the political parties from the oblivion to which they were sending themselves with their reliance on the easy fix of soft money.

The argument over the effect of the bill on the political parties was just one of the disagreements we had when the bill was considered back in 2001. Another dispute concerned what would happen to all that soft money that had previously been contributed to the parties. Opponents of the bill expressed absolute certainty that the money contributed to the parties would simply migrate to less accountable outside groups. One Senator said the following during our debate:

Why do we want to ban soft money to political parties, that funding which is now accountable and reportable? This ban would weaken the parties and put more money and control in the hands of wealthy individuals and independent groups who are accountable to no one.

Another Senator quoted a prominent Republican lawyer who said: ''The world under McCain-Feingold is a world where the loudest voices in the process are third-party groups.''

Those of us who supported the bill certainly recognized that some donors would look for alternative ways to influence the political process. But we also thought that much of the money that was being given to the political parties was being given under duress. We argued that if Members of Congress and other public officials weren't asking for the money, much of it wouldn't be given at all. We had heard from countless corporate executives that the soft money system, which many had called legalized bribery, was really more like legalized extortion. I will never forget the words of Ed Kangas the former CEO of Deloitte Touche Tohmatsu. He said:

Businesses should not have to pay a toll to have their case heard in Washington. There are many times when CEOs feel like the pressure to contribute soft money is nothing less than a shakedown.

In 1999, on this floor, I said the following in a debate with another Senator who actually supported the soft money ban, but asserted that soft money would simply flow to outside groups:

I have this chart. It is a list of all the soft money double givers. These are corporations that have given over $150,000 to both sides. Under the Senator's logic, these very same corporations—Philip Morris, Joseph Seagram, RJR Nabisco, BankAmerica Corporation—each of these would continue making the same amount of contributions; they would take the chance of violating the law by doing this in coordination with or at the suggestion of the parties, and they would calmly turn over the same kind of cash to others, be it left-wing or right-wing independent groups?

I have to say . . . I am skeptical that if they cannot hand the check directly to the political party leaders, they will take those chances.

On this dispute, with 3½ months to go before the election, the jury is still out. But once again, the early indications are that the doomsday predictions of opponents of the bill will not come to pass.

Not long ago, the Wall Street Journal reported that it surveyed the 20 top corporate donors in the 2002 election cycle and more than half, including Microsoft, Citigroup, and Pfizer, are resisting giving large contributions to the outside groups, the 527s, that are trying to raise unlimited contributions since the parties can no longer accept them. As the article noted:

The reticence illustrates an uneasiness on the part of some of the corporations to get sucked back into the world of unlimited political contributions that they thought campaign reform had left behind.

According to a Washington Post article in June:

[E]lection law lawyers said corporations are showing significant reluctance to get back into making ''soft money'' donations after passage of the McCain-Feingold law.

According to the Center for Public Integrity, which maintains the most complete database of information on 527s using the reports required by the disclosure bill we passed in 2000, 527s that focus on federal elections along with labor-funded 527s have raised approximately $150 million as of June 30. This is far less than the $254 million that had been raised in soft money by the parties at a similar point in the 2000 election cycle and less than half of the $308 million raised in the first 18 months of the 2002 cycle. It is, of course, possible that 527 fundraising will pick up significantly in the wake of the FEC's determination in May that it will likely not regulate these groups as political committees in this election cycle. But the underlying problem with raising money for these organizations remain. That is very simple. It is central to this whole issue. They cannot offer the kind of access and influence that made the parties such effective soft money seekers prior to the enactment of McCain-Feingold.

There is no doubt that ideologically motivated wealthy individuals will continue to seek ways to influence elections. Most of the money being donated to the 527s is coming from such people. I continue to believe that many of these groups, since their stated goal is to influence federal elections, should be required to register as federal PACs, which can accept contributions of only $5,000 per year from individuals. But even if they continue to operate outside the law, they are not going to replace the political parties. Without significant corporate support, they simply cannot raise the kind of money that the parties raised in 2000, much less the amounts that would have been raised under the old system in this election cycle.

So to those who forecast or believed the doomsday scenarios back in 2001 and 2002 when we considered the bill, or who continue to believe them today, I suggest you look at the numbers. McCain-Feingold is working, and the Senate should be proud that it passed. As we approach the 2004 elections, and the airwaves become saturated with political advertising, note the difference. Party ads are paid for with the contributions of millions of hard-working Americans proud to participate in the political process and looking to parties and to their government to represent them, not the special interests that used to write the big checks.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDENT OFFICER. The clerk will call the roll.

The assistant 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.

Mr. DURBIN. I ask unanimous consent I be recognized to speak in morning business.

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

9/11 COMMISSION REPORT

Mr. DURBIN. Mr. President, this may be the last day of Senate activity before we take a recess for August. In that recess, both major political parties will have their conventions in Boston and New York. Members will be back home in their States, some campaigning, some spending time with their families—a period of time we all look forward to each year. However, we leave this Senate with a great deal of unfinished business.

This morning, Governor Tom Kean, a former Governor of New Jersey, and Congressman Lee Hamilton of Indiana gave a briefing to Members of the Senate on the 9/11 Commission Report. Let me say at the outset that those two individuals, Governor Kean and Congressman Hamilton, as well as every member of this Commission, performed a great service for the United States of America. They have produced a report which, frankly, is a bargain. They were given an appropriation of some $15 million, they had 80 staff people, and over a very short period of time by congressional standards did a more thorough analysis of the events leading up to September 11 than any analysis that has been done by a congressional committee. They did it in a bipartisan fashion, an analytical fashion, and they did it not looking for someone to blame or someone to assign responsibility but, rather, to learn so they would learn as a Commission and we would learn as a nation how to make America safer.

As Governor Kean this morning went through this Commission report, he outlined all of the occurrences, starting with the initial bombing of the World Trade Center many years ago, that led up to September 11. As he read the list, it went longer and longer and longer, all of the clear evidence we had accumulated of activities by al-Qaida and other terrorists threatening the United States of America. When you heard this list, you reached the same conclusion he did; that is, why didn't we see it coming?

There was so much evidence leading in that direction. Governor Kean and Congressman Hamilton said many of our leaders, many of our agencies, many Members of Congress, and many American people were still thinking about the threat and danger of our world in terms of a cold war. Now we were facing a new danger, a danger which was not obvious to us, and very few people were prescient enough to see it coming.

He talked about how these al-Qaida terrorists on 9/11, with a budget of less than half a million dollars, managed to see weaknesses in our system of security, that they could bring a 4-inch bladed knife on a plane but not a 6-inch bladed knife. All they needed was a 4-inch knife. They used box cutters. They came on planes and threatened the crews and commandeered the aircraft. They knew the doorways to the pilots' cabin were not reinforced or locked. They put all this together into this hideous plan of theirs to crash airplanes into the World Trade Center and the Pentagon.

Well, the facts were there for us to see, and most of us missed it. But this Commission said: We need to look beyond that. We need to look to the next question: What should we be doing to make certain America is safer? What should we have learned from 9/11? And they identified several areas.

Congressman Hamilton said: We need more imagination. At one point he said—I suppose halfway in jest—we should have been reading more Tom Clancy novels and thinking about possibilities rather than just analyzing the way things had always been. We needed to make sure we developed imagination, developed a program that could respond to these new threats, capabilities. And we needed to make certain we had done everything we could to organize and manage our Government assets so they could be used most effectively.

Our friends in the military understand that. It is the reason why the United States of America has the best military in the world. About 10 years ago, Senator Goldwater and Congressman Nichols proposed some dramatic reforms in the military and its management to try to stop this competition among the branches in the military and bring them together, and it has worked. This cooperative effort has made our military even that much better today.

Well, this Commission report suggests we need to do the same thing when it comes to the 15 different intelligence agencies across our Government that are responsible for collecting and analyzing information, to warn us of dangers ahead. Fifteen different agencies, with many extremely talented people, some with the most sophisticated technology in the world, but often dealing with obstacles and hurdles between agencies that should not exist.

They gave us examples: that one agency would know of the 19 terrorists on 9/11 and that many of them were dangerous people, but it was not communicated to the Federal Aviation Administration to keep them off airplanes; that we would establish standards which said: If you were identified by our Government as a dangerous person, we are going to search your baggage, but we are not going to stop you from getting on a plane. All of these things suggest we need to be smarter and better and tougher in the future.

The proposals they came up with are going to be controversial. They will be discussed at length by Members of Congress and a lot of others. But they are on the right track.

First: to give to one person new authority over these intelligence agencies. Senator FEINSTEIN of California, my colleague, has one approach. The Commission has another approach. But the idea is to vest in that person more authority to get the job done.

Second: to force together all these different agencies, 15 different agencies, into a counterterrorism network that works and cooperates. That is something that is long overdue.

And then, third: to look at Congress, because we have a role in this, too. Congress did not do as good a job as it could have done. We have a Senate Intelligence Committee, of which I am proud to be a part, and the House Intelligence Committee. But we need more oversight. We need to be able to develop the skills, with staff and our own commitment, to ask hard questions of these intelligence agencies, to ask what they are doing, whether they are being imaginative enough, whether they are cooperating with other agencies.

We need to ask hard questions about the appropriations for these agencies. I happen to serve on the Intelligence Committee and on the Appropriations Committee. So I sat through both hearings recently. I will tell you what happened in our Appropriations Committee hearing. It was a meeting of the Defense Subcommittee, in the closed room upstairs.

Then-Director of the CIA George Tenet presented a lengthy analysis of the intelligence threats to the United States, about 150 pages, and went through it. On about page 110, he started talking about the appropriations. That is what we were there for. We were there to discuss the money needed for our intelligence operations. But the first 110 out of 150 pages were all about the threats around the world and how serious they might be.

When it came time for members of the Appropriations subcommittee to

ask questions, they dwelled on the front part of Mr. Tenet's presentation, the first 110 pages. They dwelled on questions related to threats to the United States.

I am way down the line on that committee. By the time it came, an hour and a half later, to my questions, I said to Director Tenet: May I ask you a question about your appropriations? It was the first question asked about that at that hearing. We spent less than 10 minutes asking about the money that was to be spent and why.

My question to Director Tenet at the time was: What is the most significant part of your budget? How has it changed from last year? And why do we need it?

Well, that is an obvious question in any Appropriations hearing. But we never got to it until extremely late in the hearing. We can do better.

One of the suggestions from Congressman Hamilton is to look for a joint Intelligence Committee between the House and the Senate. There is only one viable analogy, when we did the same thing with atomic energy 40 years ago. No one in Congress today served at that time. It would be interesting to see how it worked.

Another is to give to the Senate Intelligence Committee and House Intelligence Committee authorizing-appropriating authority. For most people following this debate, this sounds so arcane it does not sound important, but it is: to give to one committee the authority to look at the programs and how they are working and then look at the budget and see how it matches up. That is important.

We need to expand the Senate Intelligence Committee staff. We do not have enough people. How can we possibly keep track of 15 different agencies, thousands of employees, the reaches of these agencies into countries all around the world, in the heavens above and the Earth below, and do this with literally a handful of staff people?

On the Senate Intelligence Committee, which I have served on for 4 years, I have one staff person whom I share with another Senator. That is not good enough. Part-time staff will not do the job.

Again, let me say, the 9/11 Commission report is a great service to America. The men and women who spent the time to make it a reality deserve our thanks and praise. President Bush was right yesterday. This is not a matter of blaming President Clinton or blaming President Bush. We are called on, as Members of Congress, in a bipartisan fashion, to think of ways to change the law to make America safer. I think that is what people across America expect of us.

Let me tell you what we can do today in a bipartisan fashion. We are hours away from leaving. We will be off, as I said, for the August recess. We will leave behind this Senate Calendar of pending legislation. On the back page of this calendar, the first item: the Homeland Security appropriations bill. It has been on this calendar since June 17—over a month now. We will leave town. We will leave Washington for 6 weeks, without passing the Homeland Security appropriations bill.

We should have done that a long time ago. We should be moving toward a conference to make sure that when October 1 comes, the new fiscal year, we are ready to move, we are ready to send the resources that are necessary not only to the Department of Homeland Security but to State and local first responders. That is a critical issue.

Let me give you an example. The President's budget request for Homeland Security has a total appropriation of $32.6 billion. This is a 7.7-percent increase over last year. In the House of Representatives, they appropriated $33.1 billion, slightly more than the Senate. But the problem is within the appropriations request itself.

President Bush's budget request for the Department of Homeland Security represents a dramatic cut of $1 billion in money for State and local first responders. I have said it repeatedly, God forbid another act of terrorism hits the United States. People in the streets of America are not likely to look for the number of the White House or of the Senate. They will dial 911. They will be looking for first responders in their community.

When we cut money, as the President's budget does, for State and local first responders, we are shortchanging our line of defense, our hometown line of defense against terrorism.

When you make these cuts to these State and local units of government, let me give you an example of some of what we in Illinois and other places may find at risk.

We need the money that has been cut in the President's budget for homeland security. We need it to specially train and equip local and State teams, firefighters, policemen, medical responders. We need it for interoperable communications.

I was surprised to learn a few years ago that in my State of Illinois, with 12.5 million people, there is no single network for the police and firefighters and ambulance services and hospital trauma centers to communicate. They each have different radio systems, different frequencies. What is wrong with this picture? We need them all together. If something should happen in my State or in a neighboring State, in South Carolina, wherever it happened to be, the first responders in that State should have a common communications system. When President Bush's budget cuts money for State and local responders, it reduces the likelihood that we can develop those systems. We need standardized training, methods to share intelligence, and we need mutual aid plans.

Most people, when they think of dangers and threats in the State of Illinois, automatically think of the great city of Chicago that may be a target. I hope it never happens. We had an exercise 2 years ago to try to simulate what might happen if we had such a tragedy. We quickly learned that if something did happen, we would need a dramatic increase of first responders, that the existing police and firefighters in Chicago and most major cities were inadequate to the task. We would almost have to double their numbers. That means reaching out to surrounding communities in mutual aid, so if it is a situation in downtown Chicago or in a suburban area, surrounding units would come to their assistance. That is done today over and over again across America. When the tornado hit Utica, IL, a few months ago, they had fire departments and first responders from all over the region coming together. But in order to make this mutual aid happen, we need money for the State and local responders to develop it. That line in the budget was cut by President Bush. It needs to be restored by Congress. We need to do that before we go home.

Within this same Senate calendar, you will also find other provisions of homeland security, such as a provision to increase the safety and security of nuclear powerplants. We have six nuclear powerplants in Illinois. These are important for us. They provide more than half of our electricity. They need better protection. We need better coordination of the fire and police and medical units around them.

We also have in our State—and it is probably the reason why we have been as prosperous as we have throughout our history—so much transportation, intermodal facilities. I visited at the old Joliet arsenal out in the area where Shell is. All of these trainyards and interstate highways—each one of them is vulnerable and needs to have special protection. We are a significant source of our Nation's food supply. We have many great universities.

Our State is not unique. Virtually every State can tell the same story of areas where we need to focus our attention and resources. We have these four bills on the calendar that would address some aspects.

One of the bills provides for greater security and defense of nuclear power facilities. That is one that is obvious. We will leave the Senate today without enacting that legislation and moving it to conference committee.

We also have a provision for the chemical industry. Obviously, here is a part of the private sector that is really vulnerable. Legislation has been developed to make it safer, and it sits on the calendar while we spend our time spinning our wheels on the Senate floor.

The same thing for our ports with the thousands of containers that come in on a daily basis, and our rail facilities. Each one of these areas has a special piece of legislation on this calendar that we have failed to address as we leave to go on our August recess. I

hope there won't come a moment in the next 6 weeks when we look back and say: We really should have done our work. We should have spent less time on the Senate floor embroiled in these political debates that spin our wheels and go nowhere and more time doing things people care about.

FURTHER IMPORTANT ISSUES

I have devoted this period of time in my speech on the 9/11 Commission report and homeland security, but I will say that we are remiss if we leave Washington without thinking of other issues that have a direct impact on the families and businesses across America. Some are extremely obvious. Pick a State. Pick a city. Go to any business, large or small, and ask them their No. 1 headache today. It is likely that most will respond: The cost of health insurance. It is a cost which is crippling businesses, denying coverage to many people, it continues to go up and out of sight, and reduces protection for the people who are supposed to be helped.

What have we done in Washington in the Senate on the issue of the affordability of quality health care and health insurance? Absolutely nothing. We don't even talk about it. We act as if it is not a problem. It is the No. 1 complaint of businesses and unions and families in Illinois. How can this representative body, charged with changing the laws and making life better in America, have a session that is void of any meaningful debate on the cost and availability of quality health care? We will have done that. We will adjourn without having seriously considered it.

The second issue is the state of the economy, whether we are prepared to help those industries which have struggled during the last recession, particularly manufacturing, whether our trade laws are adequately enforced, whether we are training and equipping the workforce of the future.

The third issue is obvious to most: What are we going to do about energy? Are we going to continue to be dependent for decades to come on the Middle East, drawing us into the intrigue of Saudi Arabia and those surrounding countries and all the other sources or are we going to move toward energy independence? We had a debate on an energy bill that went nowhere. Sadly, that bill didn't get very serious about the real issues. Can you imagine a debate on energy policy in America that does not even address the question of the fuel efficiency of America's cars and trucks? That was our debate. We decided, because the special interest groups, the manufacturers, and some of their workers didn't want to get into energy efficiency, that we would consider an energy bill that did not address the No. 1 area of consumption of energy in America—the fuel efficiencies of cars and trucks.

We can do better. America can have a good, strong, growing economy that is environmentally responsible and energy efficient. We have done it before, and we can do it again. What is lacking is leadership, on the floor of the Senate, in the House, and in the White House. That is critically important.

Of course, the one issue I started with is the issue that I will end with—America's security defense. As we speak on the Senate floor today, just a few minutes away by car are Walter Reed Hospital and the Bethesda Naval Medical Center. In the wards and rooms of those two great medical institutions are men and women who served our country valiantly in Iraq, many of whom suffered extremely serious injuries. I have been out with colleagues to visit with them from time to time and can't help but be impressed. They are the best and brightest in America. They are young men and women who stood up, took the oath, put on the uniform, and risked their lives for America. My heart goes out to them every day and many just like them who are serving in Iraq and Afghanistan and all around the world.

We have to be mindful of the fact that our situation in Iraq is a long-term commitment. No matter what you might have thought when we decided to invade Iraq—and I was one of 23 Senators who voted against the use-of-force resolution at that time—we all come together now believing that we need to provide every resource our men and women in uniform need to finish their mission and come home safely. That is something that should never be far from our minds, as well as the question of what we are going to do to make America safer here at home.

We talk about a war on terrorism, but former Senator Bob Kerrey of Nebraska at the 9/11 Commission meeting made an observation we should not forget. He said to Donald Rumsfeld and George Tenet, who appeared before the Commission, that it really isn't a war on terrorism. Terrorism is a tactic. The question is, Who is the enemy using the terrorism tactic? That is the real question. What should we be doing now to discover the plots and dangers across the world that might come to threaten the United States but also to reach out to the next generation in countries around the world to let them know we are a compassionate, caring people with values they can share and that their lives will be better for that.

It goes beyond military strength and intelligence. It goes into diplomacy and leadership around the world so that this country, as we may hear from time to time, is not only strong at home but respected around the world.

We can do our part. We need to reach out in different areas where we have not as much in the past. Yesterday, I spoke on the floor about the situation in the Sudan. It is a situation where literally a thousand people a day are losing their lives to what is a horrible genocide occurring in that country. We need to do more.

The United States has spent over $100 million so far in food aid. We need to be a political force, too, to push that Sudanese Government to do what is right and to work with the United Nations so that we say to the world: The United States is not interested in treasure or territory; we are a caring people, a humanitarian people who care about some of the poorest places on Earth, such as the Sudan.

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

The PRESIDING OFFICER (Mrs. DOLE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. WYDEN. I ask unanimous consent to speak as in morning business.

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

Mr. WYDEN. I also thank my friend from Tennessee, Senator ALEXANDER. I know he wants to speak as well. I will not be long.

The PRESIDING OFFICER. The Senator from Oregon.

(The remarks of Mr. WYDEN pertaining to the introduction of S. 2723 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. I thank the Chair.

(The remarks of Mr. ALEXANDER pertaining to the introduction of S. 2721 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

9/11 COMMISSION REPORT

Mr. ALEXANDER. Madam President, this morning at about 10 a.m. we were given an opportunity to meet with Governor Kean and Lee Hamilton, the cochair of the 9/11 Commission. That is the subject of the news today. I know both men well. I know Governor Kean better. We served as Governors at the same time. I have known a lot of Governors. He was Governor of New Jersey at the time he served. My judgment was he was the best Governor in the country. Those leadership characteristics certainly showed themselves with this report.

Mr. Hamilton said he had been working actively with the directors of the CIA in every administration since Lyndon Johnson. In a few words, he gave us a very impressive presentation. I believe this is an impressive report. It is an impressive committee. It has had impressive leadership, and it certainly will command my attention as one Senator. I intend to read it all the way through, and I intend to take seriously the recommendations. I hope all Americans will take time to read it.

Terrorism, as they remind us, whether or not we like it, is the greatest challenge today to our national security. It will be for our lifetimes and perhaps much longer than that.

This is a hard matter for us to come to grips with in the United States of

America, because it seems too remote from us. It seems as if it is on television. That is hard to say after 9/11 when 3,000 people were killed in an hour.

But as Mr. Hamilton gave his report to us, he emphasized four areas of failure—not President Bush's failure, not President Clinton's failure, but our failure. In fact, he said both Presidents were active and busy and interested and working hard on the threat. But in these four areas, we as a country failed.

First was the failure of imagination. We didn't imagine what could have happened that day. Second was a failure of policy. A third was a failure of capability. And fourth was a failure of management.

It made me think, if I may give a personal reflection. I have thought about it many times because I have heard various people suggest, ''Why didn't President Bush think of this?'' or ''Why didn't President Clinton think of this?'' As the Chair knows, I was busy in the mid 1990s trying to occupy the same seat President Bush occupies today. I was a candidate for President of the United States in 1994, 1995, and 1996. I thought back many times. It never once occurred to me a group of people might fly airplanes into the World Trade Center and into the Pentagon and try to fly them into the Capitol.

It never occurred to me. And it also never occurred to me that if I should by some chance be successful in that race, that within a year and a half of taking office I would suddenly be interrupted in a meeting in Florida with some schoolchildren, and in a short period of time I would have to decide whether to shoot down a plane load of U.S. citizens on a commercial airline headed toward Washington, DC. It never occurred to me.

I thought for a long time: Maybe that is just me. Maybe I am naive and have not had enough experience, but I have asked other public officials with a lot more experience. I did not ask the Presiding Officer, whose husband was a candidate for our country's highest office, if that occurred whether they might have to shoot down such an airplane. Maybe with her background in transportation, she would have thought of that, but I didn't. And I think most policymakers did not. Obviously, many people in intelligence didn't.

What Mr. Hamilton was saying, and Governor Kean, is we are going to have to imagine all of the things that could be done, some of us at least, and think about them and take those things very seriously in the future.

As fortunate as we are to live in this big country with remote, safe places, far away from a lot of the fighting we see on television, an unfortunate part of living in today's world is there are real threats and we are going to have to imagine those things that even candidates for the highest office in our land a few years ago would not have ever imagined.

I salute the Commission for its work. I thank them for it. I like the fact that it is unanimous, without a single dissent, without a dissenting opinion. I thank them for their job.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FINANCIAL SOLICITATIONS ON MILITARY BASES

Mrs. CLINTON. Mr. President, I rise today to express my concern about a rider included in the Department of Defense appropriations conference report that we will be taking up shortly. This rider is from the House Defense appropriations bill. It will limit the ability of the Department of Defense to address deceptive sales practices on our military bases.

This week, the New York Times has published a two-part series which included disturbing reports of financial advisers taking advantage of service men and women on our military installations. These articles contained evidence which indicate that recently enlisted service members are required, at many installations, to attend mandatory financial advisory classes. In those classes, it has been discovered that sales agents use questionable tactics to sell insurance and investments that may not fit the needs of our young men and women in uniform.

Mr. President, I commend to my colleagues the articles from the July 20 and July 21 editions of the New York Times titled ''Basic Training Doesn't Guard Against Insurance Pitch to G.I.'s'' and ''Insurers Rely on Congress to Keep Access to G.I.'s.''

Mr. President, as you well know, our men and women in uniform today are being called upon to sacrifice, sometimes—for more than 900 of them—the ultimate sacrifice. All of them are separated from their families. They are putting their lives at risk in the service of our Nation.

It is almost unimaginable that in addition to their sacrifice they would be exposed to less than scrupulous financial advisers at the installations at which they serve. However, instead of protecting our service members, a culture of financial abuse persists on our military bases. As soon as I learned of these reports, I immediately wrote to Secretary of Defense Donald Rumsfeld, asking for an immediate investigation of these practices, as well as immediate action to prevent these abuses from continuing.

Mr. President, I ask unanimous consent that my letter to Secretary Rumsfeld be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, July 20, 2004.

Hon. DONALD RUMSFELD,
Secretary of Defense, U.S. Department of Defense, Washington, DC.

DEAR MR. SECRETARY: I write to urge you to conduct an immediate investigation into reports about efforts by financial advisors to take advantage of our men and women in uniform through the use of deceptive sales practices. I am greatly alarmed by these reports which indicate that recently enlisted service members at many installations are required to attend mandatory financial advisory classes in which sales agents use questionable tactics to sell insurance and investments that may not fit the needs of people in uniform.

Today our men and women in uniform are being called upon to sacrifice, be separated from their families, and to put their lives at risk in service of their nation. They should not, under any circumstances, be exposed to less than scrupulous financial advisors at the installations at which they serve. However, instead of protecting our service members, a culture of financial abuse persists at military installations. It should not be too much to expect that our service men and women are protected from this behavior through the enforcement of post policies and regulations restricting disreputable financial practices. In short, our men and women in uniform should never be the unwitting prey of self-interested sales agents at military installations.

In addition to conducting a thorough investigation, I urge you to establish a financial education program for enlistees and review the practices whereby sales agents are given unfettered access to new recruits. This financial education program should include a component that equips soldiers to recognize that an attempt is being made to entice them to purchase financial services that are not in their best interest.

With our men and women in uniform serving bravely in Iraq, Afghanistan and elsewhere, we owe it to them to make sure they are not solicited for questionable financial schemes at the installations where they live.

I thank you for your consideration of my request and look forward to your response.

Sincerely yours,

HILLARY RODHAM CLINTON.

Mrs. CLINTON. I have also written to and spoken to both Chairman WARNER and Ranking Member LEVIN from the Senate Committee on Armed Services, to ask for hearings on this issue when we return in September. However, I was alerted yesterday that there is a provision in the Department of Defense conference report that would prohibit the Department of Defense from taking immediate action to address these financial abuses on our military installations.

Specifically, section 8133 of the conference report does not allow any changes to the Department of Defense Directive 1344.7, entitled ''Personal Commercial Solicitation on DOD Installations,'' until 90 days after a report containing the results of an investigation regarding insurance premium allotment processing is submitted to the House Committee on Government Reform and the Senate Committee on Governmental Affairs.

With that investigation still ongoing, it could be months—maybe years, for

all we know—until any changes are made to these abusive practices. During that time, more of our young men and women will fall prey to these unscrupulous agents who sell them financial products they do not need and they barely understand.

Yesterday, I sent a letter to Senators STEVENS and BYRD, the distinguished chair and ranking member of the Senate Committee on Appropriations, as well as to Senator INOUYE, the ranking member of the Senate Appropriations Subcommittee on Defense, to express my concern about the inclusion of this provision in the conference report of the DOD appropriations bill and to urge them to take action to remove this rider.

I understand a similar provision, with an even longer delay before DOD can take action, was included in the House Defense authorization bill. I am a conferee in the House-Senate conference on the Defense authorization bill, and I intend to do everything I can to include language that will allow the Department of Defense to immediately address this troubling issue without having to wait several months while our men and women in uniform continue to be fleeced.

I hope I will have the support of my colleagues who are also conferees on the Department of Defense authorization bill. I look forward to working with Senators on the Committee on Appropriations to figure out the best way to address this issue.

The problem of financial advisers taking advantage of our service men and women is one that requires immediate action. It is almost hard to believe, as the two articles in the New York Times so poignantly point out, that young men and women, who have a lot on their minds—such as leaving their families; oftentimes worrying about young wives left alone, taking care of children; or parents who are worried about their safety; trying to get the training they need; trying to get prepared for the dangerous missions they will face in Afghanistan, Iraq, and elsewhere—would be required, in many instances, to attend these meetings, which could do a lot to help educate them.

In fact, in my letter to Secretary Rumsfeld I ask there be financial education provided to these young men and women and oftentimes, if possible, where there are large bases, to the spouses who are left behind. I have visited bases where particularly young wives—often as young as 17, 18, 19 years old—are seeing their husbands leave for overseas deployments. They do not know how to keep a checkbook. They do not know how to pay bills. They have gone literally from their parents' home into a new, young marriage, oftentimes under the pressure of an impending deployment—usually of their husbands—and now, all of a sudden, they are left to try to deal with the financial demands of running a household. They should be given help. They should not be taken advantage of.

It strikes me as just regrettable that we would permit the solicitation for questionable financial schemes at the very military installations where these young men and women live prior to asking them to go into harm's way.

There certainly is a role for additional insurance, for other kinds of investment information to be provided, but not in a situation where the people doing the presentations are often former military officers or high-ranking noncommissioned officers, who purport to and present themselves as people in authority, and often lay the groundwork for a very rushed and somewhat coercive atmosphere, where these young men and women sign things they do not understand. It is somewhat reminiscent of many of our college students, who are in comparable age and group settings, who are given the hard sells for credit cards and insurance policies they do not understand. So I think there is a tremendous opportunity for legitimate financial education and for helping our military service members know what their needs are, and then to meet those needs.

I am looking forward to working with my colleagues on the Committee on Armed Services, as well as Senators on the Committee on Appropriations, to find a solution to this problem. I regret these riders were injected into the DOD appropriations subcommittee conference report that we will vote up or down this afternoon.

I will certainly support the appropriations bill because there are much-needed resources in it for our military and other ongoing needs that are within the purview of the Department of Defense that we need to be funding.

