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Senate

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

PRAYER

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

Let us pray.

Eternal spirit, You have said that the truth will set us free. We thank You that Your freedom leads to harmony and not discord, to consensus and not conflict. Liberate us from deceptions and distortions that caricature reality and misrepresent facts.

Empower our Senators to find freedom in being as true to duty as the needle to the pole. Continue to teach them the fine art of conciliation and motivate them to continue to choose rational roads instead of emotional dead ends. Lift them above partisan rancor, and give them power to walk in Your light, to act in Your strength, to think in Your wisdom, to speak in Your truth, and to live in Your love. Inspire each of us to stand for right, even though the heavens fall.

We pray in the Name of Him who is the truth. Amen.

PLEDGE OF ALLEGIANCE

The Honorable LISA MURKOWSKI 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, May 24, 2005.

To the Senate:

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

TED STEVENS,
President pro tempore.

Ms. MURKOWSKI thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Madam President, this morning we will continue debate in executive session on the nomination of Priscilla Owen to be a U.S. Circuit judge for the Fifth Circuit, and today at noon we will have a cloture vote with respect to the Owen nomination. In light of the events of yesterday, I expect cloture will be invoked this afternoon. If that cloture vote is successful, it is my desire to proceed expeditiously to vote on that confirmation. Members have had the opportunity to speak for over 40 hours, and hopefully we will not need much time following cloture.

I am happy to yield to the Democratic leader. I have a brief statement commenting on the events of last night.

RECOGNITION OF THE MINORITY LEADER

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

CLOTURE VOTE

Mr. REID. Madam President, I think it would be better—I haven't had a chance to discuss this with the majority leader—to vitiate the vote on cloture and then set a time to complete the debate on Priscilla Owen. We would be willing to do that. It would move things along. I wanted the leader to know that. We would be happy to talk about schedule, how much time people need, and what we are going to do the rest of the week. We haven't had time to talk this morning.

Mr. FRIST. Madam President, we will talk over the course of the morning because over the next 5 days, with the memorandum of understanding, we would like to move ahead and address many of the judges. At the same time, we have the nomination of John Bolton, whom the Democratic leader and I have briefly discussed. I do want to be able to continue with the cloture vote that is now on the schedule for noon today. It is important to do so in part because of the events of yesterday, and I want to follow regular order. With that memorandum of understanding, which is important—it is not what the Democratic leader or I asked for—it is important that we see how it is going to be implemented, and the first step will be that vote today.

We do have a lot to do this week. I want to keep things organized efficiently and well and use time wisely.

Mr. REID. Madam President, if I could direct another question to the distinguished leader, it was my understanding of our conversation late last night that we were not going to move forward on more judges this period but move forward to other matters. Do you now feel differently?

Mr. FRIST. Well, I think we need to think how much we can do realistically this week. With that understanding and the backlog we have on judges, if we can move those expeditiously—and we put in a plan or process to do so—we should do just that. We have had

various offers from your side of the aisle on the Michigan judges and on Griffith, and now we have this memorandum of understanding for up-or-down votes on three other nominees we have been debating. Leadership to leadership, we ought to sit down and plan how we can deal with judges since we have waited a long time for these up-or-down votes and since offers have been made back and forth. In light of the understanding the 14 Senators came to, I think we should move expeditiously and address the judges who have been waiting a long time. At the same time, we have other very important business—John Bolton to be Ambassador to the U.N.—which we do need to address as well.

As I say that, I want to make an appeal to Senators. A lot has been said about many of the judges, and I don't believe we have to say it again. Whether it is on Priscilla Owen, who I am confident will get an up-or-down vote, or on to some of the other judges, I want to make sure everything gets said. But on a lot of these, we have had a lot of debate. I would like to sit down with the Democratic leader, in light of the events of yesterday, and plan out this week so it will be productive. We have a lot of other important business, such as an energy bill and a highway bill, that we need to also address.

THE MEMORANDUM OF UNDERSTANDING

Mr. FRIST. Madam President, I wish to briefly comment on the events of last night. The evening moved very quickly, and it did alter the course of what likely would have occurred over the course of today. Certain adjustments will be made and are being made, as we just heard in the colloquy between the Democratic leader and I, in terms of the schedule. Although I am not a party of the memorandum of understanding signed last night by 14 of our colleagues, I have had the opportunity to further review that agreement in more detail.

I do believe the memorandum of understanding makes modest progress in that three individuals will get up-or-down votes on the floor of the Senate. To me, it does stop far short of guaranteeing judicial nominees the fair up-or-down votes they deserve—other nominees, nominees in the future.