REPORT OF THE 9/11 COMMISSION

Mrs. CLINTON. Mr. President, I salute the 9/11 Commission for an extraordinary job well done and an act of real patriotism. The men and one woman who served on this Commission were asked to do a very difficult task, to try to separate themselves from their prior associations. These are all political people. Not everyone ran for political office, but the distinguished chair and vice chair certainly did and other members as well. These are all people who understand our political process and who with great distinction have served their party as well as our country, but they put that to one side when it came to working together. This 9/11 Commission report is a great testimony to their willingness to search hard for the truth, to get at the facts, to then explain, in understandable language, whatever they could discover about the events leading up to 9/11.

This report not only is educational and informative, but it is an urgent call to action. There are recommendations that ask the branches of our Government, the executive and legislative, as well as the American public, to understand we are up against a determined and committed adversary. Therefore, we have to think differently. We have to organize differently. We cannot act as though business as usual is sufficient. The recommendations from this Commission will ask this body to reorganize itself, to have a different approach to the oversight of intelligence. I hope we will respond to that request and recommendation.

There have been many other commissions, led by distinguished Americans, who have plowed the same ground, who have come forth with worthwhile and compelling recommendations which, frankly, have been ignored. We ignore this one at our peril.

I have stood in this spot numerous times, most recently just a week ago Thursday, to ask what are we doing. We sometimes act as though there is no threat beyond what our young men and women in the military face in the mountains of Afghanistan or the streets of Baghdad. This threat is real and it is here. It is among us. We know enough to understand that there are credible reports of plans underway as I speak to strike again.

If one reads this report—and I hope every American does, and I hope this is assigned in junior high schools and high schools and colleges because this is not just a report to be read by decisionmakers, to be read by political leaders, this is a report that should be read by every American—they cannot help but be struck by the ongoing threat we face.

I perhaps feel it more strongly because we know that in every report of any credibility, New York is always mentioned. Therefore, I have to ask: Are we doing our part even now, before we get to the point of considering the Commission's recommendations? Why aren't we considering homeland security right now? Why have we done nearly everything but consider the appropriations for homeland security, consider the very good legislation offered on both sides of the aisle to try to have a better approach to everything from port security to providing our first responders with the resources they need, to disbursing Federal funds based on threat and not treating it, as the Commission rightly says, like some kind of revenue sharing? Obviously, that will mean New York will get more than any other place, probably followed closely by Washington, DC, but those are the places of highest risk and threat.

The work before us is obvious. But I have to confess to a certain level of frustration that we have not even addressed what is within our purview. Now we are being asked by the 9/11 Commission to be even more imaginative, to be willing to change the turf, to remove some of the authority some have in order to better organize ourselves going forward.

At the press conference today, one of our distinguished former Members who served in this body for a number of years, Senator Bob Kerrey, summed it

up. He said, knowing as he does how this town works and how this body works, how this Congress works, he was hopeful but not optimistic that we would face up to our responsibilities.

What does it take for us to realize that the partisan bickering, the divisiveness, the point scoring, and the political gamesmanship have no place in the ongoing serious war against terror?

I hope, as a result of the fine work of this Commission and the path it has charted that we should follow into the future, we will rise to the occasion. There are recommendations certainly for the White House, the FBI, the CIA, the Department of Defense, the Immigration and Naturalization Service, the Department of Homeland Security. There are many recommendations that go to the administration, that go to the executive branch, that regardless of who is our President after November, that President will have to address. But that does not let the Congress off the hook. We have not fulfilled our responsibilities of oversight, and we now must take seriously the recommendations of these patriotic, hard-working, thoughtful Commissioners.

This report cannot be allowed to sit on a shelf somewhere. I hope we will take it in the spirit it is offered, as not just a bipartisan but, frankly, nonpartisan report; that we will immediately, under the leadership we have in this Senate, begin to figure out how we will fulfill the hope this Commission offers us; that we will be better prepared, better organized to play our part in the struggle against terrorism. I certainly will look forward to working with my colleagues in order to do that. I trust and hope that I can afford to be optimistic and that we will be able to prove our former colleague and one of the Commissioners, Senator Kerrey, wrong to a limited extent, that we can be both hopeful and optimistic that the Senate, the Congress, and our Government will live up to the obligations this report lays out so clearly.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. CANTWELL. Mr. President, I rise this afternoon to talk about what so many Americans are thinking about as they turn on their television today, and that is the 9/11 Commission report that is being issued by many of our former colleagues and partners in trying to address the security needs of our Nation. I am sure many Americans are going to want to know from this 9/11 report, is it going to result in us getting off our orange alert? Is it going to help us in providing better security across America?

One of the things we have to think about is the fact that this report now needs to be put into legislative action by this body. I thank the Commission, including Governor Keane, former Congressman Hamilton, and former Senator Slade Gorton, for their contribution to this report and their hard work. The voluminous report has a lot of recommendations, but I would like to call out two or three of those recommendations that are particularly important for us as a body to address when we return in September.

First and foremost is the need for us to focus on international cooperation. We in the Northwest learned that lesson very well when Ahmed Ressam came across the Canadian border with a car full of explosives on his way to LAX Airport. Many people in America know that story and know that a good customs agent was able to stop Ressam and confiscate those goods, and that act was never perpetrated on American soil. We also know after that, 9/11 did happen. So the question for us in America is, What are we going to do to make sure we have good international cooperation?

What is interesting about the Ressam case is Mr. Ressam started his efforts in Algiers, was successful in getting into France, then successful in creating a new identity and getting into Canada. Even though that was an illegal entry into Canada, he was able to remain in Canada and then create a Canadian passport and birth certificate and try to gain access to the United States.

As I said, the route he took through several countries to try to get to Port Angeles, WA, to start his journey shows the need we have in this country for international cooperation as it relates to our visa program and our visa standards. This is something we have seen a delay in in the last several years and something we need to pay particular attention to in the Senate to make sure this visa standard program gets implemented and gets implemented as soon as possible.

While we in the United States can have a visa entry program based on a biometric standard, that standard will only be as good as the standard that is then adopted by Canada and Mexico, our European partners, our Middle East allies, and various other countries around the world. By that, I mean if Mr. Ressam had entered France on a biometric standard which showed, perhaps with fingerprints or facial recognition, who Ahmed Ressam was, the various times he tried to perpetrate a false identity to get into the United States, we would be able to track that individual.

We know this is very important because we know that of the hijackers on 9/11, many of them had various trips back and forth to the United States. While we want to continue to have good international commerce with many countries and have people travel to the United States, we need a better security system with our visa standard, and we should make a top priority of getting such international cooperation based on biometrics.

I can say the same for international cooperation on port security. Washington State, being the home to many ports, needs to focus on the fact that cargo containers come in every day into the ports of Seattle, Tacoma, Vancouver, and various parts of Washington State. What we need is not to wait until the last minute for cargo containers to get into the Seattle area to find out whether they have explosives or whether the containers have been tampered with, but to have point of origin cooperation with countries all over the world to make sure that security system is deployed at the time the cargo leaves its port.

Here are two examples, one of human deployment of people coming to the United States and another of goods and services in which international cooperation is essential. That is why I take to heart the recommendation on page 20 of the 9/11 Commission report, the executive summary saying that:

> Unifying strategic intelligence and operational planning against Islamic terrorists across foreign-domestic divide with a National Counterterrorism Center.

What I believe the report is saying is we have to have the cooperation of our allies and the global community in fighting terrorism and doing so in a cooperative effort if we are going to be successful in the United States.

Secondly, while I think the report emphasizes the focus of a flat organization, from my 2 years on the Judiciary Committee and review of the incidents of 9/11 through the FBI and their organization and changes that have been made to that organization, one thing that is very clear about the 9/11 report is that a flat, decentralized organization and network of information must be accomplished.

While the report does talk about consolidation and the central focus, the important thing to understand is we are facing an asymmetrical threat by terrorists. We are not facing a superpower. We are not facing a well-oiled, well-heeled organization with a lot of support that we can track, detect, and analyze on a large-scale basis; it is very decentralized, with a lot of information flowing from a lot of different cells through different parts of the international community. What is important about that is if we are going to face that asymmetrical threat and meet that challenge, having a large bureaucracy facing an asymmetrical threat of lots of cells presents a challenging problem.

That is why it is very important, as Special Agent Coleen Rowley pointed out to many of the people in the intelligence community and the FBI community, the information that existed in different FBI offices throughout America but was not shared, was not pieced together with the other intelligence information by the CIA about potential people entering and exiting the country, needs to be pieced together in a flat organization.

Critical to this report and our success is for us to monitor the new organizations and agencies, such as Homeland Security, the structure of the FBI and CIA, and any new structures coming out of the 9/11 report to make sure we are keeping a flat organization. That flat organization is about getting access to as much information as possible.

Just as the Intelligence Committee report released by my colleagues in the last 10 days showed and just as this 9/11 report shows, the third thing we need to do is make sure we use the information we acquire and put much more focus and analysis behind that. While that sounds simple and it sounds like something that can be easily forgotten, I remind my colleagues that in 1998, ADM David Jeremiah, under a CIA governance order study, was asked the question: Why did the CIA miss India's testing of a nuclear bomb? Why did we as a country not really understand that was happening? Well, the No. 1 recommendation from that report was not enough analysis, and we had a culture that was not really assessing the 21st century threats to our country.

That is a report that was done in 1998 about a particular part of intelligence, in a particular part of the world, that missed something. We had a report that basically is saying the same things the 9/11 report is saying today, that information and analysis are critical to our success on international efforts at understanding information and potential threats or use of weapons of mass destruction.

To me, it is very important that we take to heart the fact that we need more analysts, and how that analyst structure is going to work. We live in an information age. You can say that terrorists, in their decentralized structure, are going to create much more information about their prospects, their attention to different projects, their communication with cells across the globe. It is this information that we need to acquire, put together, and have analysts working on, on an ongoing basis.

It is safe to say we need a dramatic increase in the number of analysts that we need to recruit into Government, new processes to put this information into a network, and access and assess it on an ongoing basis. I believe this is going to be a very hard challenge for us in Congress because we will see it as something that an agency is assigned to do, and we will forget about the challenges that face each of these agencies as they change their culture and change their structure.

We must keep in mind we are facing a threat of a very decentralized nature. To face a threat of a very decentralized nature we must build organizations and teams of people, including analysts, who also think in a decentralized way.

The report also talks about technology and the role that technology can play. I am a big proponent of technology in this information age. Something like a biometric standard on fingerprints and identification can be helpful. The report goes into a great deal of detail about implementing those at borders, at airports, at various other facilities. Yes, I want to expedite the speed and flow of individuals in and out of the country and have the United States continue to remain a great place where people want to visit. But in adopting these technology solutions, we need to work hard, as the 9/11 report says, to make sure the civil liberties and privacy rights of individuals are protected.

The United States has its privileges. The right to privacy is one of those. So we need to work on this recommendation in the report with that in mind. I think the structure within the FBI and Homeland Security needs to have someone, as these recommendations are implemented, who can—as databases are created, as information is assessed—help create the safeguards that are necessary.

But that should not impede us from working on an international basis to make sure that information about terrorist threats is shared through numerous countries in the world, and shared on a systematic database form with the United States. That is where I believe we have been lacking since 9/11. We have had a visa program and standard that we set in the PATRIOT Act and other bills as an objective. Yet we have failed to execute those. We should use this report today to continue our sharpened focus on getting that standard implemented so we can be sure the same people, like the 9/11 attackers, are not moving in and out of the country.

This report is so critical for us now to join together on these specific recommendations. We must not continue to focus on the past but focus on what we can do to get off of orange alert. It is important that we look at international cooperation, organizations, resources for analysts, new technology, and protecting civil liberties. But as I think about this issue, I think about the significant threats we face from those asymmetrical forms. Yet the results of those could be very catastrophic. That is why we need to get this program implemented.

I look to my colleagues, when we return in September, to keep away from what now has been an analysis of the past and look forward to implementing these solutions as quickly as possible, giving Americans better security in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent to speak as in morning business.

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

TROUBLING TRENDS

Mr. LAUTENBERG. Mr. President, I rise this morning because issues are brought to mind that somehow or other have slipped into the background. For example, look at this morning's Washington Post and see there is disturbing news about the impending retirement of air traffic controllers. This is a subject I have dealt with, even in my previous terms, and certainly in my current term in the Senate, sounding the alarm that we are going to be woefully short of people to replace retirees. We have to be certain that in the middle of what is an impending crisis because of the lack of skilled professionals in the towers, we do not turn to the subject of commercializing this.

We went through an enormous amount of pain and dislocation when we took the baggage screeners out of commercial hands and put them into Government hands because we knew they would operate more efficiently. Now the conversation goes that we are trying as well to go back with our screeners and put that function into commercial hands.

I ask unanimous consent that article be printed in the RECORD.

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

[From the Washington Post, July 22, 2004]

FAA FACES EXODUS OF TRAFFIC CONTROLLERS

(By Karin Brulliard)

Federal officials said yesterday that they are preparing to deal with a nationwide wave of retirements by air traffic controllers over the next decade and that passenger safety will not be jeopardized.

Regional officials with the Federal Aviation Administration are gauging how a potential exodus of nearly half the nation's air traffic controllers will affect individual airports, including Reagan National, Dulles International and Baltimore-Washington International, said Doug Simons, manager at National's control tower.

''Neither the FAA nor its controllers will permit the system to operate in ways that are unsafe or with staffing that is inadequate to the task,'' Simons told reporters yesterday. ''We will be there, with the numbers of people we need, everywhere, at all times.''

The FAA estimates that nearly half of the nation's 15,000 air traffic controllers will be eligible for retirement before 2013. Many of the potential retirees were hired in 1982 after President Ronald Reagan fired more than 11,000 striking members of the Professional Air Traffic Controllers Organization the year before.

In the Washington region, nearly 700 air traffic controllers direct more than 3,000 daily flights from six towers and radar centers. Ten percent of those controllers will be eligible to retire in 2006, said FAA spokesman Greg Martin.

Paul Rinaldi, alternate vice president of the National Air Traffic Controllers Association's eastern region said at least one-third of the controllers at Dulles and BWI will be eligible to retire or will reach the mandatory retirement age of 56 by 2008.

The association has warned in recent weeks that the retirements, if not headed off by aggressive recruiting and increased funding, could cause a controller shortage that would result in chronic flight delays, overstressed controllers and safety risks.

If we don't have the adequate number of certified controllers to work this system, basically we're not going to be able . . . to

safely meet the needs of the traveler, Rinaldi said.

The association, which represents 30,000 controllers nationwide, has called on Congress to appropriate an additional $14 million to the FAA to hire controllers. The current budget is $6.2 billion. To stave off a crisis, at least 1,000 controllers must be hired annually for the next three to five years, Rinaldi said. The FAA hired 762 controller in 2003.

The retirements will come at a time when air traffic is expected to increase dramatically because of expanded flight schedules, new budget airlines, and growth in the private and charter plane industrys.

A shortage could hit Dulles especially hard. The flight schedule there is expanding rapidly, partly because of the arrival of Independence Air, a discount airline that has been based there since June, Rinaldi said.

The FAA says it is uncertain how many new controllers will be needed and which of the nation's 300 air traffic facilities will need them, Simons said. He said the agency is studying the situation at each of the facilities and will deliver a report to Congress in December.

In the meantime, the agency said, it is taking steps to stem a potential shortage. It has proposed raising the controller retirement age and is focusing on advancements in technology to help reduce the dependence on air traffic controllers.

It is also streamlining controller training, an extensive process that can take up to five years, officials said.

''The task at hand is not simply to hire a number of new controllers, but the right number,'' Simons said.

Union representatives say there is no time to wait. Hiring must start now so that enough veteran controllers are still in towers to train recruits, said John Carr, national president of the Air Traffic Controllers Association.

''When it comes to having eyes on the skies, we need help and we need help now,'' Carr said.

Mr. LAUTENBERG. That speaks to the leadership we have. We see a headline that says, ''War Funds Dwindling, GAO Warns.'' That is terrible. We have spent a ton of money.

One thing all of us can agree upon, whether Democrat or Republican, is that we want our troops protected. We want them to be able to conduct their responsibilities in Iraq and Afghanistan with the best equipment they can get. Frankly, I have been looking for some time now at a way to compensate these service people for the 90 days of extended term that has been demanded by this administration. I want to get a $2,000-a-month extra stipend to help them weather the financial storm.

The emotional, family storm is terribly painful. We see an unusual number of suicides—far greater than we have seen in past wars—because of the emotional distress. It is overpowering. Soldiers are away from their families for a year. They are often people with little children. These are people, largely in the Reserve Corps, who are often young, have young families, and are trying to take care of their family and financial needs at the same time—paying the mortgage payments, paying for the normal sustenance of life.

That could not get heard here. It wasn't allowed to be brought up.

There are other things that I consider detrimental to the purported support we want to give our troops. I agree all of us in this body want to do what we can for those who are serving so dutifully and courageously. But we see, no matter what we have allocated, the funds are short. We have a lack of sufficient numbers of service people there, and we are trying to find our way out of that. We now find that a promise made recently that we would go from 130,000 down to 90,000 service people there is now kind of canceled. It has fallen into the background. We are going to maintain 130,000 people there.

I submit that is not enough. We know darned well that is not enough because all we have to do is look at the casualty count and we see now we have finally gone over 900 dead in Iraq.

We see we are miscalculating on all fronts—whether it is financial, whether it is service, whether it is the kind of equipment we should have had early on.

I ask unanimous consent this article be printed in the RECORD.

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

[From the Washington Post, July 22, 2004]

WAR FUNDS DWINDLING, GAO WARNS

(By Jonathan Weisman)

The U.S. military has spent most of the $65 billion that Congress approved for fighting the wars in Iraq and Afghanistan and is scrambling to find $12.3 billion more from within the Defense Department to finance the wars through the end of the fiscal year, federal investigators said yesterday.

The report from the Government Accountability Office, Congress's independent investigative arm, warned that the budget crunch is having an adverse impact on the military as its shifts resources to Iraq and away from training and maintenance in other parts of the world. The study—the most detailed examination to date of the military's funding problems—appears to contradict White House assurances that the services have enough money to get through the calendar year.

Already, the GAO said, the services have deferred the repair of equipment used in Iraq, grounded some Air Force and Navy pilots, canceled training exercises and delayed facility-restoration projects. The Air Force is straining to cover the cost of body armor for airmen in combat areas, night-vision gear and surveillance equipment, according to the report.

The Army, which is overspending its budget by $10.2 billion for operations and maintenance, is asking the Marines and Air Force to help cover the escalating costs of its logistics contract with Halliburton Co. But the Air Force is also exceeding its budget by $1.4 billion, while the Marines are coming up $500 million short. The Army is even having trouble paying the contractors guarding its garrisons outside the war zones, the report said.

White House spokesman Trent Duffy said the Defense Department continues to believe that extra funds will not be needed this fiscal year. President Bush had requested a $25 billion reserve to cover shortfalls that may arise between Oct. 1, when the new fiscal year begins, and February, when the White House plans to submit a detailed funding request for military operations. But for now, Duffy said, there are no plans to tap the reserve. He added: ''This president has said repeatedly the troops will have what they need, when they need it. That's why he has stood steadfastly in support of funding for our troops.''

Lt. Col. Rose-Ann Lynch, a spokeswoman for the Pentagon's comptroller, said that though the fiscal 2004 budget is tight, ''the department still anticipates sufficient funding to finance ongoing operations.''

Democrats quickly pounced on the report, charging that the Bush administration is turning a blind eye to military funding issues to avoid adding to the overall budget deficit or conceding that the Iraq operations are off-course.

''George W. Bush likes to call himself a wartime president, yet in his role as commander in chief, he has grossly mismanaged the war on terrorism and the war in Iraq,'' contended Mark Kitchens, national security spokesman for Democratic presidential candidate John F. Kerry. ''He went to war without allies, without properly equipping our troops and without a plan to win the peace. Now we find he can't even manage a wartime budget.''

The GAO report detailed just why a $65 billion emergency appropriation has proved to be insufficient. When Bush requested that money, the Pentagon assumed that troop levels in Iraq would decline from 130,000 to 99,000 by Sept. 30, that a more peaceful Iraq would allow the use of more cost-effective but slower sea lifts to transport troops and equipment, and that troops rotating in would need fewer armored vehicles than the service members they replace.

Instead, troop levels will remain at 138,000 for the foreseeable future, the military is heavily dependent on costly airlifts and the Army's force has actually become more dependent on heavily armored vehicles. The weight of those vehicles, in turn, has contributed to higher-than-anticipated repair and maintenance costs. Higher troop levels have also pushed up the cost of the Pentagon's massive logistical contract with Halliburton subsidiary Kellogg Brown & Root.

About 4,000 Navy personnel in Iraq and Kuwait were not expected to be there, contributing to a $931 million hole in the Navy's budget for fiscal 2004. The Marine Corps was supposed to have decreased its presence in Iraq but instead has 26,500 Marines in the country and an additional two expeditionary units supporting the war on terrorism.

The strain is beginning to add up, the GAO said. The hard-hit Army faces a $5.3 billion shortfall in funds supporting deployed forces, a $2 billion budget deficit for the refurbishing of equipment used in Iraq and a $753 million deficit in its logistics contract. The Army also needs $800 million more to cover equipment maintenance costs and $650 million to pay contractors guarding garrisons.

The Air Force has decreased flying hours for pilots, eliminated some training, slowed civilian hiring and curtailed ''lower priority requirements such as travel, supplies and equipment,'' the report said.

The Pentagon comptroller told GAO investigators that the Defense Department has sufficient funds to cover the shortfalls, provided Congress gives officials more authority to transfer money among accounts.

But the GAO report warned that there will be a serious downside to that approach, especially the deferral of maintenance and refurbishing plans until next year.

''We believe that the deferral of these activities will add to the requirements that will need to be funded in fiscal year 2005 and potentially later years and could result in a 'bow wave' effect in future years,'' the report cautioned. ''Activities that are deferred also run the risk of costing more in future years.''

A ''bow wave'' refers to a time when deferred costs confront Congress all at once, making it impossible to meet the demands.

Mr. LAUTENBERG. When I look at the morning paper, I see examples of what the administration has failed to do. Look at the status of things in Washington, DC. I assume it is a representative city of urban centers across the country. We see the DC gap in wealth is growing.

I ask unanimous consent to have that article entitled ''D.C. Gap In Wealth Growing'' printed in the RECORD.

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

[From the Washington Post, July 22, 2004]

D.C. GAP IN WEALTH GROWING

UNEDUCATED SUFFER MOST, STUDY SHOWS

(By D'Vera Cohn)

The gap between rich and poor is as great in the District as in any other major city and has grown more here than in most places, a widening chasm that troubles government leaders.

A study to be released today by the D.C. Fiscal Policy Institute said the top 20 percent of the city's households have 31 times the average income of the 20 percent at the bottom. The gap in the District is fed by extremes at both ends: The poor have less average income than in most of the country's 40 biggest cities, and the rich have more.

The persistent gap between rich and poor has been fueling debate over whether the national economic recovery is helping all Americans. The study deepens the picture of an increasingly fractured city, where poverty and wealth both grew in the last decade. The average household income for the top group was $186,830, and the average income for the poorest group was $6,126.

''The rich got richer and the poor didn't get richer,'' said Stephen Fuller, a regional economist at George Mason University in Fairfax. ''The poor can't afford to get out of Washington to the suburbs. . . . Our wealthy class got wealthier in the 1990s, and it didn't trickle down to the bottom.''

The new report identifies the District, Atlanta and Miami as the big U.S. cities with the largest income gaps.

Another recent analysis, by the Lewis Mumford Center at the State University of New York at Albany, found that the District now ranks higher among economically polarized cities than it did in 1990. The analysis, by Brian Stults, a sociology professor at the University of Florida, employed a standard technique to analyze income inequality and ranked the District among the five big cities with the largest gap between rich and poor.

The D.C. Fiscal Policy Institute study measured 1999 income, but a co-author, Ed Lazere, said the income gap is not likely to have closed since then. Nationally, the gap between rich and poor widened from the 1970s until the early 1990s, and has inched up slightly since.

The trend, experts say, reflects a growing gap in wages between skilled, educated workers and those with no skills, as well as social changes such as a growing number of single parents, who have lower incomes than married couples. Although some gap is expected, they see the trend as a disturbing reflection of an economy in which people without college educations will be stuck at the bottom.

The city's richest and poorest households could not be more different, according to Lazere's analysis. Half of the richest households, with incomes starting at $89,814, are married. Among the poorest, where incomes topped out at $14,000, six in 10 were single, living alone. Single mothers accounted for less than 10 percent of the richest households, and more than a quarter of the poorest ones. Nearly all the working-age adults held jobs in the richest households, but only about half did in the poorest ones.

Using numbers from another census survey, Lazere's study calculated that the incomes of the city's richest households rose 38 percent over the decade, while those of the poorest went up 3 percent.

Tony Bullock, a spokesman for Mayor Anthony A. Williams (D), said the gap is the product of complex forces, including poor city services and poor schooling, that have persisted for decades and cannot be fixed overnight.

''We have a large concentration of poverty where no matter what we seem to do to bring investment into the District, a certain population is not able to access the kind of employment opportunities that come from a growing tax base,'' he said. ''But it is our hope that we can improve in the future.''

Bullock said the attractiveness of the city to high-income households is good for its tax base, and the study agreed. It said high-income families in the Washington region are more likely to live in the city than are affluent families in most other big metro areas.

Those at the top benefit from the District's unique job bank of high-paid employment related to the federal government, including lobbying and contracting. A single young professional can earn $100,000 in his or her first year out of law school.

At the other end of the income scale, Lazere's study said, the D.C. minimum wage, $6.15 an hour, is worth less when inflation is taken into account than it was worth in 1979. The purchasing power of the city's maximum welfare benefit—$379 for a family of three—fell by nearly a third over the decade, it said.

A bill co-sponsored by D.C. Council members David A. Catania (R–At Large) and Sandy Allen (D–Ward 8) would raise the D.C. minimum wage to $6.60 an hour next year and to $7 an hour by January 2006. It would be the first increase since 1997 in the D.C. minimum wage, which is set at $1 above the federal level. Catania said yesterday that he is confident that it will pass, and that he also wants the city to beef up its training programs for less-skilled workers.

''I don't want to focus so much on income disparity,'' he said. ''The government should focus more on how to lift these workers out of poverty and help them make better wages.''

Lazere said he is concerned that the mayor's efforts to boost the city's population by 100,000 over the next decade and attract high-income residents could squeeze out the poor through gentrification if the city does not expand its assistance to low-income workers.

''At the high end, the city already is attractive.'' he said. ''Specific policies to attract more high-income families may not be needed and may exacerbate the problems for our neediest residents.''

INCOME GAP

[The income gap between the richest and poorest households is at least as wide in the District as in the nation's other big cities, according to a new study by the D.C. Fiscal Policy Institute. The average income of the city's richest households was about 31 times that of the poorest ones.[1]]

Rank and city	Average income bottom fifth of households	Average income top fifth of households	Ratio of highest income to lowest income
1. Washington, D.C.	$6,126	$186,830	30.5
2. Atlanta	5,858	172,773	29.5
3. Miami	4,294	125,934	29.3
4. New York	5,746	159,631	27.8
5. Newark	3,747	93,680	25.0
6. Boston	5,832	145,406	24.9
7. Los Angeles	7,124	162,639	22.8
8. Fort Lauderdale, Fla.	7,831	176,053	22.5
9. Cincinnati, Ohio	5,440	117,086	21.5

INCOME GAP—Continued

[The income gap between the richest and poorest households is at least as wide in the District as in the nation's other big cities, according to a new study by the D.C. Fiscal Policy Institute. The average income of the city's richest households was about 31 times that of the poorest ones.[1]]

Rank and city	Average income bottom fifth of households	Average income top fifth of households	Ratio of highest income to lowest income
10. Oakland, Calif.	7,642	163,931	21.5

[1]Census 2000 data analyzed by the D.C. Fiscal Policy Institute. The difference between D.C., Atlanta and Miami may not be statistically significant.

Mr. LAUTENBERG. If you look at the chart and see what has happened in terms of the difference in the wage scales, it is atrocious.

The wage scale gap at the top of the ladder goes up $186,000 and the people at the bottom of the ladder are at $6,000. Once again, we see a failure of responsibility.

I see on television a message that says, ''My name is George W. Bush and I approve of this message.'' We see talk about the number of votes JOHN KERRY has missed but we don't see in the same message what JOHN KERRY did when he was in Vietnam. Even though he disagreed with the war, he went there and served bravely. He got three Purple Hearts, a Bronze Star, and a Silver Star—medals of bravery. One of the instances that got him that medal was pulling out of the water one of his colleagues who was practically drowning as bullets were flying overhead. He stopped that boat he was in command of and pulled his friend and subordinate out of the water. We don't see that. Instead, it says JOHN KERRY missed these votes.

Yes. JOHN KERRY is a man who is always devoted to duty. Right now what he is doing is important. All of us think the votes are very important here, but very often these votes are already predetermined by the numbers in the majority and the numbers in the minority—not that we should miss votes. But he has a more important task. He has a task of changing the leadership in this country and making sure we are paying attention to our responsibilities to the community at large and not just to a particular moment in time but, rather, in the total picture of leadership.

In my view, it is not how one runs government. What we see is a question of leadership in the administration—the question of leadership of President Bush and Vice President CHENEY. If you look at their prior leadership positions, you will see similar problems.

For instance, take Vice President CHENEY's recent leadership of Halliburton. How did he transform that company?

My experience in the corporate world was a very good experience. I, with two other fellows—all three of us coming from poor homes, two brothers—started a business over 50 years ago. It was a very small business in its beginning days. We had a few dollars of borrowed money—not much. We started a business that never looked like it was

going to mature. It took us 12 years to get to the stage where we could apply computer technology to our business. Today that company we started—three poor kids with no resources to begin with—has over 40,000 employees and the longest growth record of any company in America, a growth of 10 percent each and every year for 42 years in a row. We grew at 10-percent earnings each and every year. It is remarkable.

I give that background not to boast but, rather, to try to make a point, the point being that there is a culture associated with our company—a culture, I am proud to say, has never been challenged in over 50 years of business, a culture that says whatever we do we have to be honest with our customers, honest with our employees, honest with our shareholders, and honest with the public at large. That sets the corporate culture. It tells you how we want that company to operate.

A CEO has an impact on a company that should endure beyond his or her years of service. I want to use that example to reflect on what has happened with Halliburton, one of America's largest companies.

In the wake of early leadership, Halliburton has been associated with bribes, kickbacks, violating terrorist sanctions laws, and sweetheart, no-bid Government deals. It doesn't sound very pretty, and it is not.

To make matters worse, Vice President CHENEY still receives salary checks from Halliburton for well over $150,000 each and every year. It has been 4 years now, somewhere around $700,000. He still holds over 400,000 unexercised Halliburton stock options. They are exercisable to 2009. He left the company 4 years ago. If the administration continues its service, he will have 4 more years. That is 2008, by my count. But the options exercise in 2009.

It is unconscionable that he would have a financial association with this company that disgraced corporate leadership in a time of war.

When I was in the Army a long time ago, I enlisted in 1942. I was 18 years old. During that period of time that America was fighting for its life, it was unthinkable that a company could profiteer while a war was going on; unthinkable. It would have been considered traitorous behavior.

But here we are in a session where the Vice President is undermining our Nation's ethical credibility here and abroad.

On September 14, 2003, the Vice President was asked about his relationship with Halliburton and the no-bid contracts on ''Meet the Press.'' This is what triggered my interest. I listened very carefully, because I have respect for the office, and I think DICK CHENEY is someone who wants to do the right thing but it has hasn't come out that way. Vice President CHENEY told Tim Russert:

I have severed all of my ties with the company, gotten rid of all of my financial interest. I have no financial interest in Halliburton of any kind and haven't had now for over 3 years.

There is a problem with that statement. When he said it, he held over 400,000 Halliburton stock options and continued to receive a deferred salary from the company.

In fairness, the Vice President has said, well, this is insured income, took out an insurance policy not dependent on the operating results of Halliburton. I take him at his word. He said he is going to give profits away from the stock option exercise to charitable institutions, philanthropic institutions.

But it is better for him if the company does well. He has these options, and even if he wants to give away the profits, the more profits the better if you look at the institutes he is giving the profits to. But he does hold 433,000 unexercised Halliburton stock options. Even though most of the exercise prices are above the current market price, the majority of the options, as I mentioned earlier, extend to 2009.

Any optionholder has to hope that the stock price will surge relative to the value of the options in excess. One way it can happen is to be sure that lucrative contracts keep coming from whatever source, whoever the customer is. In this case, the customer is the U.S. Government, and it is happening.

In the first quarter of 2004, Halliburton's revenues were up 80 percent from the first quarter of 2003. Why? Wall Street analysts point to one simple factor—the company's massive Government contracts in Iraq.

In addition, as I said, to the stock options, Vice President CHENEY continues to receive a deferred salary. Halliburton has paid the Vice President a salary of at least $150,000 a year since he has been Vice President of the United States. I think it is wrong and it ought to stop.

I heard the Vice President's defense: The deal was locked in in 1999; there was no way for him to get out of his deferred salary deal. That is not so. A little checking of the facts shows otherwise. I have obtained the terms of Vice President CHENEY's deferred salary contract with Halliburton. The bottom line is that the deferred salary agreement was not set in stone.

In fact, one need only look at the ethics agreement of Treasury Secretary Snow to see what the Vice President should have done in order to avoid taking the salary from a private corporation while in public office. Secretary Snow took six different deferred compensation packages as a lump sum upon taking office. The Vice President is not a victim of Halliburton's generosity. He could have attempted to take the deferred salary as a lump sum.

In the meantime, what has happened to Vice President CHENEY's former company? For starters, Halliburton overcharged the Pentagon a $27.4 million fee for meals served to troops abroad. The company billed taxpayers for meals never served to our troops. This is not Senator LAUTENBERG's concoction. These are the facts printed in news media, printed in contract agreements, printed in Pentagon papers.

Another Pentagon investigation is continuing after an audit found Halliburton overcharged the Army by $61 million for gasoline delivered to Iraq as part of its no-bid contract to operate Iraq's oil industry.

Now whistleblowers, former Halliburton employees, have revealed Halliburton employees would abandon $85,000 trucks because of flat tires—do not bother to fix them, get rid of it—or the need for an oil change. Dump the truck; we can bill the taxpayers. The whistleblowers also said Halliburton spent $45 for 30 canned cases of soda when local Kuwaiti supermarkets charged about $7. Halliburton has a cost-plus contract so they get reimbursed for their spending plus a calculated percentage of profit. That system is being heartily abused and is costing taxpayers a lot of money.

In my view, Halliburton is a company that suffers from failures in leadership, the same type of leadership that continues.

These overcharges are confirmed when the Pentagon, the Department of Defense, is refusing to pay bills of $160 million comprised of the elements I talked about. The auditors at the Pentagon said, Don't pay them; we do not owe that kind of money.

Those are overcharges, Mr. President.

In the meanwhile, we see the attack on Senator KERRY, our colleague. They are saying he has misplaced priorities; he missed votes in the Senate. What they are unwilling to admit is Senator KERRY and all of us are on a critical mission such as those he took on in Vietnam. What he is doing is not purposeless, it is not something to be made fun of. He is working for a safer, stronger America at home and respect for us across the world.

I wish President Bush would talk about the things he did or failed to do and that he would want to correct, such as protecting the purchasing power of working families, eliminating the creation of larger and larger deficits, protecting the solvency of Medicare, now estimated to be insolvent in 2019.

How about the costs of gasoline to the average person in this country since this administration has taken over? And $2.40 a gallon is not unusual for high test; $2.19 for regular gas is not unusual. I don't hear the President saying he wants to correct that problem.

No, he would rather try to say JOHN KERRY deserted his responsibilities, he is soft on defense. He received three Purple Hearts. Citizens do not get Purple Hearts for nothing. They even wanted to challenge the depth of one wound to see whether it was deserving of a Purple Heart.

Look at the cost of prescription drugs. Where are we going with that if drug prices go higher and higher? But

we do not hear any protest. As a matter of fact, we had a Medicare bill that says within its content that Medicare is forbidden to negotiate with the drug companies to try to get a lower price because of the huge volume of purchasing for Medicare beneficiaries. The VA negotiates drug prices and it brings the prices way down, much lower, 20, 30 percent lower than those the Medicare beneficiaries pay.

How about improving the job market? We see what is happening in the stock market. If that is to be a barometer of where we are going, it is a terrible indication. The market has been reeling from shock and in an awesome decline from where it was. This market that was supposed to be making everybody, the pensioners and the mutual funds and the investors, happy is not doing so.

We should be hearing from President Bush about what he is going to do to correct the problems so worrisome to American families today: whether they can afford their mortgage, whether they can afford to educate their kids, whether they can afford to take care of a grandparent, if necessary, whether they could guarantee that someone who can learn can get an education. Those are the things we would like to hear.

Stop this insidious criticism, personal criticism, of Senator JOHN KERRY. Look at JOHN KERRY's record and look at the record of this administration. What a comparison that is. The Nation is tired of hearing this negative stuff. Talk about positive things. Talk about what you are going to do for America, not about what the other guy failed to do. Talk about what you failed to do and are ready to correct.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST—S. 1039

Mr. INHOFE. Mr. President, I ask unanimous consent that the Senate proceed to legislative session to consider S. 1039, the Wastewater Treatment Works Security Act of 2003, that the bill be read a third time and passed, and that the Senate return to executive session.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, will my friend restate the unanimous consent request?

The PRESIDING OFFICER. The Senator asks for a restatement of the request?

Mr. REID. Yes, please.

Mr. INHOFE. Of course.

Mr. President, I ask unanimous consent that the Senate proceed to legislative session to consider S. 1039, the Wastewater Treatment Works Security Act of 2003, that the bill be read a third time and passed, and that the Senate return to executive session.

Mr. REID. Mr. President, reserving the right to object, in committee I voted for this matter, to have it reported out. The ranking member, Senator JEFFORDS, did not, as did a number of other people who are in the minority. Their belief is this bill does not require wastewater systems to do basic tasks such as even completing a vulnerability assessment. Senator JEFFORDS believes this legislation is a step backward from existing law for drinking water plants and what we have agreed to already for chemical plants. So because of that, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. INHOFE. Mr. President, I would like to at least mention this is a bill that is in the committee I chair. It is one that has been requested by virtually every community we have in Oklahoma. In fact, the Senator who is presiding right now was a cosponsor of this bill. It passed the committee by a vote of 12 to 6. It passed the House of Representatives, once on a voice vote and the second time by a vote of 413 to 2—413 to 2. Virtually every Republican and Democrat voted for it. In fact, every Democrat voted for it. Only two Republicans did not vote for it. The House cosponsors include Congressman JIM OBERSTAR.

Wastewater treatment works are responsible for treating municipal and industrial waste to a level clean enough to be released into the Nation's waterways. I have to say, I cannot think of any one bill that means more to local communities. Having been a mayor of a major community at one time, this is a very critical bill. It is one I am hoping there will be no objection to when we come back from this recess in September.

With that, 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. NELSON of Florida. 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. NELSON of Florida. Mr. President, I ask to speak as in morning business.

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

9/11 COMMISSION REPORT

Mr. NELSON of Florida. Mr. President, I rise to comment about the 9/11 Commission report. I think it is an excellent report. Its recommendations ought to be implemented and they ought to be implemented soon by the Congress. Given the fact that we are near gridlock in an election season and it is very unlikely in September when we come back from the August recess we will get anything done, I think we ought to consider coming back after the election and implementing the recommendations of the report. Why? Because the only way we protect ourselves from the enemies whom we call terrorists is to have accurate and timely information.

The terrorist uses surprise and stealth, and the only way to defeat that is by having accurate and timely intelligence.

So whatever we need to do to avoid the colossal intelligence failure we had on September 11 and the colossal intelligence failure we had again prior to going into Iraq, we best get about the job of correcting that information gathering, information flow, and information analysis so we can try to continue to thwart the attempts at doing damage to us.

Is it not interesting what the 9/11 Commission report said? It specifically defined the terrorist as someone who is usually an Islamist fundamentalist who has warped the teachings of Islam so that it becomes a passion of hatred, and out of that wanting to do damage to the free world. Of course, we being the superpower are the target of that.

It was also noteworthy in the Commission's report, as they are suggesting how to restructure the intelligence apparatus, they have suggested having a national intelligence director and that the counterterrorism center would be a compendium that would report to him. It is also interesting that they still wanted to keep the administration of intelligence gathering and analysis from direct political involvement. So the Commission did not recommend the new intelligence chief be a member of the President's Cabinet but rather be what they have defined as the National Intelligence Director. Then in all of these subdepartments that have a myriad of filling out a flow chart, an organizational chart, it is interesting how all of the different components of intelligence, the CIA, the DIA, the FBI, would then fit together into this new apparatus.

We only have to remember that about a month ago we had another major information failure, and this was at the time of President Reagan's funeral. We had the Governor of Kentucky on his State airplane, having been given clearance by the FAA to come in and land at Washington National Airport, and his transponder was not working. He had been given clearance by the FAA, but the FAA was not communicating with the military. So the military, seeing a blip on the radar moving to the center of Washington, without a transponder, sent out the alert and, of course, everybody in this U.S. Capitol building and in all of those office buildings off to the side of this building got the emergency evacuate order, so much so that the Capitol Police, bless their hearts, were shouting at the top of their lungs, get out of the building, run, there is an inbound aircraft.

So how many more of these do we need to have before we come to the commonsense reality that we are not collating and coordinating all of this information like we ought to? So, we best get on the process of reforming the system.

Now we have a good blueprint with which to do it. We have an opportunity to make America safer—and, with our allies, quite a bit.

That leads me to the next subject I want to talk about, our allies. The 9/11 Commission report also says something that many of us in this Chamber have been saying for some period of time: You can't go out and be successful in the war on terror until you can bring in a lot of colleagues, a lot of allies, in a coordinated and planned effort so you internationalize the effort. We did that brilliantly 13 years ago in the gulf war. We did that again brilliantly in Afghanistan when we started going after bin Laden. But we didn't do that in Iraq. Especially, we didn't do it in Iraq after a brilliant military victory. We didn't do it in the occupation.

What the 9/11 Commission is pointing out is that if you want to improve the intelligence-gathering mechanism and analysis, then you have to internationalize the effort. That stands to reason.

Fortunately, through Interpol and direct one-to-one relationships with other countries' intelligence services, we get a lot of that information. But as the 9/11 Commission said, we have to do a lot more.

The 9/11 Commission also told us something that we didn't know. It said the country of Iran may have facilitated al-Qaida. It did not suggest that Iran's Government knew anything about the planning for the September 11 attack, but it suggested that some of those operatives passed through Iran.

There have been a number of us in this body who have been talking about Iran; that after September 11, and the importance of going after al-Qaida, that the next imminent threat to the interest of the United States were the countries of Iran and North Korea. Why? Because they are trying to acquire or already are building nuclear capability. Therefore, I think it is very important that we get our act together and implement this Commission report for many reasons. That is just one additional reason.

I see the esteemed chairman of the Senate Armed Services Committee has come into the Chamber. I want to say in his presence, as he knows, as one of the members of his committee, on a completely different subject, I have spoken out time and time again about the plight and the determination to find some evidence about CAPT Scott Speicher, the Navy pilot who was shot down on the first night of the gulf war in 1991.

There is a report in the Washington Times—and I will make reference directly only to what is reported in today's Washington Times—and what the Washington Times says is that a Speicher team has left and has given up the search. I hope that is not true. The family who lives in my State, in Jacksonville, FL, deserves to have closure. The family has been through a trauma like hardly any of us could believe. The Washington Times gives a great deal of detail. I don't know if it is true or not, but if it is, then what this country owes to that family is to keep searching. If a team has been returned, as the Washington Times has stated, then it is important that whatever the size of that team, that we have a presence. As long as the U.S. military is located there, a fallen flier in the future will always have the confidence to know we are not going to leave him or her there alone, and we are coming to get you. We didn't do that with Scott Speicher.

Mr. WARNER. Will the Senator yield?

Mr. NELSON of Florida. I am delighted to yield.

Mr. WARNER. First and foremost, I can't comment on the Washington Times article. But yesterday, in the course of an Armed Services Committee briefing by General Dayton, who at this point in time is also briefing the Senate Intelligence Committee—and I just left the Intelligence Committee meeting to come to the floor—the matter was discussed. That much I will confirm, as appropriate. As a member of the Committee of the Armed Services, my able friend knows that at every juncture our committee, largely through yourself and Senator ROBERTS most often, brings up a current report on that.

I will not say, other than it was a matter that was discussed, and General Dayton shared with us his views. But I wish to point out, in discussing it with General Dayton, he finds that whatever was carried today, reflects it as his views, and he simply wants to say the final decision rests with the Secretary of the Navy, not General Dayton, as to the course of this investigation. So that much I will say. Beyond that, I believe, regrettably, it was a top secret briefing, but nevertheless information might well have gotten out. That is regrettable.

I thank the Senator for bringing it up. I, too, join you in fervently wishing and praying for Scott Speicher. The Senator has to be commended for the amount of time he has spent on this situation.

Mr. NELSON of Florida. I thank my colleague, my esteemed chairman. I am a devoted member of his committee, under his leadership. I thank the Senator from Virginia for all the personal encouragement he has given to me as we have relentlessly kept after this, trying to find some evidence.

I do want to say, since my colleague mentioned General Dayton, I think he performed magnificently. He, of course, had many other responsibilities other than just the search for CAPT Speicher. He had all the responsibilities of the search for weapons of mass destruction. But he had a special team that was led by Major Eames, who has now been promoted to lieutenant colonel. That young officer was as devoted as any that I could ever imagine in the search, when I visited with him in his headquarters in Baghdad. At the time we had actually gone to one of the cells where we thought maybe it was Scott Speicher's initials on the wall, having been scratched into the stucco: MSS.

All those leads did not pan out. But there are other leads they need to follow. It is my hope the U.S. military will continue to do that, even though General Dayton is not in Iraq anymore, and he deserves to be home. Even though Colonel Eames is not in Iraq.

If those leads would be continued, Colonel Eames would, in fact, be back in Iraq in a heartbeat, following up that new information.

I want to take the occasion of reminding the Senate that this Senator will continue to speak out on this issue, to remind the U.S. military of its obligation to continue to search for evidence so the case of Scott Speicher can be brought to closure.

Mr. President, I yield the floor.

Mr. WARNER. Mr. President, I commend my colleague. He has worked very hard on the Speicher case and undoubtedly his commitment will carry forward. I suggest, based on what was said yesterday, that he will be in consultation with the Secretary of the Navy. He has the authority to make disclosures as he sees fit about this case, but I believe General Dayton, in a very professional and conscientious way, will discharge his duties.

THE 9/11 COMMISSION REPORT

Mr. WARNER. Mr. President, I would like to provide this Senator's observations, very preliminary though they may be, with regard to the report of the 9/11 Commission which was made public today.

Yesterday I joined about a dozen or so Senators, the distinguished majority leader, and others to receive a brief private briefing. That was our first official glimpse of this report. I have not had the opportunity to, of course, go through this rather prodigious volume—each Member received a copy—but I do intend to do so because I think it is a very important contribution by this Commission. I think many parts of it can provide a roadmap for things that must be done.

It has been my privilege to serve in the Senate—this is my 26th year, and I commit to work with other colleagues, all colleagues, to see what we can do to strengthen our ability, not only in intelligence, but across the board in all areas of national security.

As privileged as I am to be the chairman of the Senate Armed Services Committee, I am prepared to listen to how the responsibilities of that committee should be changed for the better. I will not participate in any obstruction simply because of turf. I have been here too long. Also, this changed

world in which we live is so very different than when I came to this institution a quarter of a century ago, and most particularly in the aftermath of the tragedy of 9/11.

So I think it is incumbent upon all of us in the Congress and, indeed, the executive branch to have a strong self-examination of the areas covered by this report; to use this report, along with input from other commissions, groups, and individuals, as a sort of roadmap to guide us into those areas which need to be carefully reviewed.

Out of that process, which I hope is a carefully thought through, not rushed, deliberative process, I hope will evolve such changes as we, Congress, deem necessary to strengthen our capability to deter and, if necessary, engage further in this war against terrorism. So, therefore, I say with respect, I welcome the recommendations of the Commission. I commit to study them and commit to work with my colleagues.

Yesterday a specific question was put to the two cochairmen of the 9/11 Commission: Is America safer today? And their unhesitating acknowledgment was it is safer today, and I agree it is. Is it as safe as we need? None of us believe that. But I think conscientious efforts have been made all along the way to make this a safer Nation, and we have, in large measure, succeeded with the goals within the timetable we have had.

I am disappointed, however, that there was not more thorough dialog between the 9/11 Commission and Members of the Congress. I do not take that personally. I did have an opportunity to visit in my office some 2 weeks ago—a very pleasant visit—with one member, at which time we exchanged views. Somehow I do not feel that was the type of consultation that enabled us to get into the report and make constructive contributions. I do not suggest all 535 Members of Congress troop up before the 9/11 Commission. We do not have time to do that. Somehow it seems to me a better balance could have been struck between the knowledge and the ideas we have in the institution of the legislative branch of our Government that could have been shared with this Commission. After all, the Commission was, in many respects, created as a consequence of the actions of Congress.

Having said that, I am going to take some specific issue with this rather sweeping indictment that we have been dysfunctional in our oversight.

All throughout my public service, I have been privileged to have a number of jobs, and I am very humble about it, but I am far from perfect, and I have always welcomed constructive advice and criticism. But this time this dysfunctional brush that was wiped across struck me as not fair to certain things I personally have a knowledge of that were done by this body, the Senate.

I will start back some years ago in 1987 when, as a member of the Armed Services Committee, we structured the Goldwater-Nichols legislation which had sweeping ramifications in our overall defense setup. It has been hailed since that period of time as a landmark achievement by the Congress to begin to transform our military from the cold war era to the era of the threats today which are so diverse and so different as compared to those we confronted during World War II and in the immediate aftermath of the cold war.

That was quite an accomplishment and, in large measure, is owing to Senator Goldwater and Congressman Nichols. Again, I had the privilege to serve with those two men for many years, long before we started the Goldwater-Nichols Act.

As a member of the Armed Services Committee—and I say with humility and personal pride, I was a close personal friend of Senator Goldwater. I admired him so much and looked forward to the times we worked together and traveled together. I remember Congressman Nichols bore the scars of World War II, having been a very courageous serviceperson in that war. He was extremely conscientious about his duties on the House Armed Services Committee. These two giants in the way of thinking got together and relentlessly drove this legislation through both bodies of the Congress, and it has withstood the test of time.

Contemporaneous with this, I remember my dear friend with whom I came to the Senate, Senator Cohen, who later became, after he resigned from the Senate, Secretary of Defense. We worked together as a team with others to carve out of the Department of Defense, taking from the Army, the Navy, the Air Force, and the Marines some of the best and the brightest to create the Special Operations Command.

While today most colleagues have seen their magnificent performance worldwide, particularly as a front line against terrorism, I remind them it was a tough and long struggle, vigorously resisted by the Department of Defense, to create this new entity and to give them their dedicated assets of modest naval vessels, modest number of airplanes, and other equipment which was their own. But we succeeded. Today those forces have established themselves in the contemporary military history of this country as an essential part of our military structure, much admired by all, much envied by all, and their performance record is second to none. I do not mean to suggest by that they have outpaced or outperformed the basic elements, particularly combat-committed elements of the Army, Navy, Air Force, and Marines. No, it is that the whole military looks with a sense of pride toward their accomplishments. I am proud to have been a part of establishing this important part of our armed forces.

Then in 1999, when I was privileged for the first time to become chairman of the Senate Armed Services Committee, I went in there and I changed basically a structure that had been in place for decades, the subcommittee structure. Again, I carved out a new subcommittee called Subcommittee on Emerging Threats and Capabilities. This is 1999. This is not in the aftermath of 9/11. This is 1999.

I must say, I have had the constructive support of the members of the committee, and by pure coincidence—I am speaking of the Subcommittee on Emerging Threats and Capabilities—the first chairman of that subcommittee, the distinguished Senator from Kansas, Mr. ROBERTS, just walked into the Chamber, and perhaps he will have a word or two about the functions of that subcommittee.

Mr. President, I say to my distinguished colleague, I was saying the 9/11 Commission has brushed the Congress as being sort of dysfunctional, and I was going back in history. The Senator from Kansas was one of my principal supporters on establishing the Subcommittee on Emerging Threats and Capabilities. He has been ranking member or chairman of that subcommittee, and under his leadership and that of the full committee, we have achieved a great deal, and have helped the Department of Defense move forward in the areas of joint experimentation, homeland defense, counterterrorism, and future technologies and concepts that will be needed to confront future threats.

That subcommittee was directed to look forward a decade and determine what are the threats that are going to face the United States of America and how best our Department of Defense needs to transform itself and allocate assets and men and women to take up the positions of responsibility to meet those threats.

That subcommittee has done its work and done it admirably and has measurably enhanced the overall strength of our military today.

My distinguished colleague, Senator ROBERTS from Kansas, is chairman of the Intelligence Committee. I am privileged to serve on that committee today. In years past, I was privileged to serve 8 years. We have this rotation in the Senate, and this is my second tour on that committee. When I was vice chairman, together with other members of that committee, we fought hard against the cuts in intelligence.

I ask unanimous consent that portions of the minority view report be printed into the RECORD.

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

MINORITY VIEWS OF SENATORS WARNER, DANFORTH, STEVENS, LUGAR, AND WALLOP

The United States must maintain and strengthen U.S. intelligence capabilities to provide for the future security of the Nation and for the protection of its interests around the globe. The U.S. should commit more resources to achievement of that objective than the fiscal year 1994 intelligence authorization bill reported by the Select Committee on Intelligence would provide.

The U.S. faced grave security risks during the Cold War, but it faced them in an international environment that was comparatively stable and predictable. With the end of the Cold War and the dissolution of the Soviet Union and its Warsaw Pact military alliance, the U.S. had hoped for a ''New World Order'' with stable and steady progress toward greater democracy, freedom and free enterprise. What the U.S. faces in the post-Cold War era, however, is a more chaotic environment with multiple challenges to U.S. interests that complicate the efforts of the U.S. and cooperating nations to achieve the desired progress. In an unstable world of diverse and increasing challenges, the need for robust and reliable U.S. intelligence capabilities has grown rather than diminished.

America faces a world in which:

Ethnic, religious and social tensions spawn regional conflicts;

A number of nations possess nuclear weapons and the means to deliver them on a target;

Other nations seek nuclear, chemical or biological weapons of mass destruction and the means to deliver them;

Terrorist organizations continue to operate and attack U.S. interests (including here at home, as the bombing of the World Trade Center in New York reflects);

International drug organizations continue on a vast scale to produce illegal drugs and smuggle them into the U.S.; and

U.S. economic interests are under constant challenge.

The United States continues to have a vital interest in close monitoring of developments in the independent republics on the territory of the former Soviet Union. The U.S. Government needs accurate and timely intelligence on the nuclear arsenals, facilities and materials located in Russia, Ukraine and other republics; the economic and military restructuring in the republics; and the ethnic, religious and other social turmoil and secessionist pressures in the republics.

To the extent that the end of the Cold War allows a reduction of U.S. resources devoted to intelligence capabilities focused on military capabilities of countries on the territory of the former Soviet Union, the U.S. should reallocate the gained resources to strengthen intelligence capabilities to deal with growing risks to America's interests. The U.S. should make such resources available for strengthened intelligence capabilities focused on the problems with which the U.S. Government must deal in the coming decades, including proliferation of weapons of mass destruction, terrorism, international narcotics trafficking, and the illegal transfer of U.S. high technology. In many intelligence disciplines, investment in research and development is needed now to yield intelligence capabilities a decade from now. Absent needed investment, capabilities will not be available when needed and existing capabilities will erode.

At the same time as risks to U.S. interest grow, U.S. military power will decline as the U.S. draws down substantially the size of its armed forces following victory in the Cold War. With a diverse and growing array of risks to U.S. interests and a reduced commitment of resources to the Nation's defense, the U.S. will grow increasingly dependent for its security and the protection of its interests abroad upon its intelligence capabilities—the Nation's eyes and ears. Indeed, the substantial cuts of recent years in defense budgets have been premised directly upon the strengthening of intelligence support to the remaining, smaller armed forces. Reducing the Nation's intelligence capabilities magnifies significantly the risks attendant to reductions in resources devoted to the Nation's defense. As this Committee noted in discussing legislation to assist in managing the personnel reductions at the Central Intelligence Agency, ''. . . maintaining a strong intelligence capability is particularly important when military forces are being substantially reduced . . .'' (S. Rept. 103–43, p. 3).

The U.S. will depend on effective foreign intelligence in allocating scarce U.S. national security resources effectively. To protect America's interests in times of peace and of conflict, U.S. policymakers and military commanders will depend heavily upon early warning of trouble and early and extensive knowledge of the activities, capabilities and intentions of foreign powers. Effective intelligence will multiply substantially the effectiveness of the smaller U.S. military force.

A sampling of the deployment of the U.S. armed forces abroad in the past four years illustrates risks to American interests in the post-Cold War world, likely uses of U.S. military forces in the future, and the importance of effective intelligence in supporting military operations. In late 1989, American troops in Operation JUST CAUSE liberated Panama from the Noriega dictatorship that suppressed Panamanian democracy and threatened U.S. personnel. In 1990 and 1991 in Operations DESERT SHIELD and DESERT STORM American and coalition forces liberated Kuwait from Iraqi occupation, and those forces remain on station in and around the Arabian Peninsula to enforce United Nations sanctions on Iraq. American forces have rescued American diplomats caught in civil insurrections abroad. U.S. forces have assisted in stemming the flow of illegal immigrants into the United States. U.S. forces have undertaken humanitarian relief operations, to feed hungry people and provide them medical care. The U.S. has assigned its forces as part of or in support of United Nations peacekeeping forces in many countries, including Bosnia, Macedonia, Somalia, and Cambodia. In every one of these operation—from massive operations on the scale of DESERT STORM to the smallest humanitarian relief operations—the successful accomplishment of missions by the U.S. armed forces and the protection of American troops have depended directly upon the high quality and timeliness of the intelligence available to American forces.

Reductions in U.S. intelligence capabilities in this period of international instability are unwise and do not serve the Nation's long-term security interests. Defense of America and America's interests abroad requires a greater commitment of resources to U.S. intelligence capabilities than the fiscal year 1994 intelligence authorization bill provides.

JOHN WARNER.
JOHN C. DANFORTH.
TED STEVENS.
RICHARD G. LUGAR.
MALCOLM WALLOP.

Mr. WARNER. I have the report that accompanied the 1994 bill. This was written in July of 1993. This report covered the ensuing fiscal year. I wrote the minority views, which were joined in by other colleagues on the committee at that time: Senator Danforth, who is now our Ambassador to the United Nations; Senator STEVENS, who is currently chairman of the Senate Appropriations Committee; Senator LUGAR, who is currently chairman of the Foreign Relations Committee; and our former colleague, Senator Wallop.

Here is what we had to say, and I do not think this is dysfunctional participation, but I will let my colleagues judge for themselves after I have read portions of this report.

The minority views of the following Senators:

The United States must maintain and strengthen U.S. intelligence capabilities to provide for the future security of the Nation and for the protection of its interests around the globe. The U.S. should commit more resources to achievement of that objective than the fiscal year 1994 intelligence authorization bill reported by the Select Committee on Intelligence would provide.

We were, of course, members of that select committee.

The U.S. faced grave security risks during the Cold War, but it faced them in an international environment that was comparatively stable and predictable. With the end of the Cold War and the dissolution of the Soviet Union and its Warsaw Pact military alliance, the U.S. had hoped for a ''New World Order'' with stable and steady progress toward greater democracy, freedom and free enterprise. What the U.S. faces in the post-Cold War era, however, is a more chaotic environment with multitude challenges to U.S. interests that complicate the efforts of the U.S. and cooperating nations to achieve the desired progress. In an unstable world of diverse and increasing challenges, the need for robust and reliable U.S. intelligence capabilities has grown rather than diminished. America faces a world in which: Ethnic, religious and social tensions spawn regional conflicts; a number of nations possess nuclear weapons and the means to deliver them on a target; other nations seek nuclear, chemical or biological weapons of mass destruction and the means to deliver them; terrorist organizations continue to operate and attack U.S. interests (including here at home, as the bombing of the World Trade Center in New York reflects)—

This is 1993. It is interesting. It was June 30, just about this time—

international drug organizations continue on a vast scale to produce illegal drugs and smuggle them into the U.S.; and U.S. economic interests are under constant challenge.

To the extent that the end of the Cold War allows a reduction of U.S. resources devoted to intelligence capabilities focused on military capabilities of countries on the territory of the former Soviet Union, the U.S. should reallocate the gained resources to strengthen intelligence capabilities to deal with growing risks to America's interests. The U.S. should make such resources available for strengthened intelligence capabilities focused on the problems with which the U.S. Government must deal in the coming decades, including proliferation of weapons of mass destruction, terrorism, international narcotics trafficking, and the illegal transfer of U.S. high technology.

I shall not read further because I will put it in the RECORD.

This is not dysfunctional action by legislators; this is legislators looking into the future and seeing much of what is occurring today. I only wish we had the opportunity to advise the 9/11 Commission of this and other contributions by many others in this Chamber at that period of time who were in the service of the Senate and their States. This was not dysfunctional.

In the days ahead, we do need to look at how best to organize the intelligence elements of our national security structure, along with many other components. We must not, however, do anything precipitously.

In the specific area of intelligence, our intelligence services, even with the flaws that have been recently pointed out, are the best in the world, by far. They are not perfect, and their business is, by definition, one of uncertainty—best judgments made with the information that is currently in hand. Any changes we make must be carefully constructed to preserve existing excellence, while improving other functions.

As we consider any changes, we must remember that intelligence is an integral part of military operations. Recent military operations by our forces in Afghanistan and Iraq have been extraordinarily successful, in large part because of excellent intelligence, and because of the close relationship between military operations and intelligence that has been so carefully built over the years. Intelligence is part of a whole Department of Defense, as well as part of a larger intelligence community. Moving defense intelligence functions under the authority of another cabinet-level official could have unintended consequences—we must move with careful deliberation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TRIBUTE TO TOM DIEMER

Mr. DEWINE. Mr. President, I rise today to recognize the retiring dean of the Ohio press corps. Tom Diemer, a veteran reporter who spent more than 26 years at the Cleveland Plain Dealer newspaper, has left the paper to pursue another career.

Tom is one of those rare reporters who truly do ''get it.'' Tom understands Ohio. He understands Ohio government. He understands Ohio politics and certainly national politics. He understands what his readers need and what they want to know.

Tom Diemer began working at the Columbus bureau of the Plain Dealer in 1978. A few years later, in 1981, Tom was promoted to bureau chief. When the opportunity came in 1985 to join the Plain Dealer's Washington bureau, Tom took it. During his career here in Washington, Tom has covered four Ohio U.S. Senators: first, Howard Metzenbaum and John Glenn; later on, myself and then GEORGE VOINOVICH.

With a healthy dose of skepticism, Tom reported to his readers in Cleveland about the activities in the U.S. Senate. But Tom was never a reporter to take a press release at face value or a prepared statement at face value. I think Tom was a skeptic in a good sense of the term. He required his sources and those he got information from to make the case to him, and he questioned them, questioned them hard. He asked them questions that showed he was looking for the story behind the story. Whether it was local issues, such as the Great Lakes or the Euclid Corridor, or national issues, such as a war declaration or the PATRIOT Act, we could always expect Tom to dig deeper and go further with his line of questioning than just about anybody else.

Tom would want to know the implications of a certain story or he would want some ''color'' for his story so he could capture the ''feel'' of an event for his readers. He would want to be able to take his readers here to Washington and let them feel and understand how things really work in our Nation's Capital.

I always got the feeling that when Tom wrote a story, his editors got off pretty easily. They really did not have to do much work. However Tom wrote it, that was probably just about the way the story appeared in the Plain Dealer because Tom got it right. No matter how tough his questions were to me, I always knew any story I read by Tom Diemer would be fair and accurate.

In Washington, Tom came to lead the Ohio press corps. His expertise about Ohio politics often made him the go-to person for C–SPAN or CNN or any of the national reporters anytime they needed someone to analyze the Ohio political scene during an election year.

I have always appreciated Tom's great professionalism, his thoroughness, his frankness, his fairness, his kindness, and the way he deals honestly, forthrightly with people.

Tom Diemer will still be writing, but he is leaving the Plain Dealer to set out now on his own. I certainly will miss him. I will miss my frequent contact with him. I certainly wish him the best of luck.

TRANSPORTATION SAFETY

Mr. President, I would like to turn to the issue of highway safety. Over 43,000 people lost their lives on our Nation's highways last year. That is one death every 12 minutes or the equivalent of two Boeing 747–400s filled to capacity going down every week with no survivors.

This past May, the National Highway Traffic Safety Administration, NHTSA, released its 2003 traffic safety report, which details when, where, and why so many Americans lose their lives on our roads. This information gives us an idea of how effective our efforts are at the local, State, and national levels and where we need to focus resources in the future to help save lives. Based on the preliminary 2003 data, we have, tragically, a long way to go.

Overall, fatalities increased 1 percent, from 42,815 in 2002 to 43,220 in the year 2003. This is the fourth consecutive increase in annual traffic fatalities. This is truly bad news, particularly in light of the progress we made throughout the 1990s, when the norm was a reduction in fatalities each year. On the other hand, the number of deaths per 100 million vehicle miles traveled stayed constant at 1.5 from 2002 to 2003. While not an increase, this figure does show how difficult it will be to reach the Secretary of Transportation's very aggressive goal of reaching 1.0 fatalities per 100 million vehicle miles traveled by the year 2008.

The 2003 report also includes a number of other findings that shed light on the direction our country is taking as far as highway safety. Among other things, the report states the following:

Standard passenger car fatalities are down but deaths in sports utility vehicles, SUVs, are up in the past year, with most of the increase coming from rollover crashes. NHTSA estimates this trend may continue as SUVs grow as a share of sales volume.

Motorcycle crash deaths are up 11 percent from last year, now totaling 3,592. Further, drunk driving death rates are essentially unchanged from 2002, with 40 percent of crash fatalities involving alcohol in the year 2003.

Further, the number of fatal crashes involving young drivers, those between 16 and 20, declined by 3.7 percent, from 7,738 in 2002 to 7,542 in the year 2003.

While the report does bring welcome news with regard to young drivers who are much more vulnerable while driving than adults, it is also clear that progress needs to be made in a host of other areas, particularly rollover crashes and drunk driving. I have been working in the Senate, along with others, to see that we do just that through safety issues we have added and that the Senate added to the 6-year highway bill currently under consideration by the joint House-Senate conference committee.

These initiatives are designed to advance our ability to test vehicles for passenger protection and rollover crashes, get consumers vital crash test information when they need it most, and increase seatbelt use and reduce drunk driving through nationwide high-visibility traffic safety enforcement campaigns. Combined with increased seatbelt use, something that in my State of Ohio, Ohio State Senator Jeff Armbruster is working diligently to enforce in Columbus, better driver education, which the Ohio Department of Public Safety is focusing on, and responsible practices, such as using a designated driver, can in fact make a real difference.

These initiatives are contained in the Senate-passed bill that is currently being considered by the House-Senate conference committee. It is vitally important that they remain in this conference committee. They will, in fact, save many lives.

Traffic safety affects all of us. We all have a role to play in making sure that when the 2004 numbers come out early next year, they are headed in the right direction.

In a related matter, I would also like to discuss a very important development in the effort to make our Nation's roads safer. Earlier this month,

Delaware became the 50th and last U.S. State to adopt a .08 blood-alcohol content per se drunk driving standard. Now every State in the Union has that standard.

This development constitutes the culmination of many years of work here in the Senate to get tough, uniform drunk driving laws on the books across our country. In 2000, the Senate took decisive action to help stop drunk driving by implementing mandatory sanctions for States that do not adopt a .08 per-se standard. Now we are finally seeing the full realization of this effort, as all 50 States now have .08 laws.

This is so important from a safety perspective because the fact is that a person with a .08 blood-alcohol concentration level is seriously impaired. When a person reaches .08, his or her vision, balance, reaction time, hearing, judgment, and self-control are severely impaired. Additionally, critical driving tasks, such as concentrated attention, speed control, braking, steering, gear-changing and lane-tracking, are negatively impacted at .08.

Beyond these facts, there are other scientifically sound reasons to have a national .08 standard. First, the risk of being in a crash increases gradually with each blood-alcohol level, but then rises rapidly after a driver reaches or exceeds .08 compared to drivers with no alcohol in their systems. The National Highway Traffic Safety Administration reports that in single-vehicle crashes, the relative fatality risk for drivers with blood alcohol levels between .05 and .09 is over eleven times greater than for drivers with blood alcohol levels of zero.

Second, .08 blood alcohol laws have proven results in reducing crashes and fatalities. Some studies have found that .08 laws reduce the overall incidence of alcohol fatalities by 16 percent and also reduced fatalities at higher blood alcohol levels. Now that all 50 States have a .08 law, we will have the opportunity to see its effects on a much larger scale.

The reduction in alcohol-related fatalities since the 1970s is not attributable to one single law or program. Rather, it is the result of a whole series of actions taken by State and Federal Government and the tireless efforts of many organizations, such as Mothers Against Drunk Driving, Students Against Drunk Driving, Advocates for Highway and Auto Safety, the Insurance Institute for Highway Safety, the Alliance of Auto Manufacturers, and many others.

I thank my friend from New Jersey, Senator LAUTENBERG, for his continued dedication to fighting drunk driving. His hard work and perseverance have made the nationwide .08 standard possible. Mr. President, .08 was definitely a legislative effort worth fighting for, and now that all 50 States have a companion law in effect, I believe we will see why.

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

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

JOB GROWTH: GOOD JOBS

Mr. FRIST. Mr. President, shortly we will be going to the Defense bill and we will have a UC in a little bit on that. While we are waiting for some final approval on language, I want to take this opportunity to comment on the economy, job growth, and jobs.

Earlier this week, Chairman Greenspan presented his semiannual monetary policy report to Congress. The chairman's conclusion needs to be highlighted. He said: ''Economic developments of the United States have generally been quite favorable in 2004'' and that this favorable situation ''increasingly supports the view that the expansion is self-sustaining.''

On the same day the chairman presented his upbeat, optimistic assessment of the economy to the Senate Banking Committee, the Department of Labor released its latest report on State-by-State employment figures for June. The Department of Labor report presents hard data that shows the unemployment rate has fallen in 47 States since last June—47 States. Nonfarm payroll employment increased in 41 States in June. Over the past year, employment has increased in 46 States. Today, 37 States have unemployment rates at or below the national unemployment rate of 5.6 percent in June. Further, since last August, the economy has generated 1.5 million private sector jobs, and an average of more than 250,000 jobs have been created each month over the last 4 months. Finally, today, more Americans are working than at any time in this country's history—over 139 million Americans.

Unable to refute this good news, this positive news, this real and continually improving news on the job front, some of our Democratic Senators and colleagues, including the presumptive Democratic Presidential and Vice Presidential nominees, have tried a whole new approach in attacking this positive news. They now have decided: OK, maybe there have been jobs created, but they are not good jobs; they are low-paying jobs. This is a new approach. As former President Ronald Reagan would say: There they go again.

The question was asked directly of Chairman Greenspan by my colleague, Senator DOLE, on Tuesday:

Does your analysis show that the current jobs being created are basically lower wage jobs with little or no benefits?

The chairman's answer, in one uncharacteristic word for him:

No.

More recently, the University of Pennsylvania's nonpartisan Annenberg Public Policy Center supported research found that after analyzing data over the last year from the Bureau of Labor Statistics, there was ''solid growth in employment in relatively higher paying occupations,'' including construction workers, health care professionals, business managers, and teachers, and virtually no growth in relatively lower paying occupations, such as office clerks and assembly line workers.

Factually, the study concluded that we have seen ''good evidence that job quality has increased over the past year or more.''

I asked my staff to similarly analyze the data since the most recent job growth began last August. Using the current population survey data distributed by 11 industries broken down by 14 occupations, 154 categories of workers, there were in these 154 categories 1.8 million jobs created and 110,000 jobs lost since last August.

The median weekly earnings for these 154 categories in 2003 was $541. Of the gross 1.8 million jobs created since last August, 1.4 million were in categories where their weekly wage exceeded the median wage of all workers in 2003. In other words, 77 percent of all the jobs created since last August have been in occupations with weekly earnings above the median.

Of the 1.8 jobs created since last August, 461,000 were in occupations with weekly earnings below the median, or 27 percent of the jobs created were in those below median earnings jobs. Only about 110,000 jobs created since last August have been in occupations at the median.

The conclusion, supported by other objective analyses, higher paying jobs are growing faster than other jobs in this recovery.

My friends on the other side of the aisle who are looking hard to find a way to spread pessimism across the political landscape of this election year are simply wrong in saying the quality of jobs being created is low.

Chairman Greenspan just simply disagrees. The nonpartisan Annenberg Public Policy Center-supported research disagrees, and hard data from the Bureau of Labor Statistics disagree.

Economic growth is on track, job growth is good, and the quality of those jobs is high. I hope my Democratic friends could at least try to get their facts correct, and when they do they will find this latest attempt to discredit the progress made is a canard.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. The Senate is in executive session.

Mr. DODD. I ask unanimous consent to speak as if in morning business.

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

(The remarks of Mr. DODD pertaining to the introduction of S. 2755 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. The majority leader.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2005—CONFERENCE REPORT

Mr. FRIST. Mr. President, I ask unanimous consent that following the granting of this request, the official Senate copy of the Defense appropriations conference report having been presented to the desk, the Senate proceed to 2 hours for debate only, with 1 hour equally divided between the chairman and ranking member of the committee and 1 hour equally divided between Senator MCCAIN and Senator INOUYE; provided further that following that time the Senate proceed to a vote on adoption of the Defense appropriations conference report with no intervening action or debate and points of order waived; further, that when the Senate receives the official papers from the House, the vote on passage appear at the appropriate place in the RECORD following the receipt of those papers; and, finally, this agreement is null and void if the House does not agree to the conference report.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, reserving the right to object, if all goes well, Members will not use the full 2 hours. This, I think, is the only remaining vote Members would have to worry about tonight unless something untoward happens. Is that right?

Mr. FRIST. Mr. President, we have several business items, one of which has Transportation, Coast Guard, and other issues. The assistant Democratic leader is right with his implication that this is going to be in all likelihood the only rollcall vote. It is absolutely critical that Members understand we have other items we have to address tonight. We need to do that, and finish with this vote, if all goes well.

Mr. REID. Mr. President, if everything goes well, Members may have a vote on this very important conference report.

There is no objection on this side.

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

Who yields time?

Mr. DAYTON. Mr. President, after the vote on the Defense appropriations, will there be opportunities for Senators to speak on other subjects?

Mr. FRIST. Mr. President, there will be. We will be happy to be here through the night for morning business—at some reasonable hour, I hope. We will be here for a while.

Mr. DAYTON. I thank the majority leader.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4613) ''making appropriations for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes,'' having met, have agreed that the House recede from its disagreement of the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same.

Signed by all of the conferees on the part of both Houses.

(The conference report is printed in the House proceedings in the CONGRESSIONAL RECORD of Tuesday, July 20, 2004 (No. 101—Book II).)

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. STEVENS. Mr. President, our Appropriations Committee is pleased to present to the Senate the Defense Appropriations Conference Report for the Fiscal Year 2005. I believe passage of this measure today represents the earliest date the Defense bill has ever been sent to the President for signing.

This conference report symbolizes a balanced approach to fulfilling the financial needs for the Department for the fiscal year 2005.

It provides $416.2 billion in new discretionary spending authority for the Department of Defense. This amount includes $25 million in emergency spending requested by the President for the fiscal year 2005 costs associated with the operations in Iraq and Afghanistan. That provision becomes effective immediately upon the signing of this bill by the President.

The conference report fully funds key readiness programs critical to the global war on terrorism such as land forces training, helicopter flying hours, ship steaming days, and spare parts.

It fully funds the 3.5 percent military pay raise proposed in the President's budget, and increases levels for basic allowance for housing, eliminating service members' average out-of-pocket housing from 3.5 percent to zero in 2005.

It provides $1.5 billion above the President's budget request for Army and Marine Corps recapitalization of combat and tactical vehicles, helicopters, and ammunition, and provides a total of $18.2 billion for the Defense Health Program, an increase of $2.5 billion over the fiscal year 2004 enacted level.

I urge all Members to support the men and women in uniform who risk their lives for our country each day by voting for this measure.

I would like to thank Larry Lanzillota, the Acting Department of Defense Comptroller, for his hard work, dedication, and diligence throughout the past year. He has done a superb job and we wish him success in his future endeavors.

I also thank my cochairman, Senator INOUYE, for his support and valuable counsel, and recognize him for any statement he wishes to make.

I wish to put in the RECORD the names of the diligent staff members who have worked on this bill night and day to be able to present it to the Senate at this time, as follows:

Charlie Houy, Betsy Schmid, Nicole DiResta, Sid Ashworth, Jennifer Chartrand, Kraig Siracuse, Tom Hawkins, Kate Kaufer, Lesley Kalan, Alycia Farrell, Brian Potts, Brian Wilson, Janelle Treon, and Mazie Mattson.

I yield to my friend from Hawaii, if he wishes to make an opening statement.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I rise today to address the Defense appropriations conference report that passed the House earlier today.

First, I wish to commend my chairman, Senator STEVENS, and his capable staff for this agreement.

The proposals provided by the conference report represent a careful balance between the recommendations of each body. Moreover, it provides what the Defense Department needs for the coming year.

This is a good bill. It represents a fair compromise. It is the product of a lot of hard work by the chairman and members of the committee. I recommend all my colleagues support it.

Let me highlight just a couple of key items in this measure.

In meeting the conference committee priorities, the bill supports the men and women in uniform. It approves a 3.5 percent pay raise for them. It funds health care requirements to include benefits that are authorized for our guard and reserve forces. And, most important in this very challenging time, it provides significant increases for force protection—specifically up armored ''humvees'', body armor, better helmets, armor plating for other vehicles and new technology to try and counter improvised explosive devices.

The bill provides substantial resources to enhance investment programs in the Defense Department to support key programs like the V–22, the F–22, the new DDX destroyer, the littoral combat ship, missile defense and significant increases in Army equipment for Stryker combat vehicles, trucks, and helicopters.

But, I want to inform my colleagues that this bill does not rubber stamp the administration's desires. It reduces many programs for which insufficient justification has been provided. While we recognize that the country needs to continue to enhance its space capabilities, members of the Appropriations Committee have learned the hard way that improvements must be developed prudently. It is a waste of resources to try and accelerate complex new technologies in the manner recommended by civilian officials in the Defense Department.

The bill also provides $25 billion in emergency spending, the amount requested, but it allocates the funds to meet the priorities and needs of the individual military departments, not the

blank check sought by the administration. It provides adequate safeguards on these funds to ensure proper congressional oversight and requires stringent reporting requirements on its use.

I point out also that there are a few items in here that do not fall under the jurisdiction of the Defense Subcommittee. I will defer to others to speak to those.

This is a good bill. It represents a fair compromise. It is the product of a lot of hard work by the Chairman and Members of the committee. I encourage all my colleagues to support it.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore (Mr. CHAMBLISS). Who yields time?

Mr. STEVENS. Mr. President, on behalf of my colleague from Hawaii, I reserve the remainder of our time. Senator BYRD has his time, Senator MCCAIN will have his time, and we will withhold our time.

Our time is reserved?

The ACTING PRESIDENT pro tempore. Yes.

Who yields time?

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

The ACTING PRESIDENT pro tempore. The Senator has 30 minutes.

Mr. BYRD. Mr. President, I yield such time as I may require from my allotted time.

Yesterday, the General Accounting Office released a shocking report about the state of funding for our troops in Iraq and Afghanistan. Simply put, our troops are running out of money. But the White House denies that there is a problem.

The findings in the General Accounting Office report are alarming. The Army is overspending its fiscal year 2004 operations in maintenance funds to the tune of $10.2 billion. The Air Force urgently needs another $1.4 billion this fiscal year, and the Marines are short by $500 million. Our military is cutting back on training at the same time that retired service members are being pressed back into uniform to be sent overseas. These budget problems are being compounded by the fact that the White House planned on having only 99,000 troops in Iraq by this point instead of the 140,000 troops we will have there for the foreseeable future. This is the most astounding evidence to date that the administration has fundamentally mismanaged the financing for the wars in Iraq and Afghanistan. The President did not bother to put a single dime, not one thin dime, in his February budget request for these wars. He insisted that more funding would not be needed until January 2005.

Even when the administration flip-flopped and came to Congress on May 13, 2004, to ask for a $25 billion emergency reserve fund, top administration officials denied that there was an urgent need for more funds to support our troops in the field. Deputy Defense Secretary Wolfowitz described the $25 billion which is contained in the conference report of the Defense appropriations bill now before the Senate as an insurance plan. That is the way Mr. Wolfowitz described it. Secretary Wolfowitz stated in his testimony to the Armed Services Committee that our troops would not run out of funds until February or March 2005.

I didn't buy that line. The administration has fallen down on the job in budgeting for these wars, and his budget projections simply are not to be trusted. I say ''these wars'' because we are fighting two wars, one war in Afghanistan, which is the result of the al-Qaida attack upon the United States on September 11, 2001. That was an attack upon the United States by those individuals who had hijacked planes and flown them into the World Trade Towers, into the Pentagon, and into the field in Pennsylvania. That was one war. I supported Mr. Bush on that war. I support that war today.

The second war is the Bush war, the war that is of Mr. Bush and his ring of people around him in the White House. That is the Bush war. That was an attack upon a sovereign nation which had not provoked us, which had not attacked us. That was an attack on a nation in support of the Bush doctrine of preemption. I did not support that war then, and I do not support it today.

I did not buy that line. The administration has fallen down on the job of budgeting for these wars, and its budget projections simply are not to be trusted. It should have been clear to anyone who has picked up a newspaper in the last 6 months that our troops were beginning to run low on funds, but the administration sent witnesses bearing only rosy scenarios.

To add insult to injury, the White House asked for a $25 billion blank check on the heels of Bob Woodward's revelations in his book, ''Plan of Attack,'' about the Pentagon hiding from Congress $700 million in spending to prepare for war in Iraq. This was an astounding request.

Thankfully, Congress has seen through the administration's double dealing on funding our troops. I thank the chairman of the Appropriations Committee, Senator TED STEVENS, and his colleague, the ranking member of the Appropriations Defense Subcommittee, Senator DANIEL INOUYE, for working to pierce the fog of rhetoric to reshape this $25 billion reserve fund to best help our troops while protecting the constitutional prerogatives of Congress.

Instead of being a $25 billion blank check, $23 billion of these funds—that is, 92 percent—is made available for regular appropriations accounts. This means that Congress will be better able to track how these additional funds are used. In addition, the $25 billion in funding will be available for our troops as soon as this bill is signed into law. They will not have to wait until October 1 to purchase the critical equipment our troops need to survive in the combat zones in Iraq and Afghanistan. Again, I thank Senator STEVENS and Senator INOUYE for working with me to promote fiscal responsibility and accountability for how these funds are to be used.

Despite the improvements made to the administration's request for funding for the war, I continue to have serious concerns about the direction of the so-called peacetime defense budget; that is, the huge amount of funds not related to the wars in Iraq and Afghanistan. This bill contains $391.2 billion for the Pentagon, not including $25 billion for the cost of the wars. That is a massive increase over the $287.1 billion appropriated for the Pentagon as recently as fiscal year 2001.

The administration claims this explosion in defense spending is necessary to transform our military into a faster, lighter, and stronger fighting force. But today's Los Angeles Times states that the Army is delaying by 2 years the launch of its first modernized unit that is supposed to be the centerpiece of this defense transformation effort.

In this age of sky-high deficits, could it be that we are getting less bang for more bucks? How else can the administration explain a stalled transformation effort when defense spending has risen 36 percent in 4 years? If this rate of growth continues, this country will soon be spending half a trillion per year on the defense establishment, with no assurance that those funds are being well spent.

The Pentagon's accounting systems are a mess, an absolute mess. Despite Secretary Rumsfeld's promise to me at his confirmation hearing in January 2001 to get this problem fixed, the General Accounting Office has recently issued serious warnings that his accounting reform effort is headed down the wrong track.

In fact, this Defense appropriations bill cuts funds from this accounting reform effort precisely because the Defense Department's program to fix its accounting systems is underperforming. Tens of millions of taxpayer dollars that were supposed to have been put to use in establishing a robust system of financial accountability remain unspent. This Congress made the wise decision not to throw more money at a problem that is not being fixed. When Secretary Rumsfeld gets his accounting reform program back on its feet, I will be the first Senator in line to support all necessary funds for that purpose.

Senators should also realize this Defense appropriations bill brings back from conference something that was never included in the Senate-passed bill and something that was never included in the House-passed bill. It includes a deeming resolution to increase the annual discretionary spending limit to $821.9 billion for the fiscal year 2005.

The failure of this Congress to pass its annual budget has led to this move to include a deeming resolution in the

Defense appropriations bill, signaling the complete breakdown in this year's budget process.

Setting aside the fact that this provision violates rule XXVIII of the Standing Rules of the Senate, Senators should know that this deeming resolution authorizes $11 billion less than what the Congressional Budget Office says is necessary to maintain current services, adjusted for inflation. That $11 billion is needed to maintain services to our veterans, fund health care and education programs for our seniors and our youth, and maintain our mass transit and highway programs.

In a time of war, each dollar devoted to our military must be put to full use. No matter how many additional hundreds of billions Congress may approve for the Pentagon, defense spending without accountability ultimately hurts our troops in the field.

Each dollar that is spent on wasteful contracts, each dollar that is lost in an accounting maze, is one less dollar for our troops to buy ammunition, to buy fuel, to buy body armor. There must also be a budget so Congress can know the spending plan for our troops on the battlefield will be supported in the coming months and years.

The administration would do well to listen—just to listen; get off its high horse, swallow its false pride, and listen—to this commonsense message. Stop the budget gamesmanship that only endangers the lives of our fighting men and women. Enough of the political posturing that denies that our military in the field may have urgent needs. The President of the United States must take responsibility for the fiscal mess that he has created.

Mr. President, I reserve the remainder of my time.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. STEVENS. Mr. President, I ask unanimous consent that the time during this quorum call be charged against the time of the Senator from Hawaii and my time.

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

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

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

The assistant legislative clerk proceeded to call the roll.

N O T I C E

Incomplete record of Senate proceedings.

Today's Senate proceedings will be continued in Book II.

EXTENSIONS OF REMARKS

TRIBUTE TO MIKE BESSLER

HON. STENY H. HOYER
OF MARYLAND
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. HOYER. Mr. Speaker, I rise to pay tribute to Mike Bessler, the Chief Publications Clerk with the Office of Official Reporters under the Clerk of the House.

Mike will be retiring on July 30 after 23 years of service to the House making sure our committee transcripts are accurate, properly bound and delivered on time. I am pleased to have this opportunity to commend one of my constituents for his outstanding service to this institution.

Originally from the Bronx, New York, Mike served a 4–year tour in the Air Force, stationed at Wright Patterson in Ohio and Shemya in the Aleutian Islands.

He was finally discharged from Andrews Air Force Base, and with his wife, Peggy decided to stay in the Washington, D. C. area, where he spent over a decade in the private sector before being hired by the Office of Official Reporters in January 1981. He has served in that office with distinction ever since.

Mike has spent his years working closely with the House committees to ensure their satisfaction with the transcripts. Through his dedicated supervision of the Publications Office, he has been the quintessential dedicated public servant.

Those who worked with him are privileged to have worked with an individual of Mike's level of professionalism.

Mike and Peggy are the proud parents of two daughters, Michelle and Kelly, and doting grandparents of Erica, Ezra and Zoe.

Mike looks forward to spending time with them and enjoying gardening, home projects, and devoting more time to a lifelong fascination with film and movies.

Thank you, Mike, for your many years of dedicated, professional service to the House and the country. Best wishes to you and Peggy in your retirement.

HONORING REV. DAVID JOHNSON AND MRS. TAWANA JOHNSON FOR THEIR WORK WITH THE STUDENTS OF THE BRONX, NEW YORK AND THE TRIP TO THE UNITED NATIONS

HON. CHARLES B. RANGEL
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. RANGEL. Mr. Speaker, I rise today to commend Reverend David M. Johnson and Mrs. Tawana Johnson for their strong community activism and commitment to today's youth. They have not only instilled pride into each and every child they have worked with, they have destroyed the notion that they are just residents of America's inner-cities, but a valued citizen of the world.

On May 14, 2004, Mrs. Johnson, Founder of Virtuous Women Empower and God's Glory Interfaith Ministries where Rev. Johnson presides, organized and sponsored a trip to the United Nations for 100 of the most outstanding students from I.S. 117 Joseph H. Wade and C.E.S. 70 Max Schoenfeld School in the Bronx, New York. This meeting encouraged minority students that their representation in the international community is needed. This trip has engraved in the minds of these students a new understanding of diversity.

The students left a lasting impact on the United Nations with the intellect of their questions, and sincere concern for their community. After their visit the students were encouraged to return and many students were offered internships with the United Nations. Some of the students left striving to become diplomats, ambassadors, and Members of Congress.

Rev. and Mrs. Johnson have instilled a standard of excellence that all students should strive to follow. I share in our young people's dreams of democracy, equal opportunity and success. One day these students will assist in assuring these dreams come true for every citizen. I urge my colleagues to join me in congratulating them for their superior academic achievements, and their desire for social change.

The following Honor Roll students met with United Nations Ambassador Patrick Kennedy on May 14, 2004: Yariza Pimentel, Karina Hernandez, Narda Lopez, Zena Ahmed, Carol Prashad, Patricia Holman, Gisselle Francisco, Jatnna Medina, Jadderin Torres, Yereny Rodriguez, Gisell Acevedo, Jonathan Ruiz, Kamani Gujjar, Donnie Santana, Maite Amador, Eric Mayfield, Pilar Cruz, Eduardo Guerrero, Luiraldy Castillo, Kevin Delarosa, Jose Camacho, Ramon Cabral, Michelle Camarena, Lerubi Lopez, Luis Adames, Eduard Garcia, Betzaida Rodriguez, Denise Garcia, Albania Gonzalez, Edwin Albino, Marla Dominguez, Leonela Paula, Jessica Pena, Myrtle Richards, Kayla Williams, Yennifer Hernandez, Caroline Antigua, Devon Ferrer, Roshawn Ullah, Tasnim Majumder, Elias Rosario, Stephanie Pena, Tataria Burns, Paloma Carty, Erika Rosa, Verenice Gomez, Tatiana Santiago, Angel Cardenas, Jose Aguilar, Omar Liriano, Leandro Pena, Richard Anim, Lisa Maldonado, Steven Diaz, Adalis Martinez, Gaby Perez, Stephany Veras, Claudia Avila, Evelyn Liriano, Marilyn Fernandez, Valeria Salazar, Omaira Tejada, Sebastian Gutierrez, Florangel Monegro, Sylvin Little, and HRU Rameses Amon Ra.

CONGRATULATING THE WRIGHTWOOD NEIGHBORS ASSOCIATION OF CHICAGO

HON. RAHM EMANUEL
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. EMANUEL. Mr. Speaker, I rise today to congratulate the Wrightwood Neighbors Association (WNA), and its President Michael Lufrano, on their ongoing commitment to enriching the lives of members of the Wrightwood community, on the occasion of the 21st annual "Taste of Lincoln Avenue."

The Wrightwood neighborhood—part of the Lincoln Park community—is located on Chicago's North side, bounded by Diversey Parkway on the north, Halsted Street on the east, Fullerton Avenue on the south, and Lakewood Avenue on the west.

Since 1962, the work of the WNA has been essential to the ongoing success of the Wrightwood community. The WNA strives to maintain a vibrant urban community for people to live, shop, play, and raise families. The Association has helped Wrightwood preserve its historic and cultural treasures, while also encouraging architectural development to add beauty and rejuvenation to the neighborhood. With this combination, lifelong Wrightwood residents are able to remain, as new generations bring their own flavor to the area.

The vision of the WNA has given Wrightwood the ability to continuously emerge as an area with a strong sense of community, diversity, and heritage. The WNA's committees have enhanced the schools, maintained and improved local parks, and reviewed land development to guarantee the character of the community.

Known as the "Granddaddy of Chicago street festivals," the "Taste of Lincoln Avenue" provides Wrightwood neighbors the opportunity to enjoy the summer and spend time with friends. With food, craft vendors, live music, and other entertainment, it is an occasion for Chicagoans to sample the diversity of this great neighborhood.

Since its beginnings in 1984, the "The Taste of Lincoln Avenue" has raised over $1 million, and last year alone, over $135,000, in order to improve schools and parks, aid non-profit organizations, and increase the beauty of the community. The WNA's "Taste of Lincoln Avenue" celebrates the history of Wrightwood and ensures the community's continuous improvement in the future.

It goes without saying that the enthusiasm, hard work, and leadership of Michael Lufrano, organization officers Jeff Kwiat, Stacey Hawk, Anne Durkin, and Chris Connors, and the other members of the WNA have brought a secure and lasting vision to Chicago's North side. I thank them for the enthusiasm in making the Wrightwood neighborhood one of the jewels of Chicago.

Mr. Speaker, on behalf of the people of the Fifth Congressional District of Illinois, and indeed all of Chicago, I am privileged to congratulate the Wrightwood Neighbors Association on continuing to enhance the quality of life in Chicago, and wish them tremendous success with the upcoming ''Taste of Lincoln Avenue.''

MINOR USE AND MINOR SPECIES ANIMAL HEALTH ACT OF 2004

SPEECH OF

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 20, 2004

Mr. SHUSTER. Mr. Speaker, I rise today in strong support of S. 741, the Minor Use and Minor Species Animal Health Act. This legislation contains provisions that will better the lives and ease some of the frustrations for the more than 7 million Americans that suffer from food allergies every day.

I have had the unfortunate experience to learn more about the trials and tribulations of food allergen sufferers when one of the members of my staff, Christy Farmer, was diagnosed with Celiac Disease earlier this year. Celiac Disease is an immune-mediated disease that causes damage to the gastrointestinal tract and is triggered by the consumption of gluten. Gluten is the protein part of wheat, rye, barley, oats, and other related grains, which are found in many of the foods that people eat on a day to day basis. The only treatment for Celiac Disease is adherence to a strict life long gluten-free diet. In order to comply with this, individuals must carefully read all food labels—which can often be inaccurate and extremely confusing. Many times, food products may contain a derivative of a known food allergen, however the food label does not make that clear. This can lead to people unknowingly consuming exactly what they have been trying so hard to avoid. This painstaking process of carefully examining every food label and determining the exact ingredient of each product can be extremely frustrating and difficult for individuals.

This legislation will help tremendously in taking some of the guesswork out of reading food labels. Manufacturers in the food industry must now include the commonly accepted names of the eight most common allergens—milk, eggs, fish, crustacea, tree nuts, wheat, peanuts, and soybeans. Food allergen sufferers will now be able to scan food labels with greater ease and many incidents of accidental ingestion can be avoided.

Having a food allergy, especially to something that is found in so many different foods, can add a level of complication to a person's life that can be difficult to imagine. Christy was required to undergo a total lifestyle change due to her gluten sensitivity. Spontaneously stopping at a restaurant for dinner is no longer possible, traveling not knowing in advance what foods will be available is no longer an option, and giving up your favorite foods is not as easy as it sounds.

I am pleased that this legislation will help ease some of the frustrations and make adhering to an allergy-free diet a little easier for the millions of Americans that suffer from food allergies. I strongly urge my colleagues in joining me to support S. 741.

THE ALASKA AIDS ASSISTANCE ASSOCIATION IN ANCHORAGE

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. YOUNG of Alaska. Mr. Speaker, last week at the 15th International AIDS Conference in Bangkok, Thailand, the world's attention was drawn to the 38 million people around the world who are living with HIV—nearly a million of whom live in the United States.

Moreover, many HIV positive individuals in the United States face significant hurdles that prevent them from engaging in long-term health care, including unstable financial and housing situations and a lack of trust between patients and health care providers. As a result, approximately 250,000 individuals who are aware of their HIV status are not receiving regular primary medical care; a population the Health Resources and Services Administration defines as the ''unmet need'' in the domestic epidemic. However, the United States should not and must not consider this lack of HIV health care inevitable because solutions do exist.

With this in mind, I rise today to recognize and share with you work that is being done in my own state of Alaska to successfully bring HIV treatment and care to the people who need it. The Alaska AIDS Assistance Association in Anchorage uses ''Inter-Agency Networking'' to connect HIV positive Alaskans to a system of integrated health care and support. The activity accomplishes this by providing health care agencies with opportunities to exchange information and share resources, thus increasing the agencies understanding of community needs and enhancing their ability to provide care to more people living with HIV.

Inter-Agency Networking is indebted to a capacity-building initiative called Connecting to Care, which was developed by AIDS Action in collaboration with the Health Resource and Service Administration, Connecting to Care identified the Alaskan AIDS Assistance Association's activity as a ''model practice'' and disseminated it to more than 10,000 health providers throughout the country as a model intervention that has been successful in connecting HIV positive individuals to care. My hope is that the Connecting to Care initiative will guide other communities in their own development of activities that connect HIV positive individuals with the health care they want and need.

PROTECTING RAILROAD OPERATORS, TRAVELERS, EMPLOYEES, AND COMMUNITIES WITH TRANSPORTATION SECURITY ACT OF 2004

HON. ELIJAH E. CUMMINGS

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. CUMMINGS. Mr. Speaker, I, along with my colleagues Congressman JAMES OBERSTAR, the Ranking Member of the Transportation and Infrastructure Committee, and Congresswoman CORRINE BROWN, Ranking Democratic Member of the Railroad Subcommittee, are introducing the ''Protecting Railroad Operators, Travelers, Employees, and Communities with Transportation Security Act of 2004'' (PROTECTS Act).

Since the September 11 terrorist attacks, the government has authorized over $12 billion on aviation security. Railroad and transit agencies were authorized to receive $65 million in security grants in 2003 and $50 million in 2004. Clearly, this disparity in security funding is unacceptable. We cannot afford to put a price tag on safety. We cannot leave our railroads vulnerable to attack. Nearly five times as many people take trains as planes every day. Our bill authorizes nearly $1.3 billion to protect passenger and freight railroads and the communities they serve.

I have grave concerns regarding the vulnerability of our national rail and transit systems. A documented one-third of all terrorist attacks worldwide have targeted railroads and other surface transportations systems. The United States rail network touches every major urban center and hundreds of smaller communities in between. Millions of tons of hazardous materials are shipped yearly across the United States. A large portion of these shipments is transported by rail, sometimes through densely populated areas, increasing the concern that attacks or accidents on these shipments could have severe consequences. Additionally, the 3,000 to 3,300 railroad shipments of spent nuclear fuel from 39 states that the Department of Energy plans to deposit in Yucca Mountain over the next 24 years, highlights the need for stringent rail security to guard against such incidents.

Based on recent numerous rail attacks around the world, terrorists seem to have expressed a proclivity for attacking rail systems. Between 1998 and 2003, there were 181 attacks on trains and related targets such as depots, ticket stations and rail bridges worldwide. Lack of screening and inadequate safeguards in the transportation of explosives, chemical, biological and radiological agents have created major vulnerabilities in our rail transportation system. These vulnerabilities are all largely un-addressed.

The challenge of protecting our railroads is a daunting one. The demands on our system to deliver travelers and freight safely, quickly, and efficiently make our task all the more difficult. However, these goals are achievable. Failure on this mission is not an option.

The PROTECTS Act authorizes over $1 billion to help secure our national rail system against terrorist threats. $500 million is authorized for grants to wholly or partially reimburse State and local governments, railroad carriers and rail labor for the development and implementation of increased security measures.

The tragic terrorist attack on a commuter train system in Madrid earlier this year was a urgent reminder of our need to implement safety measures to secure our national rail transportation system. Washington's Union Station, and New York's Penn Station, both have very high volumes of pedestrian traffic that include a mix of Amtrak travelers and daily commuters. Inadequate security measures put these travelers at risk. Our bill authorizes $597 million for Amtrak to address fire and safety issues in tunnels in New York, NY, Baltimore, MD, and Washington, DC. In addition, $65 million is authorized for Amtrak system-wide security upgrades.

It is particularly disturbing that the federal government has yet to complete a national, risk-based threat management plan for preventing attacks upon our nation's rail system. The GAO report, ''Rail Safety and Security: Some Actions Already Taken to Enhance Rail Security, but Risk-Based Plan Needed,'' which I, along with my colleagues JIM OBERSTAR, HENRY WAXMAN, and MARTY MEEHAN requested in 2001, concluded that ''the adequacy of this industry plan to protect communities and the railroad infrastructure is still unclear since the Transportation Security Administration lacks the framework for systematically evaluating and prioritizing actions needed to ensure the safety and security of the transportation of hazardous materials by rail.''

The PROTECTS Act authorizes grants to State and local governments and emergency responders for proper equipment and protective gear for hazardous material incidents. In addition, the act ensures that responders are properly trained and are familiar with the different types of hazardous materials that pass through and are stored in their communities.

A clear comprehensive industry plan is needed to protect communities and rail infrastructure. With 530 rail stations throughout the country—some of those no more than open platforms where passengers can walk freely onto the train—stringent airport-like security measures are not possible. However, the PROTECTS Act will ensure that the necessary steps to address security vulnerabilities on our rail system are implemented and that a comprehensive plan is developed.

The National Commission on Terrorist Attacks Upon the United States (9/11 Commission) in their report that was released today concludes that the United States needs to develop strategies for neglected parts of our transportation security system. Also, the report recommends that we address problems of biometric screening between agencies and governments, including border and transportation systems. Our bill provides funding and authorizations to aid such efforts.

We got an urgent wake up call on September 11, which we answered. The commuter rail station bombing in Madrid was a second wakeup call. The PROTECTS Act is how we will answer that call. We have to do all that we can to secure America and its citizens against terrorists' threats. Why wait for the other shoe to drop, we need to act now to protect rail and rail passengers before we wake up to another tragic terrorist incident.

THE SITUATION ON CYPRUS

HON. ED WHITFIELD

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. WHITFIELD. Mr. Speaker, I would like to discuss the situation on Cyprus. The best way to commemorate the twin anniversaries of the coup d'etat and the following events in Cyprus 30 years ago in July 1974 is to make sure that they never happen again. This is only possible if the political problem in Cyprus between the Greek and Turkish Cypriots is settled once and for all. This in turn will make Cyprus a bridge of cooperation, rather than conflict, between Greece and Turkey, and a bastion of stability in the eastern Mediterranean.

A historic opportunity was missed just a few months ago when the ''Annan Plan'' was rejected by the Greek Cypriots by a margin of 3 to 1, while it was accepted by the Turkish Cypriots with a clear majority of 65 percent in separate referenda. The United States, the European Union, Turkey and Greece had given strong support to the Plan as a reasonable compromise.

According to Secretary-General Kofi Annan's recent report to the Security Council regarding the results of the referenda, ''the Turkish Cypriot vote has undone any rationale for pressuring and isolating them.'' Annan also called on U.N. Security Council members to ''give a strong lead to all States to cooperate both bilaterally and in international bodies, to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots and impeding their development.''

Having demonstrated their conciliatory spirit by letting bygones be bygones, the Turkish Cypriots rightly expect to be reintegrated with the international community in economic, cultural, social and other fields. U.S. and EU assistance to Turkish Cypriots to help them rehabilitate their economy and ease their isolation has been forthcoming but modest. I believe the Turkish Cypriots need and deserve our help in their struggle for justice and a better future.

AN ARTICLE ABOUT MR. PAUL KLEBNIKOV

HON. MARK E. SOUDER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. SOUDER. Mr. Speaker, when the Soviet Union collapsed in 1991, its fall was heralded as a new era of peace and prosperity, when the victims of communism would learn what it means to live in freedom. The establishment of capitalism in the capital of communism was no less significant. Sadly, the brand of Russian capitalism practiced today is just another form of materialism without moral foundation.

As rivals jockey for a share of the market and the trappings of a high flying Western lifestyle, Russia's amoral brand of the market economy has led to a last man standing mentality where shooting and bombing rivals and critics are nearly as common as balancing the books.

This past week, the Al Capones of Russia's business world claimed yet another victim. Paul Klebnikov, an American and editor of Forbes Magazine in Russia, was shot to death outside his office.

Klebnikov's only crime was reporting on the Russian business world and criticizing what he viewed as the too close relationship between Russia's elite businessmen and the government.

Paul Klebnikov's fearlessness and sense of right and wrong ultimately were his undoing. Had he been more circumspect in his views or less vocal with his criticism, he would probably be alive today. Those who knew Klebnikov, however, would be the first to say that he would not have changed a thing.

He believed in Russia and in Russia's future. He could not simply sweep Russia's problems under the rug. He knew that the only way to move democracy and market capitalism toward a normal existence was to condemn the excessive and corrupt.

Like so many other similar crimes, Paul Klebnikov's assassination has not been solved. Given the current strength of the Russian mafia and rampant corruption in the Russian government, I don't know if his murderers will ever be brought to justice.

I am submitting for the RECORD an article from the Washington Post. In it, Michael Caputo, a friend and colleague of Paul Klebnikov, honors his friend better than I can.

[The Washington Post, July 13, 2004]

SAME OLD RUTHLESS RUSSIA

(By Michael R. Caputo)

American journalist Paul Klebnikov was shot to death outside my office building on Friday. At least it used to be my office. I worked with Klebnikov, Forbes magazine's maverick correspondent, several times in the past 10 years, sometimes in Moscow, sometimes in New York. Our paths crossed often through one of Russia's wildest decades.

Eight years after we first met as he covered Boris Yeltsin's 1996 presidential election, his murder brings clarity: Nothing has changed. Brutal criminals still run amok in Russia, operating with impunity and no fear of prosecution.

Klebnikov had high hopes for Russia and was determined to urge democracy along. He grew up in the United States, cradled in the close-knit Russian American community; his Russian skills were perfect and his devotion to the culture ran deep. He blossomed in journalism just as the communist bloc crumbled, and his unique understanding of ''the story'' in the region propelled his career.

As we toured the Russian countryside eight years ago, he talked to peasants waiting in line to vote and grilled me with questions, too. Had I run across billionaire Boris Berezovsky in my work with the Yeltsin administration? I hadn't. Klebnikov had recently been scratching the surface of Berezovsky's brazen get-rich-quick schemes. He was convinced there was much more to the oligarch. He was in town to investigate him as well as to cover the elections.

Berezovsky was one of several superwealthy men who had back doors to Yeltsin's Kremlin. His popularity waxed and waned, but as he amassed wealth he gained unparalleled power. Experienced expatriates in Russia shared an essential rule: Don't cross these brutal billionaires, ever, or you're likely to go home in a box.

Klebnikov knew this well. In Russia the mafia kills every day. He knew Paul Tatum, the Oklahoma entrepreneur who ran afoul of Moscow's mafia and was shot dead just a few hundred yards from a hotel he had founded and had fought against Mayor Yuri Luzhkov to control. After Tatum's murder, Hizzoner promised swift justice. We're still waiting.

Tatum had led a loud life in Moscow. Klebnikov told me he knew Tatum's battle with city ''authorities'' was never a sound strategy for survival. The Tatum murder shook him, but he was determined to go forward with what grew into a series of articles exposing Russian corruption. After all, he was a reporter, not a businessman.

As a journalist, Klebnikov was the real deal. He was based in New York through the 1990s but had more contacts in Moscow than most reporters on the ground full time. During his frequent trips to the region he accomplished more meetings before lunch than many of us could pull off in a week.

Klebnikov listened as intently to the griping of a pensioner as he did to the drone of politicians. He was quick to the point, wasted no time, and drove to the center of his story like a tank. Some thought he was bold,

others thought him brash, but everyone was reading.

''Godfather of the Kremlin,'' his December 1996 Forbes cover story on Berezovsky, threw new light on the doings of Russia's oligarchs. The story grew into Klebnikov's first book, with the same title, published in 2001. The exiled industrialist took the magazine to court in London, and eventually Forbes recanted accusations of violence. Those of us who lived in Moscow during Berezovsky's heyday still believe.

His follow-up stories on Russian industrialists were always fair and thorough, but he didn't make many friends in the country. Soon after Vladimir Putin stepped into the presidency, Klebnikov and I met in New York. I told him he needed to watch his back with so much change afoot. He shrugged and said he was uniquely positioned to get to the heart of corruption in Russia. ''Who else is going to do it?'' he asked. I had no answer.

When Forbes announced Klebnikov would lead its new Russian publication and relocate to Moscow, I immediately feared for his safety. A few months later he was dead. I think about him, sprawled bleeding on the sidewalk, coughing his final words to a reporter colleague who found him dying.

Russia hasn't changed in the past decade and at this trajectory it won't be truly civilized for generations. Those who killed Klebnikov are killing today, plan to kill tomorrow, and know they'll roam free to kill for years to come. Hellbent on getting rich, they have no boundaries. Raised in a communist world devoid of morals, they have no soul.

There is no valid reason why a nation so tolerant—even complicit—in organized crime should stand on par with world leaders in groups such as the World Trade Organization. Putin must stand as the guarantor of media freedom. And the Bush administration must demand results in this murder investigation and require the assassins and their bosses be detected, arrested, tried and punished to the fullest extent of the law.

Or will it let Paul Klebnikov, like Paul Tatum, be just another footnote in Russia's disingenuous flirtation with world-class rule of law? We're waiting.

ANNIVERSARY OF THE ILLEGAL TURKISH INVASION OF CYPRUS

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mrs. MALONEY. Mr. Speaker, I rise today to commemorate the 30th anniversary of the 1974 illegal Turkish invasion of Cyprus.

I have commemorated this day each year since I became a Member of Congress. PSEKA (The International Coordinating Committee ''Justice for Cyprus''), The Cyprus Federation of America, SAE (World Council of Hellenes Abroad), and The Federation of Hellenic Societies are all primarily located in the 14th Congressional district of New York, which I am fortunate to represent. These individuals believe that peace will come to Cyprus, and they have been strong advocates against the division of Cyprus and the human rights violations perpetrated by the Turkish army in Cyprus.

While we must remember this black anniversary, we also have reason to celebrate. On May 1, Cyprus became a full-fledged member of the European Union along with nine other countries from Central and Eastern Europe. Cyprus's accession to the EU is a historic achievement. As an EU member, Cyprus will represent European values and policies and, at the same time, will work toward even stronger transatlantic ties with the United States. This has been a long time in coming, and I believe that Cyprus will have much to contribute to the EU.

Although all of us, including the Turkish Cypriots and Greek Cypriots, wanted to see the division of Cyprus end before its accession to the EU, the Annan Plan for a Cyprus settlement was justly voted down by the Greek Cypriots. Prior to the April referenda on the Annan Plan, I and several of my colleagues met with U.N. Secretary General Kofi Annan to express our concerns and our willingness to work with him to move the process forward. I know we are all hopeful that a just resolution can be reached soon to end the division so that both sides will reap the benefits from membership in the EU.

Now is not the time to give up. Earlier this month, my friend and fellow co-chair of the Congressional Caucus on Hellenic Issues, Congressman BILIRAKIS, and I sent letters, along with more than ninety members of the House of Representatives, to President Bush, Secretary of State Powell, and U.N. Secretary General Annan urging them to respect the democratic decision of the people, to remain engaged in efforts to resolve the Cyprus problem, and to work toward a fair and lasting reunification of Cyprus.

A unified Cyprus would promote stability, both politically and economically, to the entire Mediterranean region. The people of Cyprus deserve a unified and democratic country. I remain hopeful that a peaceful settlement will be found so that the division of Cyprus will come to an end.

Thirty years is too long to have a country divided. It is too long to be kept from your home. It is too long to be separated from family.

We have seen many tremendous changes around the world. It is time for the Cypriots to live in peace and security, with full enjoyment of their human rights.

In recognition of the spirit of the people of Cyprus, I ask my colleagues to join me in solemnly commemorating the 30th anniversary of the invasion of Cyprus.

Long Live Freedom. Long Live Cyprus. Long Live Greece.

A TRIBUTE TO SALVATORE AND MYRA RASPA'S SERVICE

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. HOYER. Mr. Speaker, I rise today to recognize Salvatore and Myra Raspa of St. Mary's County, Maryland for their leadership as outstanding educators and service to their community.

In 1961, Sal was employed as a science and chemistry teacher at Great Mills High School. After teaching for seven years, he was appointed Assistant Principal and in 1978 became Principal of Great Mills High School. He later became Supervisor of Instruction for Science and Health with the Department of Curriculum and Instruction, St. Mary's County Public Schools. He was also Supervisor of Transportation and Assistant Superintendent before his retirement from the St. Mary's County Public Schools in 1999 after 38 years of service.

Dr. Raspa was dedicated to his profession and accordingly received numerous awards and commendations such as recognition from the VFW for Outstanding Achievement and Exceptional Leadership in the Community, the Governor's Citation for Outstanding Commitment to Public Education, recognition from the Naval Air Warfare Center and The Maryland Science Center, and the Joint Board of Science and Engineering Education Award as an Outstanding Educator. He also received the Governor's Award for Voluntary Service in Prevention of Drugs and Alcohol as well as the American Legion Award for Contribution to Youth in St. Mary's County and special recognition from Lions Clubs International for Promoting Drug Awareness Programs—Skills for Adolescence.

Myra Raspa began her teaching career as an English and Publications teacher at Leonardtown High School, where she was responsible for publishing two major publications: The History and Culture of the Chesapeake Bay and The Heritage/History of The St. Mary's County Fair. During her 20 years with the St. Mary's County Public Schools, she also received several awards and citations, such as the Citation from the Southern Maryland Legislative Delegation for ''Outstanding Educator and for Contribution to Youth'', the Governor's Citation for ''Excellence in Education'', Recognition from Comptroller Louis L. Goldstein for Exemplary Publication, The Heritage, Citation from St. Mary's County Commissioners for ''Outstanding Contribution to Students of St. Mary's County'', St. Mary's Board of Education Certification of Recognition for ''Outstanding Contribution to Student Achievement'', St. Mary's Award to Recognize Talent in Teachers, The St. Mary's Council on Children and Youth ''Outstanding Contribution to Youth'', recognition from Dr. David W. Hornbeck, State Superintendent of Schools for ''Outstanding Educator'', and National Council of Teachers of English for ''Outstanding Publication'', and a Commendation from Senator C. Bernard Fowler, Senator of Maryland, for ''Exemplary Contribution to Youth,'' and a Commendation from the Environmental Matters Committee for ''Excellence in Education.'' She is currently an Instructional Resource with the Department of Curriculum and Instruction with a focus on high schools.

Mr. Speaker, dedicated educators like Sal and Myra Raspa are today's hope for a better tomorrow. They are the role models to whom students and others within their workplace and their community look for guidance and support. By pointing students in the right direction, such educators contribute to the future accomplishments of their students.

They have applied this commitment to molding children's future to their own home, as well. Myra and Sal's children are Sal, Jr., Joseph—deceased, Scott, Angela, Victor, and Anthony. Myra Raspa had to undergo a major juggling act between continuing her education and taking her children to Boy Scouts, band practice, football practice, wrestling practice, swimming lessons, and so forth. All the children attended Great Mills High School and were given their diplomas by their father during his tenure as Principal there. All are college graduates and are successful and are

contributing to society. Sal and Myra consider their children their major accomplishments.

As busy as Sal and Myra were, they still took the time to find a way to involve the entire family in a tobacco farming business for a number of years when the children were teenagers, even venturing into an experimental curing process which was monitored by the University of Maryland. The Raspas also operated an air conditioning and refrigeration business at one time.

The Raspas have constantly demonstrated their commitment to service through their participation in other civic activities in St. Mary's County. Sal served four terms on the Democratic Central Committee and served as chair for two terms. He belongs to the Lexington Park Lions Club and received the Melvin Jones Award in 2002, which is the highest award given by Lions Club International. He was elected to the St. Mary's County Board of Education in 2002 and currently holds the position of Vice Chairman.

Myra has been active on many county and state committees including the State Department of Education Standards Setting Committee for English; the Maryland Assessment Consortium; the Gifted and Talented Task Force; Integrated Support Team; PreK–12 Intervention Task Force; Project SMART Grant Advisory Committee; MSPAP MEGA–TASK Developer; Content Coordinator for English/Language Arts/Writing MEGA–TASK, Maryland State Department of Education; and TASK-WRITER for High School Assessments, Maryland State Department.

Both Sal and Myra Raspa are still very active in St. Mary's County and continue to advocate for children. They believe in contributing for the betterment of the community. Mr. Speaker, on this day I wish Dr. and Mrs. Raspa well in their future pursuits.

HONORING THE COUNTRIES OF THE CARIBBEAN ON THE OCCASION OF THE 166TH ANNIVERSARY OF THEIR EMANCIPATION FROM SLAVERY

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. RANGEL. Mr. Speaker, I rise today in one accord with all the former British colonies in the Caribbean to celebrate the 166th anniversary of Emancipation Day, August 1, 1838.

In doing so, I wish to not simply recount the histories of the islands in the Caribbean, for I could hardly do justice to their diverse and compelling paths to freedom. Instead, I would like to commemorate the great day of Emancipation with a narrative of cunning, resolve, and triumph, a story that in many ways symbolizes the history of all the former British colonies which were granted freedom on that great August day.

Early in the 18th century the British brought a young lady to Jamaica's shores to work as a slave. Like the Caribbean countries themselves, her roots were African. Her name was likely a strong Ashanti one since she hailed from that great African kingdom, but upon arriving she was stripped of her given nomenclature and was known to her fellow slaves simply as ''Nanny.''

Slavery persisted in the Caribbean until 1834 and then in the name of ''apprenticeship'' until 1838, but it did not persist with ''Granny Nanny of the Maroons'', as she is known today. Soon after her arrival she displayed the world-renown Caribbean penchant for cutting her own path, and escaped from her master's plantation with her five brothers. Granny Nanny then traveled around the countryside organizing free Africans in the towns of St. James, St. Elizabeth, and Portland. She eventually established Nanny Town and based the community's governance on the Ashanti society.

Like the Caribbean countries, Nanny was small and wiry, but also like these countries, she was singularly focused in her pursuit of self-determination. The vast British military presence on the island launched numerous attacks on Nanny and her comrades, hoping to force them back into slavery, but for nearly two decades Nanny, the acknowledged and greatly respected leader of an army of at least 800 maroons, withstood their aggressions. She placed guards at look-out points, sent spies to live among the slaves in British plantations, and ordered her fighters to dress like trees and bushes, so that when the British entered these human ''forests'' they would be overwhelmed by Nanny's forces.

In 1737 the British offered Nanny a truce: the maroons would be given land and rights as free men, but only if they promised to help capture and return runaway slaves, assist the Government in putting down revolts, and cease their wars with the British. Their only other alternative would be to continue in their campaign against the massive British military, pitting 800 men against what was, at that time, the strongest army in the world.

Nanny refused their offer.

And still, these Caribbean countries refuse. Thus, I feel that the story of Granny Nanny is in many ways the story of Barbados, Nevis, Bahamas, Antigua, Barbuda, Montserrat, Jamaica, Trinidad and Tobago, Saint Vincent, Grenada, and Saint Lucia.

For centuries, the people of these countries refused to accept British colonialism, stubbornly resisting the British from hideaways in cities, mountains, and forests. In 1838 they were finally freed from slavery's grasp, but they have not become complacent. Although confronted by pressing economic and social issues, they remain defiant, refusing to be defined by their problems and continuing to make important strides to attract investment, maintain good governance, and work for equity across all segments the population.

Today I remember Caribbean Emancipation Day by saluting Granny Nanny of the Maroons, the hero who perhaps most typifies the spirit of these great nations. It is my hope that we in the United States, with our economic policies and diplomatic relations, continue to support the efforts of these Caribbean countries as they move confidently and prosperously into the 21st Century.

HONORING THE KOREAN CHICAGO KOREAN AMERICAN CHAMBER OF COMMERCE

HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. EMANUEL. Mr. Speaker, it is my privilege today to recognize the contributions of Chicago's Korean American Chamber of Commerce toward preserving the glorious heritage and culture of Chicago's Korean community, on the occasion of its 9th Annual Korean Street Festival.

The Korean Chamber of Commerce continues to be an integral part of the Korean Community in Chicago. As a strong advocate for commercial, financial, and industrial member rights, the Chamber has played an essential role in local Korean American economic and community development. From educating members on renewing and issuing licenses, to aiding small businesses and forming cooperatives for purchasing products, its services have been indispensable to the greater Chicago area.

Among the valued contributions of the Chicago Korean American Chamber of Commerce is their joint effort with the Korean Street Festival Committee for the annual street festival. The Annual Korean Festival on August 14th and 15th will showcase the rich culture and traditions of the Chicago Korean Community, while celebrating the Centennial of Korean immigration.

Since 1996 the Korean Street Festival Committee has planned its celebration to enrich Chicago's summer season. Last year's display of arts, cuisine, music and dance performances, and variety of merchandise, brought over 40,000 local Chicago residents and travelers from around the Midwest region.

The Chicago Korean American Chamber of Commerce has consistently demonstrated its commitment to keeping the Korean heritage alive in Chicago. Their various programs and services all contribute to the success of the organization, and I applaud those who work and volunteer their time to continue this important mission. But, the Korean Street Festival is much more than good food and entertainment. It is a chance to remember and honor all of the hard work and accomplishments made by the Korean Community. It is through this awareness in which younger generations can pass on the traditions and values of Korea.

Mr. Speaker, I am honored on behalf of the Fifth District, and indeed all of Chicago, to call attention to all of the meaningful work occurring at the Chicago Korean American Chamber of Commerce at the time of its 9th Annual Korean Street Festival. I wish them a glorious festival and a thriving future in Chicago.

BILL CALLS FOR REGULATING ACCUTANE

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. SMITH of New Jersey. Mr. Speaker, I rise in support of H.R. 4598: the Accutane Safety and Risk Management Act.

In an effort to improve the health and safety of patients using a pharmaceutical product that has been linked to several major side effects, I recently joined with my friend and colleague Congressman BART STUPAK of Michigan to introduce this legislation that will establish a comprehensive patient registry for users of the drug Accutane and its generic forms.

Accutane was approved for use in treating severe acne in the early 1980s. Today, more than 1 million prescriptions are approved each year, and not always for the serious cases of acne for which the drug is intended. The Food & Drug Administration states that, ''Accutane may cause depression, psychosis, and rarely, suicidal ideation, suicide attempts, and suicide.'' Additionally, the makers of the drug state that ''there is an extremely high risk that a deformed infant can result if pregnancy occurs while taking Accutane in any amount, even for short periods of time.''

Four years ago, Congressman STUPAK had to endure the tragic suicide of his teenage son, who was using Accutane at the time of his death.

Despite the fact that the significant and serious side effects linked to Accutane are well known, the Food and Drug Administration has yet to mandate a program to better monitor the use of this drug and to document its effects in patients. Such a registry has been recommended by FDA advisory panels on two separate occasions.

Mr. Speaker, our bill is common sense legislation that will build upon a safety plan first proposed by the makers of this drug themselves. It will still permit doctors to prescribe Accutane, but will also institute several additional patient safety and protection measures and ensure patients and their families know the full risks before beginning treatment.

H.R. 4598 will permit physicians to prescribe Accutane only for ''severe, recalcitrant nodular acne'' that has been unresponsive to other forms of treatment. Severe acne is the condition for which Accutane was originally approved by the FDA to treat.

For patients with severe acne, Accutane may be the only medication that can successfully treat their affliction. But in far too many cases, Accutane is prescribed in an overly cavalier manner, and patients are being placed at risk to the drug's potential side effects for no medically valid reason. Many teenagers suffer from acne, and doctors and patients need to be cautious and not treat this drug lightly.

The legislation will also register all physicians and pharmacists who prescribe and dispense the drug, and institute an education campaign to ensure these providers are well-informed about the potential risks associated with Accutane. All patients will also be educated and be required to receive similar information before starting treatment with Accutane and throughout the treatment regimen.

Prescriptions will only be written for 30 days and will not be permitted via the telephone, Internet, or mail. Female patients will also have to undergo a monthly pregnancy test before receiving a renewal on their prescription, and all patients will be required to take a monthly blood test.

The makers of the drug and all practitioners who dispense Accutane will also be required to file prompt reports with the Department of Health and Human Services anytime they learn of a negative reaction, including a death, that occurs in a patient while using Accutane.

REMARKS BY CHAIRMAN DORCAS HARDY, VA TASK FORCE ON VOCATIONAL REHABILITATION AND EMPLOYMENT

HON. HENRY E. BROWN, JR.

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. BROWN of South Carolina. Mr. Speaker, Honorable Dorcas R. Hardy recently chaired the Vocational Rehabilitation and Employment Task Force of the Department of Veterans Affairs. The Task Force issued its report in March 2004, and furnishes an excellent road map on how VA can place a stronger emphasis on long-term sustained employment for disabled veterans who are vocational rehabilitation participants. I was especially impressed with the section entitled, More Challenges Await: A Final Word from the Task Force Chairman, and commend it to my colleagues as an example of Ms. Hardy's wisdom and foresight:

MORE CHALLENGES AWAIT: A FINAL WORD FROM THE TASK FORCE CHAIRMAN

Addressing the benefit, rehabilitation, and employment needs of persons with disabilities—and especially veterans with service-connected disabilities continues to be difficult, and often controversial. One thing is certain: The Department of Veterans Affairs cannot afford to fail the veteran who has given so much in the service of our Nation in previous wars and now in this age of terrorism.

There is no doubt in my mind that VA's Vocational Rehabilitation and Employment Program can become the best public rehabilitation program in the country, given appropriate resources and leadership. The new comprehensive, integrated 21st Century VR&E Employment-Driven Delivery System, which is proposed by the Task Force, builds on the strengths of the past and provides a continuum of service delivery, from military service to career counseling, appropriate retraining, and education, to employment or transitional independent living services with the ever-present goal of employment. The new system can provide the answer to a disabled veteran's transition to civilian society—a job.

Employment program will necessitate a major shift in attitude and approach. The current reality is that the VR&E program—despite the legislation of 1980—continues to operate as a VA education benefit for disabled veterans. It provides a larger stipend than the GI Bill program, and is accompanied by some counseling, as necessary. The new program, on the other hand, addresses the continuum of ''life cycle'' needs that a veteran with disabilities experiences, of which education may—or may not—be a necessary part. The focus will be the rehabilitation and employment needs of the 21st century service-connected disabled veteran.

Because the United States is at war, and will likely be in conflict situations for the foreseeable future, there must be a sense of urgency on the part of the entire Department as well as the Vocational Rehabilitation and Employment Service to create this new 21st century service delivery system.

I respectfully suggest that no more reports or discussions are needed, just immediate and concrete actions that are supported by the Administration, the Department, and the Congress. If this vital program, with its potential for becoming the most outstanding vocational rehabilitation system within the federal government, is unable to quickly and effectively serve the 21st Century veteran, then one must consider other options. These options include: (1) contracting the program out with clear and stringent requirements to follow the employment intent of the law, or (2) recognizing that the mandated employment focus of the program is not possible and reintegrating VR&E into the Education Service of the Veterans Benefits Administration, adding an additional stipend for disabled veterans.

Having served in various state and federal governmental positions, including Commissioner of Social Security and Assistant Secretary of Human Development Services, I have worked with numerous social services policies and programs. Cash benefit services, such as the VA Compensation and Pension Service or Social Security provide support through direct payments. These programs require development of automated claims processing methodologies. Direct and personal services are those provided by VR&E or social service agencies. Different skills, personalities, and approaches are needed for each part of the delivery system. VR&E stands as an island in the sea of the Veterans Benefits Administration, a claims processing organization. VR&E is not connected to the claims processing functions, nor do other business lines have any particular appreciation or understanding of its function. Both cash and direct benefits are needed to support the veteran. Development of a seamless, integrated delivery system is the challenge.

Many have suggested that the entire VR&E program should become a part of the Veterans Health Administration, which has more of a hands-on service delivery focus. Just as the Task Force rejected the idea of moving the VR&E Independent Living program to VHA at this time, that same thinking can be applied to moving all of VR&E to VHA. VR&E needs to address its own shortcomings first, wherever it is housed, before participating in another reorganization.

If implemented with commitment and enthusiasm, the Task Force's recommendation to rebuild the VR&E Service can be successful. Building the new service delivery system cannot be done slowly, nor sequentially. It must be driven with clear and focused timeframes; and it must be done believing that each veteran's future depends upon an effective new approach. Leadership and management will be key; timeframes that some may deem un reasonable should become standard; processes must be streamlined and supported by technology; and veterans must recognize that they, too, have an individual responsibility to complete their vocational rehabilitation plan and secure employment in a timely manner.

FUTURE POLICY CONSIDERATIONS

Throughout the discussions and deliberations of the Task Force, several broad policy issues were raised that were not thoroughly addressed, either because they were not directly within the scope of this Task Force's work or, in several cases, they were far more complex than our time permitted. Some issues were just too controversial at this particular point in time, but their ''tipping point'' will come and thoughtful policymakers and managers should be prepared to consider their breadth, shape, and impact upon VR&E. As the Veterans Benefits Administration proceeds to modernize VR&E, these longer term policy considerations, which cross the business lines of VBA, should be discussed and addressed. Each issue below will arise in the foreseeable future; each issue will have a significant consequence for the successful future of a 21st century VR&E program.

ROLE OF COUNSELING AND TRANSITION ASSISTANCE IN THE VETERANS BENEFITS ADMINISTRATION

Historically, VBA had a focus on personal counseling about requested benefits and services through face-to-face contact with the veteran. Today, the Compensation and Pension Service provides outreach services to veterans through the Veterans Service Centers but the focus is ''you are entitled to benefits from the VA and here is the claim to file.'' This is not counseling in the traditional sense, rather a method to ensure that veterans receive cash benefits to which they are entitled. Since the VR&E Program is the only benefit that is provided face-to-face to the veteran, VR&E, with its professional counseling staff, should provide all outreach services to veterans, regardless of whether or not the veteran is disabled. A veteran with financial or life cycle or any other issues should be able to access counseling services at a VR&E office. Such a policy may necessitate additional resources beyond what is recommended at this time to rebuild the VR&E program.

NEED FOR NEW PROGRAMS

This report highlights the need for clear and comprehensive data about the population that is served by VR&E. Without such data, as well as research, we will not be able to project who the service-connected disabled veterans of the future will be, nor what their needs will be. Questions that should be addressed include:

Will their injuries and disabilities be considerably different than those of recent veterans?

Will the technology used on battlefields or in medical rehabilitation impact more significantly the veteran's future ability to be a productive member of civilian society?

How will medical advances, as projected by the Institute of Medicine or the National Institutes of Health, impact the VR&E program?

The Task Force's analysis of types of disabilities of veterans entering the VR&E program found that the number of veterans determined disabled due to neuropsychiatric illnesses is increasing. The increase in mental conditions is also being seen by other public benefit programs such as Social Security Disability Insurance. It appears that the majority of veterans in the Independent Living program are those with Post-Traumatic Stress Disorder (PTSD). Yet, as this report clearly states, Independent Living status within the VR&E program should not be the sole response to their needs. An assessment of the impact of an increased number of mental health disabilities on the VR&E services should be conducted as soon as possible. The outcome will likely conclude that new programs should be developed jointly with VHA to address the needs of these veterans. Of equal importance will be the development of a methodology that guides how VR&E interacts with VHA to plan for new solutions to disabling conditions.

IMPACT OF AN AGING VETERAN POPULATION ON SERVICES

Every social services delivery policymaker is well aware of the general aging of the population. The question should be raised as to the expected impact of the graying of veterans upon VR&E. Issues such as the aging of the general workforce could mean less discrimination against older veterans in the workplace and therefore more older applicants for VR&E services. As veterans age, many are filing additional claims for disability compensation, and many may initiate or renew their requests for VR&E services. VR&E should be proactive in addressing at least the following questions: Should VR&E accept all disabled veterans regardless of age? Is age a criterion for prioritization of expected services? How should VR&E balance its resources vis-a-vis age of applicant and number of times services have been requested?

IMPACT OF DISABILITY DETERMINATION

The VA disability benefits adjudication system has been the subject of discussion and controversy for many years. Congress recently established, as part of the 2004 Defense Authorization Act, the Veterans' Disability Benefits Commission to study the compensation benefit structure and complete a report in 2005. They are directed to examine the appropriateness of such benefits and the appropriate benefit determination standards, compare veterans' benefits with other public and private sector disability benefits and, perhaps most important, ''consult with Institute of Medicine of National Academy of Sciences with respect to medical aspects of contemporary disability compensation policies.''

Ideally the Commission's deliberations will provide a framework for many policy decisions related to the VA's disability criteria that will be updated to reflect the current state of science, medicine, technology, and labor market conditions. Such recommendations could be the catalyst that moves veterans' disability policy toward use of scientific advances and incorporates economic and social changes that have already redefined the relationship between impairments and the ability to work within the private sector. Such discussion and modern approaches could significantly impact the workload and processes of VR&E.

For example, currently there are nearly 175,000 veterans with a 60 percent or more disability rating who have applied and receive a determination that they are ''Individually Unemployable.'' The designation of ''Individually Unemployable'' entitles the veteran to a 100 percent rating with commensurate compensation. Yet the adjudication process never includes the views of a vocational rehabilitation counselor as to whether or not the beneficiary could participate in the labor force or whether a strong vocational rehabilitation or counseling program would be effective in assisting the veteran achieve employment, perhaps using assistive technology or other types of supports. The questions that are raised are: Without input into the IU determination process from a trained rehabilitation expert, should IU veterans or those applying for IU status be served by the VR&E program? How can an individual be officially designated ''unemployable'' (a label that should be an anathema) and allowed to participate in an employment program at the expense of another veteran who wants and needs a job?

It is recognized that over the years, the Congress and the courts have expanded the scope and complexity of veterans' disability benefits. It is hoped that the Commission will conduct a thorough review of the benefits schedule and challenge the status quo. They might begin by asking how a tender scar, migraine, or mild asthma can be the sole'' disability'' for which a veteran receives compensation according to a rating schedule and is thereby automatically eligible for VR&E services, in the same manner as a severely-disabled veteran.

THE GI BILL FOR THE FUTURE

The Task Force learned that more than 75 percent of those who enter the VR&E program proceed through a rehabilitation plan that includes a goal of a college degree. Though the data is not clear, one can assume (given the number of discontinued and interrupted participants) that most veterans spend far more than 4 years attaining their degree. Equally important, most of these ''students'' never exhausted their GI Bill benefits. One assumes that is because the VR&E education benefits are considerably more generous than the current GI Bill. This pattern raises some questions: Does this mean that deficiencies exist in the current GI Bill? Or are veterans with disabilities just looking for the best deal? Should there be changes in the GI Bill that might make it more appealing to veterans with disabilities? What should they be?

In 1998, the then Vocational Rehabilitation and Counseling Program wrote a strategic management document that addressed the reasons that the program desperately needed to change in order to provide effective services to disabled veterans. The reasons for change were:

Inadequate focus on employment,

Customer perceptions and expectations are out-of-step with the program's intent,

Inability to monitor outcomes and provide feedback to the program; Inadequate IT support for the program,

Inadequate access for veterans,

Inadequate coalitions with peer organizations and partners, and inefficient business processes.

Despite such introspection, not much has changed. This 2004 Task Force Report not only urges management to rebuild the VR&E program but also provides a clear road map as to how to accomplish the objective. There is no excuse for lack of success.

THE CHARGE

Unfortunately, there are not as many successful social service delivery programs as one would like. Positive outcomes for adults, as measured by an individual's independence and employment, are often difficult to attain. But I believe the mighty band of nearly 1,000 VR&E staff has the resourcefulness and dedication to build a new service delivery system for veterans with service-connected disabilities. With leadership, appropriate resources, a broad and creative approach, and what I term ''cheerleading support,'' they can reinvent themselves, they can get energized, and they can be the best program serving the 21st century rehabilitation and employment program—and just in time for those 21st Century service veteran. VR&E can become the model public sector members returning from Iraq, Afghanistan, or anywhere else in the world where freedom calls.

It has been a privilege to chair this Task Force and present our report.

Dorcas R. Hardy, Chairman, VA Vocational Rehabilitation and Employment Task Force.

THE MEDICAID AND CHIP SAFETY NET PRESERVATION ACT OF 2004

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. DINGELL. Mr. Speaker, along with Representatives BROWN, WAXMAN, and CAPPS, I am introducing the ''Medicaid and CHIP Safety Net Preservation Act of 2004.'' This bill seeks to reaffirm the protections in the Medicaid statute for beneficiaries who receive health coverage through Medicaid in a waiver program. The Medicaid program currently covers more than 50 million Americans of all backgrounds, from pregnant women and children, to the working disabled and elderly in nursing homes. Recent actions by the Administration have raised concerns that the core principles

of the Medicaid program are being undermined by the inappropriate use of waiver authority by the Secretary of Health and Human Services.

The Administration's Medicaid waiver initiative is an attempt to do behind closed doors what it has been able to do openly in Congress, which is to reduce protections in healthcare for some of our most vulnerable citizens. In less than four years the Bush Administration has eroded the health care safety net for millions of Americans, at a time when the faltering economy has produced record high unemployment and increased the number of Americans who are uninsured for health care.

The ''Medicaid and CHIP Safety Net Preservation Act'' will ensure transparency and public input in the process for exercising the waiver authority under Section 1115 of the Social Security Act. It also adds protections to ensure that waivers do not erode the core objectives of the Medicaid program and Child Health Insurance Program (CHIP) previously enacted by Congress.

I urge my colleagues to join me in supporting this legislation to assure that some of our most vulnerable citizens will receive higher, not lower, quality health insurance coverage under Medicaid.

AUTHORIZING PARTICIPATION IN CERTAIN RECYCLING PROJECTS

SPEECH OF

HON. JOE BACA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 19, 2004

Mr. BACA. Mr. Speaker, I rise in strong support of Congressman DREIER's Inland Empire Regional Water Recycling Initiative, H.R. 2991, which will specifically benefit the cities of Ontario and Fontana in my district.

I am an original co-sponsor of the bill and I look forward to seeing its benefits in the Inland Empire in California.

I consider it top priority to improve water quality and increase water quantity in my community. This community has had to juggle: wildfires, huge population growth, drought, and water contamination with perchlorate and other chemicals. For all of these reasons, water recycling and new technology for treatment are critical to this area.

We need to increase and improve the quality of our water supply, and this legislation before us today is a giant step in that direction.

I would like to commend my neighbor, Congressman DREIER, for his leadership in improving water availability in Southern California, as well as in the fight to clean up perchlorate-contaminated groundwater.

I also commend the bipartisan California delegation for bringing forward important legislation that will bring crucial water benefits to our State.

I urge my colleagues to support this initiative that will help ''drought-proof'' a region that desperately needs it.

HONORING THE PUBLIC SERVICE OF JOYCE CARDELLA

HON. LUCILLE ROYBAL-ALLARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Ms. ROYBAL-ALLARD. Mr. Speaker, I rise today to honor a woman whose 42 years of public service to the City of Los Angeles serves as an example to us all. On behalf of my esteemed colleagues, I would like to acknowledge this remarkable woman whose reputation for hard work, humility, and effectiveness is well deserved.

Ms. Cardella began her career in 1960 as a senior clerk stenographer for the Los Angeles City Health Department. In 1963, she transferred to the office of 13th District Councilman James Harvey Brown. Four years later, she joined the office of Fowler D. Jones, the first Chief Legislative Analyst for the Los Angeles City Council. Over the next 34 years, Ms. Cardella faithfully served as the Executive Assistant to each succeeding Chief Legislative Analyst.

She has had the opportunity to work with many of the city's leaders, including 4 mayors, 8 City Council presidents, 67 city council members, 4 city administrative officers, and all 7 chief legislative analysts. Ms. Cardella even worked for the city when my father, former Congressman Edward Roybal, started his career in elected office as a Los Angeles City Council Member.

As part of the team of workers that have led Los Angeles, Ms. Cardella played a role in responding to Los Angeles's triumphs and tragedies—working to prepare the city for the 1984 Olympic Games and to rebuild our city after three major earthquakes, two episodes of civil disturbance, and the Baldwin Hills Flood.

Ms. Cardella has meant many things to many people. To her neighborhood, she is a graduate of Benjamin Franklin High School. To others, she is an alumnus of Glendale College, where she received an associate of arts degree. To her family, she is a loved and respected mother and grandmother. To the city that she proudly served, she is the standard to which few can lay claim, but toward which all employees strive. All who know and have worked with Ms. Cardella, know that her loyalty to her office was second only to her loyalty to the citizens of Los Angeles themselves.

Therefore, Mr. Speaker, it is with great pleasure that I take this opportunity to express my thanks, and that of a grateful city, to Joyce Cardella for 42 years of dedication and public service.

RECOGNIZING THE EUFAULA TRIBUNE'S 75TH ANNIVERSARY OF EXEMPLARY COMMUNITY JOURNALISM

HON. TERRY EVERETT

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. EVERETT. Mr. Speaker, I rise today to recognize and honor a community newspaper in my congressional district celebrating 75 years in business. The Eufaula Tribune recently marked its anniversary by announcing a new publisher, Jack Smith, who was the associate publisher, editor, and son of long-time publisher and owner, Joel P. Smith, Sr.

For three quarters of a century, The Tribune has consistently educated, challenged, and supported the community of Eufaula with weekly, professional reporting. In an age of mass media and corporate take-over, this family-owned paper has remained a cornerstone of its community and a refreshing splash of local color. In fact, the Tribune has not only garnered a loyal readership, but has netted 14 awards from the Alabama Press Association.

Since 1958, Joel Smith has devoted his time, energy, and verbal craftsmanship to the Tribune. At the same time, he and his wife, Ann, a columnist and reporter for the Tribune, have raised three boys, balancing healthy community life with critical reporting. Joel's 46 years of endurance and commitment to his paper and his hometown are worth commending.

Jack began working for the Tribune at age 10 and is now an experienced and educated writer, editor, and publisher. Succeeding as publisher while raising his own young family in Eufaula, Jack promises continued excellence for the family-oriented community newspaper, saying ''my goal is to become the best community newspaper in Alabama.''

Mr. Speaker, I have a special appreciation for the contributions and the difficulties of running a newspaper in a small town. I, myself, owned and published a few different community newspapers in Alabama for over 30 years. It is a challenging and rewarding business and one of the noblest callings in public service.

The Eufaula Tribune has kept Eufaula, Alabama a vibrant, thinking, and informed community for 75 years. I salute this outstanding achievement.

HONORING THE 23RD ANNUAL DOMINICAN INDEPENDENCE DAY PARADE

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. RANGEL. Mr. Speaker, I rise to recognize and pay tribute to one of New York's oldest celebrations of Dominican culture, Manhattan's Dominican Day Parade.

The annual parade, which once ran through the heart of Washington Heights, has grown to become one of August's most anticipated celebrations of cultural and ethnic pride on New York's Sixth Avenue since the 1980s. The parade not only is a celebration of pride, but also pays homage to the declaration of the Nation's independence on February 27, 1844, when the Dominican Republic established constitutional autonomy. For Dominicans in the United States the commemoration, held in August, is a second Independence Day serving as a cultural holiday.

The Dominican Day Parade has paid tribute to the cultural heritage of the Dominican Republic and the vast contributions the Dominican community has made in the State of New York and in the Nation. Through the parade, the President and the Dominican Day Parade Committee have promoted unity as well as the advancement of Dominicans in New York City. Dominican youth are our hope for the future

and we want to encourage them to strive for excellence and advancement through this great celebration.

As in past years, this celebration follows Dominican Heritage Week and the Gran Parada Dominicana in the Bronx. On August 8th, beginning from 36th Street to 59th Street on Sixth Avenue, New Yorkers of all ages will get a chance to learn about some of the ways in which this vibrant community is transforming the Nation.

I invite my colleagues to join me in honoring this celebration and continue to support the great accomplishments made by Dominicans around the Nation and all over the world.

FREEDOM FOR LUIS MILÁN FERNÁNDEZ

HON. LINCOLN DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I rise today to speak about Luis Milán Fernández, a political prisoner in totalitarian Cuba.

Mr. Milán Fernández is a medical doctor by profession. Because of his training in protecting and nurturing human life, he could not tolerate the tyrant's incessant abuse of Cuban people. He understood the human condition and he knew that freedom is infinitely superior to the ills of tyranny and repression. Because of his belief in liberty, he joined the Cuban Medical Association and other groups dedicated to peacefully advocating for freedom for every citizen of Cuba.

In June 2001, Mr. Milán Fernández signed a document called ''Manifesto 2001'', a document that called for recognition of fundamental freedoms in Cuba. According to Amnesty International, he, along with other medical professionals, staged a 1-day hunger strike to call attention to the medical situation of detainees.

On March 18, 2003, as part of the dictator's condemnable crackdown on peaceful prodemocracy activists, Mr. Milán Fernández was arrested because of his belief in liberty over repression. In a sham trial, he was ''sentenced'' to 13 years in the inhuman, totalitarian gulag.

Mr. Milán Fernández is languishing in the infernal gulag because he believes in human rights and liberty. He is suffering in abhorrent conditions because he refuses to accept the reality inflicted on the Cuban people by the tyrant. Let us be very clear, the politics of repression and tyranny practiced by the regime in Havana are incompatible with the democratic values of the western hemisphere.

Mr. Speaker, it is a crime against humanity that prodemocracy activists such as Mr. Milán Fernández are locked in totalitarian dungeons because they advocate for freedom and human rights. My colleagues, we must demand the immediate release of Luis Milán Fernández and every prisoner of conscience imprisoned by the nightmare called the Castro regime.

JULY 28TH IS INTERNET SAFETY DAY

HON. MARK FOLEY

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. FOLEY. Mr. Speaker, today, we live in a new age and it is becoming increasingly apparent that our laws must meet the challenge of protecting our children in the face of new threats and new technology.

The Internet is a powerful tool that has brought new opportunities for education, commerce and self-empowerment to millions of Americans. However, it also provides a new medium for pedophiles to reach out to our most vulnerable citizens—America's children.

This has become a growing problem and, in 2002, the Federal Bureau of Investigation (FBI) reported that online child pornography and/or sexual exploitation are the most significant cyber-crimes against children.

I commend the efforts of Court TV and its CEO Henry Schlieff, Al Roker and the production team behind Al Roker Investigates: Katie.com for bringing attention to online sexual predators. Court TV's active role in shedding light on the issue of ''Internet deception'' will help protect America's children and raise much needed awareness to parents across the country.

As cochairman of the Congressional Missing & Exploited Children's Caucus, I join you in celebrating July 28 as Internet Safety Day in the hopes of bringing stronger awareness to the deceptive crimes against children that are being perpetrated on the Internet.

While we work in Congress to give law enforcement the tools to protect our children like the highly successful national deployment of the AMBER Alert system, the most important weapon of all is showing parents how to keep a watchful eye on the activities of their children; knowing the people who come into contact with their children in their neighborhoods, schools and online; and using plain common sense.

JUNK FAX PREVENTION ACT OF 2004

SPEECH OF

HON. GIL GUTKNECHT

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 20, 2004

Mr. GUTKNECHT. Mr. Speaker, I would like to congratulate Mr. UPTON for crafting this legislation in such a way that it protects the rights of consumers, without obstructing legitimate business endeavors.

I bring a unique perspective to this debate. I am a real estate auctioneer by trade. And for those auctioneers, it is common practice to notify people who have bid at previous auctions about upcoming auction sales. This is particularly the case if the person is interested in a certain type of item that will be sold at a subsequent auction.

Let me provide a real world example. A person registers to bid at an auction of 18th century antique furniture. A few months after that auction, another sale is scheduled that includes 18th century antique furniture. It is common practice for auctioneers to notify those individuals again that there is an upcoming auction, and sending such notices by fax is a very cost effective means of doing this.

H.R. 4600, the ''Junk Fax Prevention Act of 2004,'' restores the Federal Communication Commission's (FCC) interpretation of the EBR or ''established business relationship'' as it existed prior to January 1, 2003. Under that FCC interpretation, incorporated by reference in the bill, the term ''established business relationship'' means ''a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber—and the bill expands that to also include business subscribers—with or without consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.''

As such, with respect to the example I referenced above, H.R. 4600 would permit an auctioneer to send a notice of an upcoming auction by fax to a person who had registered for and/or bid at a prior auction run by that auctioneer.

I support this outcome, and I also agree that if a party wishes to stop receiving such notifications they should be allowed to do so. I am pleased that this legislation contains such ''opt-out'' language.

I support this legislation and believe that such measures which aim to reduce the onslaught of faxes, e-mails, etc., are good policy for consumers. In addition, it is important that the record highlights the unique nature of the auction business and its importance to a variety of industries and especially rural communities.

DECLARING GENOCIDE IN DARFUR, SUDAN

SPEECH OF

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 21, 2004

Mr. PAUL. Mr. Speaker, I rise in strong opposition to this incredibly dangerous legislation. I hope my colleagues are not fooled by the title of this bill, ''Declaring genocide in Darfur, Sudan.'' This resolution is no statement of humanitarian concern for what may be happening in a country thousands of miles from the United States. Rather, it could well lead to war against the African country of Sudan. The resolution ''urges the Bush Administration to seriously consider multilateral or even unilateral intervention to prevent genocide should the United Nations Security Council fail to act.'' We must realize the implications of urging the President to commit the United States to intervene in an ongoing civil war in a foreign land thousands of miles away?

Mr. Speaker, this resolution was never marked up in the House International Relations Committee, on which I serve. Therefore, Members of that committee had no opportunity to amend it or express their views before it was sent to the Floor for a vote. Like too many highly controversial bills, it was rushed onto the suspension calendar (by House rules reserved for ''non-controversial'' legislation) at

the last minute. Perhaps there was a concern that if Members had more time to consider the bill they would cringe at the resolution's call for U.S. military action in Sudan—particularly at a time when our military is stretched to the breaking point. The men and women of the United States Armed Forces risk their lives to protect and defend the United States. Can anyone tell me how sending thousands of American soldiers into harm's way in Sudan is by any stretch of the imagination in the U.S. national interest or in keeping with the Constitutional function of this country's military forces? I urge my colleagues in the strongest terms to reject this dangerous resolution.

INTRODUCTION OF ''INTELLIGENT VEHICLE HIGHWAY SAFETY ACT OF 2004''

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. CRANE. Mr. Speaker, every year, 42,000 deaths occur on our highways. Together with 6 million accidents and 5.2 million injuries, the comprehensive cost to our Nation is more than $400 billion per year. The great cost in human lives these statistics demonstrate is the reason why today I offer bipartisan legislation that will assist in the reduction of these tragedies on our Nation's roadways.

Driver error is cited as the cause of 90 percent of these accidents. The World Health Organization (WHO) identified road traffic deaths as a worldwide public health issue, and dedicated this year's World Health Day theme to road safety.

A variety of technologies that could help drivers to avoid crashes have already been developed. These ''intelligent vehicle technologies'' help by warning drivers of impending collisions or compensate for other forms of driver error. While these devices are beginning to be deployed on some automobiles and commercial vehicles, this is happening far too slowly.

The Federal Highway Administration's stated goal for highway safety is to achieve of a 20 percent reduction in vehicle-related fatalities and injuries by 2008. Intelligent vehicle technologies represent the single best opportunity to help us achieve that goal. The Federal Government has long invested in traditional methods of improving highway safety, through the construction of safer roads or through encouraging and then mandating the use of seatbelts. No less important is helping to ensure that automobiles and trucks on our roads are equipped with the latest in these safety technologies.

That is why I have introduced the Intelligent Vehicle Highway Safety Act, which will accelerate the adoption of these technologies, not by regulation, but rather by encouraging consumers to purchase safer vehicles through providing incentives. Vehicles equipped with these life-saving technologies have been shown to reduce accidents anywhere from 40 percent to 60 percent.

My legislation would provide an above-the-line deduction on income tax returns for the cost of purchasing intelligent vehicle technology (IVT) equipment in their passenger vehicles. Businesses that purchase heavy trucks equipped with IVT would be allowed to exempt a portion of this equipment's cost from the Federal Excise Tax (FET). The intent of this legislation is to provide a broad based tax incentive to individuals and businesses that purchase vehicles equipped with IVT safety equipment

Intelligent Vehicle Technologies comprise the range of smart products that enhance safety for drivers, including lane departure warnings, roll stability systems, automatic crash notification systems, workload managers and telematics equipment. The relatively small cost to the Treasury for this legislation is an investment that will save thousands of lives each year. Deployment of IVT will have other benefits as well: accident reduction will reduce injuries, limit property damage and mitigate traffic congestion and its accompanying pollution.

To illustrate, let's take a snap shot of how these technologies could impact the every day lives of American motorists across the Nation. In the New York-Northeast New Jersey area, area residents spend on average 422 million hours each year in traffic related delays. Since 1982 the percent of daily travel time spent in congestion increased from 14 percent to 34 percent in 2001 and peak travel in the same time period congestion increased from 28 percent to 69 percent. This increased congestion represents an $8.4 billion annual cost in delay and wasted fuel, specifically—696 million gallons of fuel on New York City area roads and highways. Over 67 percent of this cost is due to delays caused by driving accidents. And the most sobering statistic of all is the 1,458 traffic deaths that occurred on New York City roadways in 2001. Intelligent Vehicle Technology could reduce congestion costs by $2.8 billion each year, reduce wasted fuel by 238 million gallons each year and reduce congestion by 34 percent.

In our Nation's heartland, the statistics also support the need for measures to be taken to reduce accidents on our roadways. The numbers point to the urgent need for a reduction in the costs to the American people's time, money and quality of life. In the Chicago area, residents spend 27 hours each year in traffic-related delays. Since 1982, time spent in congestion increased from 23 percent to 40 percent in 2001 and for the same time period peak travel congestion increased from 46 percent to 81 percent. If you place dollars to this delay, it costs Chicago area residents $4.1 billion each year in delays and wasted fuel—340 million gallons of wasted fuel to be exact. Once again over 56 percent of this cost is due to driving accidents and related delays. Chicago area accidents in 2001 alone tragically ended the lives of 1,418 motorists. It is estimated that IVT technology could reduce Chicagoland's congestion costs by $1.2 billion each year and save 97 million gallons each year. It is further estimated that IVT technology could also translate into a reduction in the time spent by area residents in traffic congestion by 29 percent.

To illustrate that this is a nationwide problem, fewer residents are harder hit by this ''epidemic'' than those of the Los Angeles, California area. Residents there collectively spend 667 million hours in traffic-related delays. The percent of daily travel spent in congestion has increased from 31 percent in 1981 to 44 percent in 2001, and peak travel time congestion in the same time period increased from 62 percent in 1981 to 88 percent in 2001. This increased congestion costs residents $12.9 billion each year in delays and wasted fuel to the tune of 996 million gallons of fuel, with nearly 55 percent of this cost due to driving accidents. Most alarming is the number of annual fatalities; in 2001 the number of motorists who lost their lives in traffic accidents was 3,753. This is certainly a human tragedy in addition to a significant drain on area commuter time and money.

In the Los Angeles case, research shows that IVT technology could potentially reduce congestion costs by $3.6 billion each year and reduce the number of gallons of fuel wasted in traffic by 279 million gallons. In terms of quality of life, IVT could give back local residents over 28 percent of the daily travel time they currently spend on the roadways of Los Angeles.

The benefits of IVT technology are not limited to our Nation's commuters. Commercial trucks and trailers are responsible for moving nearly 3.5 trillion tons of freight each year. The reliable and timely transport of goods is vital to the health of our Nation's economy. However, accidents involving commercial trucks cost over $24 billion each year in lives lost, medical and emergency services, and property damage. Fatal accidents cost more than any other accidents when heavy trucks are involved, the average cost being $3.54 million per accident for trucks with multiple trailers. Statistically, over the past 10 years, accidents involving large trucks increased by over 15 percent. The deployment of IVT technologies to the trucking industry could also greatly reduce accident rates, cost per accident, and the resulting traffic congestion. Application of these technologies to commercial trucking is a vital part of increasing our nation's roadway safety and ensuring the cost effective and timely transportation of goods throughout the United States.

America leads the world in the development of IVT technology, which comes as no surprise. However, what is surprising is that Europe and Japan lead in deployment of these technologies. It is clear from the statistics above that accidents, congestion, and related loss of life are nationwide problems that need to be addressed by the deployment of these life saving technologies here at home. The goal of my legislation is to jump start the deployment of these safety technologies so that associated benefits become more universally experienced through its widespread use here in the U.S. It is intended to encourage consumers at all income levels to purchase IVT equipped vehicles.

As we continue to consider various legislation this year, I believe it is also important to look at additional innovative ways to address the unacceptable levels of highway deaths and injuries. The Intelligent Vehicle Highway Safety Act will promote safer vehicles. I look forward to working with my colleagues on both sides of the aisle to enact this important legislation.

PAYING TRIBUTE TO GENERAL RICHARD A. CODY, VICE CHIEF OF STAFF, UNITED STATES ARMY

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. ROGERS of Michigan. Mr. Speaker, I rise today to recognize and pay tribute to General Richard A. Cody, a true American Patriot, who has dedicated his career to the service and defense of America. On June 24, 2004 General Cody was named the 31st Vice Chief of Staff of the United States Army.

General Cody's impressive military career began upon graduation from the United States Military Academy on June 6, 1972 with his commission as a second lieutenant in the United States Army. General Cody is an Air Assault graduate and Master Aviator with over 5000 hours of flight time. During his thirty-two years of service, General Cody has participated in a variety of command and staff assignments. General Cody served as Commanding General of the 101st Airborne Division, as well as 101st Aviation Regiment during Operation Desert Storm and most recently, he served as Deputy Chief of Staff, United States Army. General Cody has shown brilliant leadership throughout his career having been awarded with decorations such as the Distinguished Service Medal, Defense Superior Service Medal, and the Legion of Merit.

Mr. Speaker, for the last thirty-two years, General Cody has selflessly served the American people, keeping our country safe and free. I cannot think of a better soldier to lead our armed forces as they continue to protect America.

Today, I ask my colleagues to join me in recognizing General Cody's service to America and to offer my best personal regards on his appointment as Vice Chief of Staff of the United States Army.

HONORING PERMEDION FOR ITS THIRTY YEARS OF OUTSTANDING SERVICE TO THE HEALTHCARE COMMUNITY

HON. PATRICK J. TIBERI

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 22, 2004

Mr. TIBERI. Mr. Speaker, I rise today to congratulate Permedion for its thirty years of service to the healthcare community. Permedion is a not for profit organization headquartered in Westerville, Ohio whose primary areas of service are healthcare quality measurement and improvement, data analysis and management, and independent medical review. Its employees work nationwide with hospitals, insurance companies, government agencies and other professional groups in order to improve our healthcare system.

Permedion helps reduce healthcare costs by monitoring the utilization and quality of healthcare services and detecting inappropriate use. They also review appeals for medical necessity and are one of the last avenues for enrollees to appeal a decision their health plan makes.

In 1974 a group of physicians founded Permedion with the goal of providing peer review and quality assurance to healthcare agencies across Ohio. Today I am proud to recognize Permedion as one of the nation's leading providers in healthcare quality improvement. Once again, I congratulate Permedion for its thirty years of service and wish them the best for the next thirty.

Daily Digest

HIGHLIGHTS

Senate agreed to the conference report to accompany H.R. 4613, Department of Defense Appropriations Act.

Senate agreed to the conference report to accompany H.R. 2443, Coast Guard and Maritime Transportation Authorization.

House Committee ordered reported the following appropriations for fiscal year 2005: VA, HUD and Independent Agencies; and the Transportation, Treasury and Independent Agencies.

Senate

Chamber Action

Routine Proceedings, pages S8577–S8616

Measures Introduced: Fifty-seven bills and ten resolutions were introduced, as follows: S. 2716–2772, S. Res. 415–419, and S. Con. Res. 131–135.

(See Book II.)

Measures Reported:

H.R. 3340, to redesignate the facilities of the United States Postal Service located at 7715 and 7748 S. Cottage Grove Avenue in Chicago, Illinois, as the ''James E. Worsham Post Office'' and the ''James E. Worsham Carrier Annex Building'', respectively.

H.R. 4012, To amend the District of Columbia College Access Act of 1999 to reauthorize for five additional years the public school and private school tuition assistance programs established under the Act.

H.R. 4222, to designate the facility of the United States Postal Service located at 550 Nebraska Avenue in Kansas City, Kansas, as the ''Newell George Post Office Building''.

H.R. 4327, to designate the facility of the United States Postal Service located at 7450 Natural Bridge Road in St. Louis, Missouri, as the ''Vitilas 'Veto' Reid Post Office Building''.

H.R. 4427, to designate the facility of the United States Postal Service located at 73 South Euclid Avenue in Montauk, New York, as the ''Perry B. Duryea, Jr. Post Office''.

S. 2501, to designate the facility of the United States Postal Service located at 73 South Euclid Avenue in Montauk, New York, as the ''Perry B. Duryea, Jr. Post Office''.

S. 2640, to designate the facility of the United States Postal Service located at 1050 North Hills Boulevard in Reno, Nevada, as the ''Guardians of Freedom Memorial Post Office Building'' and to authorize the installation of a plaque at such site.

S. 2673, to designate the facility of the United States Postal Service located at 1001 Williams Street, Ignacio, Colorado, as the ''Leonard C. Burch Post Office Building''.

S. 2682, to designate the facility of the United States Postal Service located at 222 West 8th Street, Durango, Colorado, as the ''Ben Nighthorse Campbell Post Office Building''. **(See Book II.)**

Measures Passed:

National Veterans Business Development Corporation Clarification: Senate passed S. 2724, to amend section 33(a) of the Small Business Act (15 U.S.C. 657c(a)) to clarify that the National Veterans Business Development Corporation is a private entity. **(See Book II.)**

FHA Mortgage Insurance: Committee on Banking, Housing, and Urban Affairs was discharged from further consideration of S. 2712, to preserve the ability of the Federal Housing Administration to insure mortgages under sections 238 and 519 of the National Housing Act, and the bill was then passed. **(See Book II.)**

Patient Safety and Quality Improvement Act: Committee on Health, Education, Labor, and Pensions was discharged from further consideration of H.R. 663, 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, after striking all after the enacting clause and inserting in lieu thereof, the text of S. 720, Senate companion measure, after agreeing to the committee amendment in the nature of a substitute, and the following amendment proposed thereto: **(See Book II.)**

Frist (for Gregg/Kennedy) Amendment No. 3568, in the nature of a substitute. **(See Book II.)**

Senate insisted on its amendment, requested a conference with the House thereon, and the Chair was authorized to appoint the following conferees on the part of the Senate: Gregg, Frist, Enzi, Alexander, Kennedy, Dodd, and Jeffords. **(See Book II.)**

Subsequently, S. 720 was returned to the Senate calendar. **(See Book II.)**

U.S.-Morocco Free Trade Agreement Implementation Act: Pursuant to the order of July 21, 2004, Senate passed H.R. 4842, to implement the United States-Morocco Free Trade Agreement. **(See Book II.)**

Subsequently, the July 21, 2004 passage of S. 2677, Senate companion measure, was vitiated, and the bill was then returned to the Senate calendar. **(See Book II.)**

TEA–21 Extension: Senate passed H.R. 4916, to provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century, clearing the measure for the President. **(See Book II.)**

Sudan Human Rights: Senate agreed to S. Con. Res. 133, declaring genocide in Darfur, Sudan. **(See Book II.)**

Condemning Anti-Semitic Attack: Committee on Foreign Relations was discharged from further consideration of S. Con. Res. 126, condemning the attack on the AMIA Jewish Community Center in Buenos Aires, Argentina, in July 1994, and expressing the concern of the United States regarding the continuing, decade-long delay in the resolution of this case, and the resolution was then agreed to. **(See Book II.)**

Urging the Government of Ukraine: Committee on Foreign Relations was discharged from further consideration of S. Con. Res. 106, urging the Government of Ukraine to ensure a democratic, transparent, and fair election process for the presidential election on October 31, 2004, and the resolution was then agreed to. **(See Book II.)**

Iran Nuclear Safeguards Agreement: Committee on Foreign Relations was discharged from further consideration of S. Con. Res. 81, expressing the concern of Congress over Iran's development of the means to produce nuclear weapons, and the resolution was agreed to, after agreeing to the following amendments proposed thereto: **(See Book II.)**

Frist (for Kyl/Feinstein) Amendment No. 3569, in the nature of a substitute. **(See Book II.)**

Frist (for Kyl) Amendment No. 3570, to amend the preamble. **(See Book II.)**

Frist (for Kyl) Amendment No. 3571, to amend the title. **(See Book II.)**

Iran: Committee on Foreign Relations was discharged from further consideration of H. Con. Res. 398, expressing the concern of Congress over Iran's development of the means to produce nuclear weapons, and the resolution was then agreed to. **(See Book II.)**

Frist (for Kyl/Feinstein) Amendment No. 3572, in the nature of a substitute. **(See Book II.)**

Frist (for Kyl) Amendment No. 3573, to amend the preamble. **(See Book II.)**

Frist (for Kyl) Amendment No. 3574, to amend the title. **(See Book II.)**

Perry B. Duryea, Jr. Post Office: Senate passed S. 2501, to designate the facility of the United States Postal Service located at 73 South Euclid Avenue in Montauk, New York, as the ''Perry B. Duryea, Jr. Post Office''. **(See Book II.)**

Guardians of Freedom Memorial Post Office Building: Senate passed S. 2640, to designate the facility of the United States Postal Service located at 1050 North Hills Boulevard in Reno, Nevada, as the ''Guardians of Freedom Memorial Post Office Building'' and to authorize the installation of a plaque at such site. **(See Book II.)**

Ben Nighthorse Campbell Post Office Building: Senate passed S. 2682, to designate the facility of the United States Postal Service located at 222 West 8th Street, Durango, Colorado, as the ''Ben Nighthorse Campbell Post Office Building''. **(See Book II.)**

James E. Worsham facilities: Senate passed H.R. 3340, to redesignate the facilities of the United States Postal Service located at 7715 and 7748 S. Cottage Grove Avenue in Chicago, Illinois, as the ''James E. Worsham Post Office'' and the ''James E. Worsham Carrier Annex Building'', respectively, clearing the measure for the President. **(See Book II.)**

Newell George Post Office Building: Senate passed H.R. 4222, to designate the facility of the

United States Postal Service located at 550 Nebraska Avenue in Kansas City, Kansas, as the "Newell George Post Office Building", clearing the measure for the President. **(See Book II.)**

Vitilas 'Veto' Reid Post Office Building: Senate passed H.R. 4327, to designate the facility of the United States Postal Service located at 7450 Natural Bridge Road in St. Louis, Missouri, as the "Vitilas 'Veto' Reid Post Office Building", clearing the measure for the President. **(See Book II.)**

Perry B. Duryea, Jr. Post Office: Senate passed H.R. 4427, to designate the facility of the United States Postal Service located at 73 South Euclid Avenue in Montauk, New York, as the "Perry B. Duryea, Jr. Post Office", clearing the measure for the President. **(See Book II.)**

National Museum of the American Indian: Senate agreed to S.J. Res. 41, commemorating the opening of the National Museum of the American Indian, after agreeing to the committee amendment in the nature of a substitute. **(See Book II.)**

Record Production Authorization: Senate agreed to S. Res. 415, to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs. **(See Book II.)**

Congratulating California State University Fullerton baseball team: Senate agreed to S. Res. 416, congratulating the California State University, Fullerton baseball team on winning the 2004 College World Series. **(See Book II.)**

Congratulating UCLA Women's Softball team: Senate agreed to S. Res. 417, congratulating the University of California at Los Angeles women's softball team on winning the 2004 National Collegiate Athletic Association Championship. **(See Book II.)**

National Prostate Cancer Awareness Month: Senate agreed to S. Res. 418, designating September 2004 as "National Prostate Cancer Awareness Month." **(See Book II.)**

Authorizing Printing of Commemorative Document: Senate agreed to S. Con. Res. 135, authorizing the printing of a commemorative document in memory of the late President of the United States, Ronald Wilson Reagan. **(See Book II.)**

Recognizing AMVETS: Senate agreed to H. Con. Res. 308, recognizing the members of AMVETS for their service to the Nation and supporting the goal of AMVETS National Charter Day. **(See Book II.)**

Commending U.S. Institute of Peace: Senate agreed to S. Con. Res. 109, commending the United States Institute of Peace on the occasion of its 20th anniversary and recognizing the Institute for its contribution to international conflict resolution. **(See Book II.)**

National Veterans Awareness Week: Senate agreed to S. Res. 401, designating the week of November 7 through November 13, 2004, as "National Veterans Awareness Week" to emphasize the need to develop educational programs regarding the contributions of veterans to the country. **(See Book II.)**

Smokey Bear's 60th Anniversary: Senate agreed to S. Res. 404, designating August 9, 2004, as "Smokey Bear's 60th Anniversary". **(See Book II.)**

National Mammography Day: Senate agreed to S. Res. 407, designating October 15, 2004, as "National Mammography Day". **(See Book II.)**

SUTA Dumping Prevention Act: Senate passed H.R. 3463, to amend titles III and IV of the Social Security Act to improve the administration of unemployment taxes and benefits, clearing the measure for the President. **(See Book II.)**

Recognizing Historically Black Colleges and Universities: Committee on Health, Education, Labor, and Pensions was discharged from further consideration of S. Res. 221, recognizing National Historically Black Colleges and Universities and the importance and accomplishments of historically Black colleges and universities, and the resolution was then agreed to. **(See Book II.)**

Recognizing Gold Medal Recipients: Committee on Governmental Affairs was discharged from further consideration of S. Res. 400, recognizing the 2004 Congressional Awards Gold Medal Recipients, and the resolution was then agreed to. **(See Book II.)**

Service Activities to Assist Seniors: Committee on the Judiciary was discharged from further consideration of S. Res. 409, encouraging increased involvement in service activities to assist senior citizens, and the resolution was then agreed to. **(See Book II.)**

National Purple Heart Recognition Day: Committee on Armed Services was discharged from further consideration of S. Con. Res. 112, supporting the goals and ideals of National Purple Heart Recognition Day, and the resolution was then agreed to. **(See Book II.)**

Honoring WWII Army Motor Transport Brigade: Committee on Armed Services was discharged from further consideration of H. Con. Res. 439, honoring the members of the Army Motor Transport Brigade who during World War II served in the trucking operation known as the Red Ball Express

for their service and contribution to the Allied advance following the D-Day invasion of Normandy, France, and the resolution was then agreed to.

(See Book II.)

Adjournment Resolution: Senate agreed to H. Con. Res. 479, providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

(See Book II.)

Tamper-Resistant Entry/Exit Documents: Senate passed H.R. 4417, to modify certain deadlines pertaining to machine-readable, tamper-resistant entry and exit documents. **(See Book II.)**

Department of Defense Appropriations—Conference Report: By a unanimous vote of 96 yeas (Vote No. 163), Senate agreed to the conference report to accompany H.R. 4613, making appropriations for the Department of Defense for the fiscal year ending September 30, 2005.

Pages S8614–16 (continued in Book II)

Coast Guard and Maritime Transportation—Conference Report: Senate agreed to the conference report to accompany H.R. 2443, to authorize appropriations for fiscal years 2004 and 2005 for the United States Coast Guard, clearing the measure for the President. **(See Book II.)**

Signing Authority Agreement: A unanimous-consent agreement was reached providing that during this adjournment of the Senate, the Majority Leader, Assistant Majority Leader, and Senator Warner, be authorized to sign duly enrolled bills or joint resolutions. **(See Book II.)**

Authority for Committees—Agreement: A unanimous-consent agreement was reached providing that notwithstanding the Senate's adjournment, all committees be authorized to file legislative and executive reports of the Senate on Wednesday, August 25, 2004, from 10 a.m. to 12 noon. **(See Book II.)**

Appointment Authority—Agreement: A unanimous-consent agreement was reached providing that notwithstanding the adjournment of the Senate, the President of the Senate, the President pro tempore, and the Majority and Democratic Leaders be authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

(See Book II.)

Nomination: Senate continued consideration of the nomination of Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

Pages S8585–93

During consideration of this nomination today, Senate also took the following action:

By 52 yeas to 46 nays (Vote No. 160), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the motion to close further debate on the nomination.

Pages S8592–93

Nomination: Senate continued consideration of the nomination of Richard A. Griffin, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

Pages S8593–95

During consideration of this nomination today, Senate also took the following action:

By 54 yeas to 44 nays (Vote No. 161), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the motion to close further debate on the nomination.

Page S8595

Nomination: Senate continued consideration of the nomination of David W. McKeague, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

Page S8595

During consideration of this nomination today, Senate also took the following action:

By 53 yeas to 44 nays (Vote No. 162), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the motion to close further debate on the nomination.

Page S8595

Nomination—Agreement: A unanimous-consent agreement was reached providing for consideration of the nominations of Virginia Maria Hernandez Covington, to be United States District Judge for the Middle District of Florida, and Michael H. Schneider, Sr., to be United States District Judge for the Eastern District of Texas, at 5 p.m., on Tuesday, September 7, 2004, and that the time until 5:30 p.m. be equally divided between the Chairman and Ranking Member of the Committee on the Judiciary; after which Senate will vote on confirmation of the nominations respectively; following which, Senate will consider and vote on the nomination of Michael H. Watson, to be United States District Judge for the Southern District of Ohio. **(See Book II.)**

Nominations—Agreement: A unanimous-consent agreement was reached providing that all nominations remain in status quo, notwithstanding the adjournment of the Senate, and the provisions of rule XXXI, Paragraph 6, of the Standing Rules of the Senate, with certain exceptions. **(See Book II.)**

Appointments:

Ticket to Work and Work Incentives Advisory Panel: The Chair, on behalf of the Majority Leader, after consultation with the Ranking Member of the

Senate Committee on Finance, pursuant to Public Law 106–170, announced the appointment of the following individual to serve as a member of the Ticket to Work and Work Incentives Advisory Panel: Thomas P. Golden of Tennessee. **(See Book II.)**

Nominations Confirmed: Senate confirmed the following nominations:

Charles L. Kolbe, of Iowa, to be a Member of the Internal Revenue Service Oversight Board for the remainder of the term expiring September 14, 2004.

Jerald S. Paul, of Florida, to be Principal Deputy Administrator, National Nuclear Security Administration. (New Position)

Tina Westby Jonas, of Virginia, to be Under Secretary of Defense (Comptroller).

David M. Stone, of Virginia, to be an Assistant Secretary of Homeland Security. (New Position)

Larry C. Kindsvater, of Virginia, to be Deputy Director of Central Intelligence for Community Management.

John O. Colvin, of Virginia, to be a Judge of the United States Tax Court for a term of fifteen years. (Reappointment)

Captain Samuel P. De Bow, Jr., NOAA for appointment to the grade of Rear Admiral (O–8), while serving in a position of importance and responsibility as Director, NOAA Corps and Director, Office of Marine and Aviation Operations, National Oceanic and Atmospheric Administration, under the provisions of Title 33, United States Code, Section 3028(d)(1).

Captain Richard R. Behn, NOAA for appointment to the grade of Rear Admiral (O–7), while serving in a position of importance and responsibility as Director, Marine and Aviation Operations Centers, National Oceanic and Atmospheric Administration, under the provisions of Title 33, United States Code, Section 3028(d)(1).

John Ripin Miller, of Washington, to be Director of the Office to Monitor and Combat Trafficking, with the rank of Ambassador at Large. (Prior to this action, Committee on Foreign Relations was discharged from further consideration.)

Valerie Lynn Baldwin, of Kansas, to be an Assistant Secretary of the Army.

2 Air Force nominations in the rank of general.

9 Army nominations in the rank of general.

3 Coast Guard nominations in the rank of admiral.

9 Marine Corps nominations in the rank of general.

26 Navy nominations in the rank of admiral.

Routine lists in the Air Force, Army, Coast Guard, National Oceanic and Atmospheric Administration, Navy. **(See Book II.)**

Nominations Received: Senate received the following nominations:

Sharon Brown-Hruska, of Virginia, to be a Commissioner of the Commodity Futures Trading Commission for the term expiring April 13, 2009. (Reappointment)

James S. Simpson, of New York, to be a Member of the Advisory Board of the Saint Lawrence Seaway Development Corporation.

Karen Alderman Harbert, of the District of Columbia, to be an Assistant Secretary of Energy (International Affairs and Domestic Policy).

Hector E. Morales, of Texas, to be United States Executive Director of the Inter-American Development Bank for a term of three years.

Alan Greenspan, of New York, to be United States Alternate Governor of the International Monetary Fund for a term of five years. (Reappointment)

Christopher A. Boyko, of Ohio, to be United States District Judge for the Northern District of Ohio.

Lisa Godbey Wood, of Georgia, to be United States Attorney for the Southern District of Georgia for the term of four years.

Richard B. Roper III, of Texas, to be United States Attorney for the Northern District of Texas for the term of four years.

Gregory Franklin Jenner, of Oregon, to be an Assistant Secretary of the Treasury.

Yousif B. Ghafari, of Michigan, to be an Alternate Representative of the United States of America to the Fifty-ninth Session of the General Assembly of the United Nations.

Jane Dee Hull, of Arizona, to be a Representative of the United States of America to the Fifty-ninth Session of the General Assembly of the United Nations.

John S. Shaw, of the District of Columbia, to be an Assistant Secretary of Energy (Environment, Safety and Health).

Anna Escobedo Cabral, of Virginia, to be Treasurer of the United States.

Routine lists in the Air Force. **(See Book II.)**

Nominations Returned to the President: The following nominations were returned to the President failing of confirmation under Senate rule XXXI at the time of the adjournment of the 108th Congress:

Deborah P. Majoras, of Virginia, to be a Federal Trade Commissioner for the unexpired term of seven years from September 26, 2001; and

Jon D. Leibowitz, of Maryland, to be a Federal Trade Commissioner for a term of seven years from September 26, 2003. **(See Book II.)**

Messages From the House: **(See Book II.)**

Measures Referred: **(See Book II.)**

Measures Placed on Calendar: (See Book II.)

Executive Communications: (See Book II.)

Petitions and Memorials: (See Book II.)

Executive Reports of Committees: (See Book II.)

Additional Cosponsors: (See Book II.)

Statements on Introduced Bills/Resolutions: (See Book II.)

Additional Statements: (See Book II.)

Amendments Submitted: (See Book II.)

Notices of Hearings/Meetings: (See Book II.)

Authority for Committees to Meet: (See Book II.)

Privilege of the Floor: (See Book II.)

Record Votes: Four record votes were taken today. (Total—163)

Pages S8592–93, S8595 (continued in Book II)

Adjournment: Senate met at 9:30 a.m., and, in accordance with the provisions of H. Con. Res. 479, adjourned at 11:46 p.m., until 12 noon, on Tuesday, September 7, 2004. (For Senate's program, see the remarks of the Majority Leader in Book II of today's Record.)

Committee Meetings

(Committees not listed did not meet)

APPALACHIAN COUNCIL/WORKING FOR AMERICA INSTITUTE

Committee on Appropriations: Subcommittee on Labor, Health and Human Services, Education and Related Agencies concluded a hearing to examine contract renewal issues relative to the Appalachian Council and future funding issues relative to the Working for America Institute, focusing on vocational training, job placement and career transition services to Job Corps students and graduates, after receiving testimony from Thomas M. Dowd, Deputy Assistant Secretary of Labor for Employment and Training Administration; Mayor Bobby Baker, Batesville, Mississippi; Richard C. Trigg, Job Corps, and Nancy Mills, Working for America Institute, both of Washington, D.C.; Jim Bowen, West Virginia AFL–CIO, Gary Darlington and Herb Mabry, both of the Appalachian Council, all of Charleston, West Virginia; Bill George, Pennsylvania AFL–CIO, Harrisburg; and William Burga, Ohio AFL–CIO, Columbus.

ARMY INSPECTOR GENERAL REPORT

Committee on Armed Services: Committee concluded a hearing to examine the Department of the Army Inspector General Report on detention operation doctrine and training, after receiving testimony from Les Brownlee, Acting Secretary of the Army; General Peter J. Schoomaker, USA, Chief of Staff of the Army; Lieutenant General Paul T. Mikolashek, USA, Inspector General of the Army; and Lieutenant General Keith B. Alexander, USA, Deputy Chief of Staff, G–2.

SEC PROPOSED RULEMAKING

Committee on Banking, Housing, and Urban Affairs: Committee concluded a hearing to examine the proposed Regulation NMS (National Market System) relative to trade-throughs, intermarket access, subpenny pricing, and market data, and market structure developments, after receiving testimony from Davi M. D'Agostino, Director, Financial Markets and Community Investments, Government Accountability Office; David Colker, National Stock Exchange, Chicago, Illinois; Kevin Cronin, AIM Investments, Houston, Texas; Scott DeSano, Fidelity Investments, Boston, Massachusetts; Phylis M. Esposito, Ameritrade Holding Corporation, Omaha, Nebraska; Charles Leven, AARP, Washington, D.C.; and Bernard L. Madoff, Bernard L. Madoff Investment Securities, Robert H. McCooey Jr., Griswold Company, Inc., Kim Bang, Bloomberg Tradebook, LLC, Robert B. Fagenson, Van der Moolen Specialists, John C. Giesea, Security Traders Association, all of New York, New York.

BUSINESS MEETING

Committee on Commerce, Science, and Transportation: Committee ordered favorably reported the following business items:

S. 2295, to authorize appropriations for the Homeland Security Department's Directorate of Science and Technology, establish a program for the use of advanced technology to meet homeland security needs;

H.R. 2608, to reauthorize the National Earthquake Hazards Reduction Program;

S. 2603, to amend section 227 of the Communications Act of 1934 (47 U.S.C. 227) relating to the prohibition on junk fax transmissions;

S. 2644, to amend the Communications Act of 1934 with respect to the carriage of direct broadcast satellite television signals by satellite carriers to consumers in rural areas, with an amendment in the nature of a substitute;

S. 2281, to provide a clear and unambiguous structure for the jurisdictional and regulatory treatment for the offering or provision of voice-over-Internet-protocol applications, with an amendment in the nature of a substitute;

S. 2505, to implement the recommendations of the Federal Communications Commission report to

the Congress regarding low power FM service, with an amendment;

S. 2645, to amend the Communications Act of 1934 to authorize appropriations for the Corporation for Public Broadcasting;

S. 2488, to establish a program within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety, in coordination with non-Federal entities;

S. 2280, to establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration; and

The nominations of David M. Stone, of Virginia, to be an Assistant Secretary of Homeland Security (Transportation Security Administration), Albert A. Frink, Jr., of California, to be Assistant Secretary of Commerce for Legislative and Intergovernmental Affairs, Brett T. Palmer, of New York, to be an Assistant Secretary of Commerce, Benjamin H. Wu, of Maryland, to be Assistant Secretary of Commerce for Technology Policy, Scott Kevin Walker, of Wisconsin, to be a Member of the Advisory Board of the Saint Lawrence Seaway Development Corporation, Enrique J. Sosa, of Florida, to be a Member of the Reform Board (Amtrak), Captain Richard R. Behn, NOAA, for appointment to the grade of Rear Admiral (O–7), while serving in a position of importance and responsibility as Director, Marine and Aviation Operations Centers, National Oceanic and Atmospheric Administration, and Captain Samuel P. De Bow, Jr., NOAA, for appointment to the grade of Rear Admiral (O–8), while serving in a position of importance and responsibility as Director, NOAA Corps and Director, Office of Marine and Aviation Operations, National Oceanic and Atmospheric Administration, and sundry nominations for promotion in the National Oceanic and Atmospheric Administration and the U.S. Coast Guard.

SATURN

Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine the Cassini-Huygens mission to Saturn, focusing on the planet's rings, and its moon Titan, after receiving testimony from Orlando Figueroa, Solar System Exploration Division Director, Office of Space Science, and Denis Bogan, Scientist, and Mark Dahl, Executive, both of the Cassini Program, all of the National Aeronautics and Space Administration.

NATIONAL PARKS AIR TOUR MANAGEMENT ACT

Committee on Energy and Natural Resources: Subcommittee on National Parks concluded an oversight hearing to examine the implementation of the National Parks Air Tour Management Act of 2000 (Title VIII, Public Law 106–181), after receiving testimony from William C. Withycombe, Regional Administrator (Western Pacific Region), Federal Aviation Administration, Department of Transportation; Paul Hoffman, Deputy Assistant Secretary of the Interior for Fish and Wildlife and Parks; Roy Resavage, Helicopter Association International, Alexandria, Virginia; David J. Chevalier, Blue Hawaiian Helicopters, Kahului, Hawaii; Charles W. Maynard, Friends of Great Smoky Mountains National Park, Jonesboro, Tennessee; and Don Barger, National Parks Conservation Association (Southeast Region), Knoxville, Tennessee.

HIGHER EDUCATION FINANCING

Committee on Finance: Committee held a hearing to examine the role of higher education financing in strengthening United States competitiveness in a global economy, receiving testimony from Randall Edwards, Oregon State Treasurer, Salem; Susan Dynarski, Harvard University Kennedy School of Government, Cambridge, Massachusetts; Peter B. Corr, Pfizer, New York, New York; Watson Scott Swail, Education Policy Institute, Stafford, Virginia; Robert Paxton, Iowa Central Community College, Fort Dodge; David Forbes, University of Montana School of Pharmacy, Missoula; Chuck Toth, Merrill Lynch and Company, Princeton, New Jersey; and James Fadule, UPromise Investments, Needham, Massachusetts.

Hearing recessed subject to the call.

IRAQ—POST-TRANSITION

Committee on Foreign Relations: Committee concluded a hearing to examine the current situation in Iraq post-transition, focusing on U.S. activities in Iraq since the transfer of sovereignty to the new Interim Iraqi Government, including increasing security in Iraq, improving the economy, affirming the place of Iraq as a member of the international community, and laying the groundwork for national elections in Iraq, after receiving testimony from Ronald L. Schlicher, Iraq Coordinator, Bureau of Near Eastern Affairs, Department of State; and David C. Gompert, National Defense University Center for Technology and National Security Policy, Washington, D.C.

INTERNET PHARMACIES

Committee on Governmental Affairs: Permanent Subcommittee on Investigations resumed hearings to examine the extent to which consumers can purchase pharmaceuticals over the Internet without a medical prescription, the importation of pharmaceuticals into the United States, and whether pharmaceuticals from

foreign sources are counterfeit, expired, unsafe, or illegitimate, focusing on the extent to which U.S. consumers can purchase dangerous and often addictive controlled substances from Internet pharmacy websites and the procedures utilized by the Bureau of Customs and Border Protection, the Drug Enforcement Administration, the United States Postal Service, and the Food and Drug Administration, as well as the private sector to address these issues, after receiving testimony from Richard M. Stana, Director, Homeland Security and Justice Issues, Government Accountability Office; Karen P. Tandy, Administrator, Drug Enforcement Administration, Department of Justice; Lee R. Heath, Chief Postal Inspector, United States Postal Service; Jayson P. Ahern, Assistant Commissioner, Office of Field Operations, Bureau of Customs and Border Protection, Department of Homeland Security; John M. Taylor, III, Associate Commissioner for Regulatory Affairs, and William K. Hubbard, Associate Commissioner for Policy and Planning, both of the Food and Drug Administration, Department of Health and Human Services; John Scheibel, Yahoo! Inc., Washington, D.C.; Sheryl Sandberg, Google, Inc., Mountain View, California; Joshua L. Peirez, Mastercard International Incorporated, Purchase, New York; Steve Ruwe, Visa U.S.A. Inc., Foster City, California; Robert A. Bryden, FedEx Corporation, Memphis, Tennessee; and Daniel J. Silva, United Parcel Service, Atlanta, Georgia.

NOMINATION

Committee on Governmental Affairs: Committee concluded a hearing examine the nomination of Allen Weinstein, of Maryland, to be Archivist of the United States, National Archives and Records Administration, after the nominee, who was introduced by Senator Lugar, testified and answered questions in his own behalf.

MILITARY FAMILIES

Committee on Health, Education, Labor, and Pensions: On Wednesday, July 21, Subcommittee on Children and Families held a joint hearing with the Committee on Armed Services' Subcommittee on Personnel to examine how states have responded to military families' unique challenges during military deployments and what the Federal Government can do to support states in this important work, receiving testimony from Charles S. Abell, Principal Deputy Under Secretary of Defense for Personnel and Readiness; Florida Governor John Ellis Bush, Tallahassee; Indiana Governor Joseph E. Kernan, Indianapolis; Nolan Jones, National Governors Association, Washington, D.C.; General Dennis J. Reimer, USA, (Ret.), Edmond, Oklahoma, on behalf of the Military Child Education Coalition; and Hollister K. Petraeus, Fort Belvoir, Virginia.

Hearing recessed subject to the call.

TERRORISM PREPAREDNESS

Committee on Health, Education, Labor, and Pensions: Committee concluded a hearing to examine preparations for possible future terrorist attacks, focusing on a concept of operations plan, tailored to each National Special Security Event, which establishes a framework for managing federal public health and medical assets and coordinating with state and local governments in an emergency, after receiving testimony from Tommy G. Thompson, Secretary of Health and Human Services; Eric Tolbert, Director, Response Division, Federal Emergency Management Agency, and Andrew T. Mitchell, Deputy Director, Office for Domestic Preparedness, both of the Department of Homeland Security; Susan C. Waltman, Greater New York Hospital Association, New York; Michael Sellitto, District of Columbia Fire and Emergency Medical Services Department, Washington, D.C.; Ricardo Martinez, Medical Sports Group, Atlanta, Georgia, on behalf of the National Football League; and George E. Thibault, Partners Healthcare, Boston, Massachusetts.

BUSINESS MEETING

Committee on the Judiciary: Committee began mark up of S. 1700, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, but did not take final action thereon, and recessed subject to call.

COPYRIGHT PROTECTION

Committee on the Judiciary: Committee concluded a hearing to examine S. 2560, to amend chapter 5 of title 17, United States Code, relating to inducement of copyright infringement, after receiving testimony from Marybeth Peters, Register of Copyrights, U.S. Copyright Office, Library of Congress; Gary J. Shapiro, Consumer Electronics Association, Arlington, Virginia; Robert Holleyman, Business Software Alliance, Kevin S. McGuiness, NetCoalition, and Mitch Bainwol, Recording Industry Association of America, Washington, D.C.; and Andrew C. Greenberg, Institute of Electrical and Electronics Engineers-USA, New York, New York.

INTELLIGENCE

Select Committee on Intelligence: Committee held closed hearings on intelligence matters, receiving testimony from officials of the intelligence community.

Committee recessed subject to call.

House of Representatives

Chamber Action

Measures Introduced: Measures introduced today will appear in Book II.

Additional Cosponsors: **(See Book II.)**

Reports Filed: Reports were filed today as follows:

H. Res. 699, directing the Secretary of State to transmit to the House of Representatives documents in the possession of the Secretary of State relating to the treatment of prisoners and detainees in Iraq, Afghanistan, and Guantanamo Bay, amended, adversely (H. Rept. 108–631);

H. Res. 689, a resolution of inquiry requesting the President and directing certain other Federal officials to transmit to the House of Representatives not later than 14 days after the date of the adoption of this resolution documents in the possession of the President and those officials relating to the treatment of prisoners or detainees in Iraq, Afghanistan, or Guantanamo Bay, amended, adversely (H. Rept. 108–632);

Report on the Revised Suballocation of Budget Allocations for Fiscal Year 2005 (H. Rept. 108–633); and

H.R. 4501, to extend the statutory license for secondary transmissions under section 119 of title 17, United States Code, and to amend the Communications Act of 1934 with respect to such transmissions (H. Rept. 108–634). **(See Book II.)**

Marriage Protection Act of 2003: The House passed H.R. 3313, to amend title 28, United States Code, to limit Federal court jurisdiction over questions under the Defense of Marriage Act, by a yea-and-nay vote of 233 yeas to 194 nays, Roll No. 410. **Pages H6580–H6613**

Agreed to the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. **(See Book II.)**

H. Res. 734, the rule providing for consideration of the bill was agreed to by a voice vote. **Pages H6562–69**

United States-Morocco Free Trade Implementation Act: The House passed H.R. 4842, to implement the United States-Morocco Free Trade Agreement, by a yea-and-nay vote of 323 yeas to 99 nays, Roll No. 413. **(See Book II.)**

Agreed to extend time for debate on the bill. **(See Book II.)**

H. Res. 738, the rule providing for consideration of the bill was agreed to by a yea-and-nay vote of 345 yeas to 76 nays, Roll No. 407. **Pages H6569–79**

Department of Defense Appropriations Act for FY05—Conference Report: The House agreed to the conference report to accompany H.R. 4613, making appropriations for the Department of Defense for the fiscal year ending September 30, 2005, by a yea-and-nay vote of 410 yeas to 12 nays, Roll No. 418. **(See Book II.)**

H. Res. 735, the rule providing for consideration of the conference report was agreed to by a voice vote. **(See Book II.)**

Military Construction Appropriations Act for FY05: The House passed H.R. 4837, making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, by a yea-and-nay vote of 420 yeas to 1 nay, Roll No. 417. The bill was also considered on Wednesday, July 21. **(See Book II.)**

A point of order was sustained against the Obey motion to recommit the bill back to the Committee on Appropriations with instructions to report it back to the House forthwith with an amendment. **(See Book II.)**

Rejected the Obey motion to recommit the bill back to the Committee on Appropriations with instructions to report it back to the House promptly with an amendment, by a yea-and-nay vote of 201 yeas to 217 nays, Roll No. 416. **(See Book II.)**

Point of Order sustained against:

Section 129 of the bill regarding an increase in funds that is not subject to scoring for purposes of the Congressional Budget and Impoundment Control Act of 1974. **(See Book II.)**

Agreed to H. Res.732, the rule providing for consideration of the bill was agreed to on Wednesday, July 21. **(See Book II.)**

Suspensions: The House agreed to suspend the rules and pass the following measures that were previously debated:

Veterans' Compensation Cost-of-Living Adjustment Act of 2004: Debated on Tuesday, July 20: H.R. 4175, amended, to increase, effective as of December 1, 2004, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, by a ⅔ yea-and-nay vote of 421 yeas with none voting "nay", Roll No. 408; **Page H6579**

Sense of the House regarding the postponement of Presidential elections due to terrorist actions: Debated on Tuesday, July 20: H. Res. 728, expressing the sense of the House of Representatives that the actions of terrorists will never cause the date of any Presidential election to be postponed and that no single individual or agency should be given the authority to postpone the date of a Presidential election, by a ⅔ yea-and-nay vote of 419 yeas to 2 nays, Roll No. 409; **Pages H6579–80**

Commercial Aviation MANPADS Defense Act of 2004: Debated on Wednesday, July 21: H.R. 4056, amended, to encourage the establishment of both long-term and short-term programs to address the threat of man-portable air defense systems (MANPADS) to commercial aviation, by a ⅔ yea-and-nay vote of 423 yeas with none voting "nay", Roll No. 411; **Page H6613**

Urging the Government of the Republic of Belarus to ensure a democratic election process for its elections in the Fall of 2004: Debated on Wednesday, July 21: H. Res. 652, urging the Government of the Republic of Belarus to ensure a democratic, transparent, and fair election process for its parliamentary elections in the fall of 2004, by a ⅔ yea-and-nay vote of 421 yeas with none voting "nay", Roll No. 412; **Pages H6613–14**

Celebrating 10 years of majority rule in the Republic of South Africa: Debated on Wednesday, July 21: H. Con. Res. 436, amended, celebrating 10 years of majority rule in the Republic of South Africa and recognizing the momentous social and economic achievements of South Africa since the institution of democracy in that country, by a ⅔ yea-and-nay vote of 422 yeas with none voting "nay", Roll No. 414; **(See Book II.)**

Recognizing the importance in history of the 150th anniversary of the establishment of diplomatic relations between the U.S. and Japan: Debated on Wednesday, July 21: H. Con. Res. 418, recognizing the importance in history of the 150th anniversary of the establishment of diplomatic relations between the United States and Japan, by a ⅔ yea-and-nay vote of 416 yeas with none voting "nay", Roll No. 415; **(See Book II.)**

Condemning the attack on the AMIA Jewish Community Center in Buenos Aires, Argentina in July 1994: Debated on Wednesday, July 21: H. Con. Res. 469, condemning the attack on the AMIA Jewish Community Center in Buenos Aires, Argentina, in July 1994, by a ⅔ yea-and-nay vote of 422 yeas with none voting "nay", Roll No. 419; and **(See Book II.)**

Declaring genocide in Darfur, Sudan: Debated on Wednesday, July 21: H. Con. Res. 467, amended, declaring genocide in Darfur, Sudan, by a ⅔ yea-and-nay vote of 422 yeas with none voting "nay", Roll No. 420. **(See Book II.)**

Late Report: Agreed that the Committee on Science have until 5 p.m. on Friday, August 27 to file a report on H.R. 3551, to authorize appropriations to the Department of Transportation for surface transportation research and development. **(See Book II.)**

Tax Relief, Simplification, and Equity Act of 2003—Motion to Instruct Conferees: The House rejected the Stenholm motion to instruct conferees on H.R. 1308, to amend the Internal Revenue Code of 1986 to accelerate the increase in the refundability of the child tax credit, by a yea-and-nay vote of 198 yeas to 222 nays, Roll No. 421. The motion was also considered on Tuesday, July 20. **(See Book II.)**

Committee Election: The House agreed to H. Res. 741, electing Representative Butterfield to the Committees on Agriculture and Small Business. **(See Book II.)**

Summer District Work Period: The House agreed to H. Con. Res. 479, providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate. **(See Book II.)**

Expressing the condolences of the House of Representatives to the family and friends of Mattie Stepanek: The House agreed to H. Res. 695, expressing the condolences of the House of Representatives to the family and friends of Mattie Stepanek on his passing, and honoring the life of Mattie Stepanek for his braveness, generosity of spirit, and efforts to raise awareness of muscular dystrophy. **(See Book II.)**

Member Resignation: Read a letter from Representative Bereuter wherein he announced his resignation from the House of Representatives, effective August 31, 2004. **(See Book II.)**

Recess: The House recessed at 9:35 p.m. and reconvened at 10:25 p.m. **(See Book II.)**

Extending programs funded under the Highway Trust Fund: The House agreed to discharge from the Committees on Transportation and Infrastructure, Ways and Means, Science, and Resources and pass by unanimous consent H.R. 4916, to provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century. **(See Book II.)**

Calendar Wednesday: Agreed to dispense with the Calendar Wednesday business of Wednesday, September 8. **(See Book II.)**

Meeting Hour: Agreed that when the House adjourns today, it adjourn to meet at 4 p.m. on Monday, July 26, 2004, unless it sooner has received a message from the Senate transmitting its concurrence in H. Con. Res. 479, in which case the House shall stand adjourned pursuant to that concurrent resolution. **(See Book II.)**

Speaker Pro Tempore: Read a letter from the Speaker wherein he appointed Representative Wolf, or if not available to perform this duty, Representative Tom Davis of Virginia to act as Speaker pro tempore to sign enrolled bills and joint resolutions through September 7, 2004. **(See Book II.)**

Preserving the ability of the FHA to insure mortgages under the National Housing Act: The House agreed to take from the Speaker's table and pass S. 2712, to preserve the ability of the Federal Housing Administration to insure mortgages under sections 238 and 519 of the National Housing Act. **(See Book II.)**

Senate Message: Message received from the Senate today will appear in Book II.

Senate Referral: S. 2249 was referred to the Committee on Financial Services; S. Con. Res. 125 was held at the desk; S. Con. Res. 130 was referred to the Committee on the Judiciary; and S. 2724 was referred to the Committee on Small Business. **(See Book II.)**

Quorum Calls—Votes: 15 yea-and-nay votes developed during the proceedings of today and appear on pages H6578–79, H6579, H6579–80, H6612, H6613, H6613–14 (continued in Book II). There were no quorum calls.

Adjournment: The House met at 10 a.m. and at 11:57 p.m., pursuant to the provisions of H. Con. Res. 479, stands adjourned until 4 p.m. on Monday, July 26, unless it sooner has received a message from the Senate transmitting its adoption of the concurrent resolution, in which case the House shall stand adjourned until 2 p.m. on Tuesday, September 7, 2004.

Committee Meetings

FOOD PROMOTION ACT

Committee on Agriculture: Ordered reported H.R. 4576, Food Promotion Act of 2004.

USDA'S NATIONAL ANIMAL IDENTIFICATION SYSTEM

Committee on Agriculture: Subcommittee on Livestock and Horticulture held a hearing to review the USDA's National Animal Identification System. Testimony was heard from John Clifford, Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, USDA; and public witnesses.

VA, HUD AND INDEPENDENT AGENCIES AND THE TRANSPORTATION, TREASURY AND INDEPENDENT AGENCIES APPROPRIATIONS FISCAL YEAR 2005

Committee on Appropriations: Ordered reported the following appropriations for fiscal year 2005: VA, HUD and Independent Agencies; and Transportation, Treasury and Independent Agencies.

ELECTROMAGNETIC PULSE ATTACK

Committee on Armed Services: Held a hearing on the Report of the Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack. Testimony was heard from William R. Graham, Chairman, Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack.

SPACE CADRE/SPACE PROFESSIONALS

Committee on Armed Services: Subcommittee on Strategic Forces held a hearing on Space Cadre/Space Professionals. Testimony was heard from the following officials of the Department of Defense: Peter B. Teets, Under Secretary, Air Force, Space; GEN Lance Lord, USAF, Commander, Air Force Space Command; LTG Larry J. Dodgen, USA, Commander, Space and Missile Defense Command; and RADM James McArthur, USN, Commander, Navy Network Warfare Command; and public witnesses.

TAX CODE'S IMPACT ON REVENUE PROJECTIONS AND THE FEDERAL BUDGET

Committee on the Budget: Held a hearing on the U.S. Tax Code's Impact on Revenue Projections and the Federal Budget. Testimony was heard from Douglas J. Holtz-Eakin, Director, CBO; and public witnesses.

GENETIC NON-DISCRIMINATION

Committee on Education and the Workforce: Subcommittee on Employer-Employee Relations held a hearing entitled "Genetic Non-Discrimination: Examining the Implications for Workers and Employers." Testimony was heard from public witnesses.

DC—SAFE DRINKING WATER

Committee on Energy and Commerce: Subcommittee on Environment and Hazardous Materials held a hearing entitled "Tapped Out? Lead in the District of Columbia and the Providing of Safe Drinking Water." Testimony was heard from the following officials of the EPA: Benjamin Grumbles, Acting Assistant Administrator, Water; and Don Welsh, Administrator, Region III; John Stephenson, Director, Natural Resources and Environment Team, GAO; Jerry N. Johnson, Executive Director, Water and Sewer Authority, District of Columbia; and public witnesses.

HEALTH INFORMATION TECHNOLOGY

Committee on Energy and Commerce: Subcommittee on Health held a hearing entitled "Health Information Technology: Improving Quality and Value of Patient Care." Testimony was heard from Tommy Thompson, Secretary of Health and Human Services; Robert M. Kolodner, M.D., Acting Chief, Health Informatics Officer and Deputy Chief Information Officer, Health, Department of Veterans Affairs; and public witnesses.

E-RATE PROGRAM INVESTIGATION

Committee on Energy and Commerce: Subcommittee on Oversight and Investigations held a hearing entitled "Problems with the E-rate Program: Waste, Fraud, and Abuse Concerns in the Wiring of Our Nation's Schools to the Internet." Testimony was heard from William Maher, Chief, Wireline Competition Bureau, FCC; and public witnesses.

In refusing to give testimony at the hearing, the following individuals: Thomas J. Burger, President and CEO, NEC Unified Solutions, Inc.; William Holman, former Vice President of Sales, NEC Business Network Solutions; and George Marchelos, former E-rate Consultant and Salesperson, Video Network Communications, Inc., invoked Fifth Amendments privileges.

MARKET AND INVESTOR RECOVERY

Committee on Financial Services: Held a hearing entitled "Sarbanes-Oxley: Two Years of Market and Investor Recovery." Testimony was heard from public witnesses.

IRAQ—CONTRACTING AND REBUILDING

Committee on Government Reform: Continued hearings entitled "Contracting and the Rebuilding of Iraq: Part IV." Testimony was heard from public witnesses.

DRUGS AND SECURITY IN POST–9/11 WORLD

Committee on Government Reform: Subcommittee on Criminal Justice, Drug Policy and Human Resources and the Subcommittee on Infrastructure and Border Security of the Select Committee on Homeland Security held a joint hearing entitled "Drugs and Security in a Post-9/11 World: Coordinating the Counternarcotics Mission at the Department of Homeland Security." Testimony was heard from the following officials of the Department of Homeland Security: Robert Bonner, Commissioner, U.S. Customs and Border Protection; ADM Thomas H. Collins, USCG, Commandant, U.S. Coast Guard; Michael J. Garcia, Assistant Secretary, U.S. Immigration and Customs Enforcement; and Roger Mackin, Counternarcotics Officer.

HORMONE REPLACEMENT THERAPY

Committee on Government Reform: Subcommittee on Human Rights and Wellness held a hearing entitled " Balancing Act: The Health Advantages of Naturally-Occurring Hormones in Hormone Replacement Therapy." Testimony was heard from Barbara Alving, M.D., Acting, Director, Heart, Lung, and Blood Institute, NIH, Department of Health and Human Services; and public witnesses

ESTABLISH—NATIONAL MUSEUM OF THE AMERICAN LATINO

Committee on House Administration: Held a hearing on H.R. 4863, To establish the Commission to Establish the National Museum of the American Latino to develop a plan of action for the establishment and maintenance within the Smithsonian Institution of the National Museum of the American Latino in Washington, DC. Testimony was heard from Representatives Ros-Lehtinen and Becerra; Lawrence M. Small, Secretary, Smithsonian Institution; and pubic witnesses.

DEMOCRATIC REPUBLIC OF CONGO PEACE ACCORDS

Committee on International Relations: Subcommittee on Africa held a hearing on The Democratic Republic of Congo Peace Accords: One Year Later. Testimony was heard from Constance Berry Newman, Assistant Secretary, Bureau of African Affairs, Department of State; and public witnesses.

MISCELLANEOUS MEASURES

Committee on Resources: Subcommittee on Forests and Forest Health held a hearing on the following bills: H.R. 822, Wild Sky Wilderness Act of 2003; H.R.

4806, Pine Springs Land Exchange Act; and H.R. 4838, Health Forest Youth Conservation Corps Act of 2004. Testimony was heard from Representative Larsen of Washington and Neugebauer; Mark Rey, Under Secretary, Natural Resources and Environment, USDA; and public witnesses.

SMALL BUSINESS LIABILITY REFORM

Committee on Small Business: Subcommittee on Regulatory Reform and Oversight held a hearing on Small Business Liability Reform. Testimony was heard from Representative Chabot; and public witnesses.

OVERSIGHT—EVERGLADES RESTORATION PLAN

Committee on Transportation and Infrastructure: Subcommittee on Water Resources and Environment held an oversight hearing on Comprehensive Everglades Restoration Plan—The First Major Projects. Testimony was heard from Representative Foley; COL Robert M. Carpenter, Commander, Jacksonville District, U.S. Army Corps of Engineers, Department of the Army; Ernest Barnett, Director, Ecosystem Projects, Department of Environmental Protection, State of Florida; and public witnesses.

VA-DoD COLLABORATION—CARE OF VETERANS

Committee on Veterans' Affairs: Held a hearing on the evolution of VA-DoD collaboration in research and amputee care for veterans of current and past conflicts, and needed reforms in VA blind rehabilitation services. Testimony was heard from Cynthia A. Bascetta, Director, Veterans' Health and Benefits Issues, GAO; the following officials of the Department of Veterans Affairs; Michael J. Kussman, M.D., Acting Deputy Under Secretary, Health; Mindy L. Aisen, M.D., Deputy Chief, Research and Development Officer; and Frederick Downs, Jr., Chief Consultant, Prosthetic and Sensory Aids Service Strategic Healthcare Group; the following officials of the Department of Defense: Brett P. Giroir, M.D., Deputy Director, Defense Sciences Office, Defense Advanced Research Projects Agency; LTC Paul Pasquina, M.D., USA, Chief, Physical Medicine and Rehabilitation, and Chuck Scoville, Program Manager, U.S. Amputee Patient Care, both with the Walter Reed Army Medical Center; representatives of veterans organizations; and public witnesses.

ELECTRONIC PRESCRIBING

Committee on Ways and Means: Subcommittee on Health held a hearing on Electronic Prescribing. Testimony was heard from public witnesses.

BRIEFING: INTELLIGENCE COMMUNITY TECHNOLOGICAL SUPERIORITY

Permanent Select Committee on Intelligence: Subcommittee on Technical and Tactical Intelligence met in executive session to receive a Briefing: Technological Superiority in the Intelligence Community. The Subcommittee was briefed by departmental witnesses.

BRIEFING: NATIONAL CONVENTIONS AND OLYMPICS THREATS

Permanent Select Committee on Intelligence: Subcommittee on Terrorism and Homeland Security met in executive session to receive a Briefing: Threats to the National Conventions and the Olympics. The Subcommittee was briefed by departmental witnesses.

BRIEFING: PORT SECURITY

Permanent Select Committee on Intelligence: Subcommittee on Terrorism and Homeland Security met in executive session to receive a Briefing: Port Security. The Subcommittee was briefed by departmental witnesses.

Joint Meetings

POSTPONEMENT OF ILLNESS

Joint Economic Committee: Committee concluded a hearing to examine long-term trends in the health status and health spending levels of elderly Americans, focusing on evidence regarding declining rates of chronic disability and assess the best opportunities for further health promotion, after receiving testimony from James Lubitz, Acting Chief, Aging and Chronic Diseases, Statistics Branch, National Center for Health Statistics, Centers for Disease Control and Prevention, Department of Health and Human Services; Kenneth G. Manton, Duke University Center for Demographic Studies, Durham, North Carolina; James F. Fries, Stanford University School of Medicine, Stanford, California; and Judith Feder, Georgetown University Public Policy Institute, Washington, D.C.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D781)*

S. 15, to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures. Signed on July 21, 2004. (Public Law 108–276)

H.R. 218, to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns. Signed on July 22, 2004. (Public Law 108–277)

COMMITTEE MEETINGS FOR FRIDAY, JULY 23, 2004

Senate

No meetings/hearings are scheduled.

House

Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, oversight hearing on Regulatory Aspects of Voice Over the Internet Protocol (VoIP), 10 a.m., 2141 Rayburn.

Permanent Select Committee on Intelligence, executive, to consider pending business, 1 p.m., and, executive, Briefing: Acting Director of Central Intelligence, 2 p.m., H–405 Capitol.

July 23, Subcommittee on Human Intelligence, Analysis and Counterintelligence, executive, Briefing: Counternarcotics: Mexico, 10 a.m., H–405 Capitol.

Next Meeting of the SENATE

12 noon, Tuesday, September 7

Senate Chamber

Program for Tuesday, September 7: After the transaction of morning business for statements only (not to extend beyond 5 p.m.), Senate will begin consideration of the nominations of Virginia Maria Hernandez Covington, to be United States District Judge for the Middle District of Florida, and Michael H. Schneider, Sr., to be United States District Judge for the Eastern District of Texas, following which Senate will vote on confirmation of the nominations respectively; following which, Senate will consider and vote on the nomination of Michael H. Watson, to be United States District Judge for the Southern District of Ohio.

Next Meeting of the HOUSE OF REPRESENTATIVES

2 p.m., Tuesday, September 7

House Chamber

Program for Tuesday, September 7: To be announced.

Extensions of Remarks, as inserted in this issue

HOUSE

(Senate and House proceedings for today will be continued in Book II.)

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