I say that and recognize that with civility and trust, which are two values I have tried to stress again and again, and with that memorandum of understanding being a starting point and the spirit in which it was generated, I believe we can successfully bring these nominees to the floor, after coming through the Judiciary Committee, debate them extensively, and ultimately bring them to a vote. I believe that is the spirit. It will be spun by the left and the right and conservatives and liberals in various ways. I did not sign off on the memorandum of understanding because it stops far short of the principle, but it does put us in a position to move forward expeditiously without delay, without filibuster, giving these nominees the votes they deserve and the courtesy of a vote. It is our responsibility to vote and give them that advice and consent through that up-or-down vote.

On the agreement, first, it does begin to break the partisan obstruction we have seen over the last 2 years. Thematically, it is important to get away from extreme partisanship. Parties are important, the clash of ideas is important, But where partisanship is injected into the system and brings advice and consent to a stop, it is wrong. I believe that is the spirit in which the memorandum of understanding, with seven Senators from both sides of the aisle, was written.

Indeed, Priscilla Owen will get an up-or-down vote later today. Janice Rogers Brown will get an up-or-down vote. William Pryor will get an up-or-down vote. They all will receive the courtesy and fairness of a vote.

Other qualified nominees who have been waiting deserve that same courtesy and fairness. Why just those three? Why exclude two others? Why be silent on others? That is where the agreement stops far short of the principle I have brought to the floor, a principle based on fairness.

Second, the agreement, if followed in good faith, will make filibusters in the future, including Supreme Court nominees, almost impossible. The words in that agreement of ''will not filibuster except under extraordinary circumstances,'' obviously, I am concerned about because if extraordinary circumstances are defined as they were in the last Congress, which I believe is wrong, on people such as Miguel Estrada, who came to this country as an immigrant from Honduras, not able to speak English very well, who with hard work worked his way to the top of his profession, arguing 15 cases in the Supreme Court, if that is extraordinary circumstances, then this agreement will mean very little. We have to wait and see. The agreement will have to be monitored. The implementation of the memorandum of understanding is critical.

Third, let me be clear: The constitutional option remains on the table. It remains an option. I will not hesitate to use it if necessary. It should be used as a last resort. Nobody wants to use the constitutional option, but it is the only response if there is a change in behavior as we saw in the last Congress that is extraordinary, which is something that I believe has been absolutely rejected by the memorandum of understanding in saying that we are not going to be filibustering as we did in the last Congress.

My goal is restoring the principle of fair up-or-down votes, the principle that governed this body for 214 years until the last Congress.

I will say that if the other side of the aisle acts in bad faith, if they resume that campaign of routine obstruction where one out of every three or four nominees coming from the President who make it through the Judiciary Committee, who make it to the Executive Calendar is filibustered, the constitutional option is going to come out again. I will bring it out. And once again, I will set a date to use it. If that is what it takes to move this body forward, we will do that once again.

The constitutional option is not a threat. It ought to be used as a response behavior which I believe is inappropriate to this body as we consider nominees. All the constitutional option does is it brings it to the floor. One hundred Senators can make the decision as to whether the fairness of up-or-down votes is a principle to which they agree.

I look at all of this today as having the opportunity to begin the execution of the memorandum of understanding, using regular order of business. The regular order is, as was set out several weeks ago, to debate Priscilla Owen extensively, exhaustively, which we have done, over 21 days of debate on the Senate floor on Priscilla Owen, and then bring it to closure. We had to file a cloture motion. We made an offer of 10, 15 hours, and that was turned down by the other side. So we filed a cloture petition, and we will have the cloture vote in regular order. Depending on the outcome, we will in all likelihood move to an up-or-down vote.

I expect this afternoon that we will confirm Priscilla Owen and, by the end of the week's process, Janice Rogers Brown, and William Pryor. I will work with the minority leader in terms of the best timing. I will work with the Judiciary Committee as well and other Senators to move forward expeditiously on other nominees.

We have had discussions and offers from the other side to move ahead with Tom Griffith, which I hope we can do shortly; offers on the Sixth Circuit nominees David McKeague, Susan Neilson, and Robert Griffin, all of whom deserve a vote on the floor of the Senate, an up-or-down vote. So all this has been a very significant, substantial debate.

I believe the injustice of judicial obstruction in the last Congress has been exposed, talked about, recognized, and I believe we have now—it is not guaranteed—the opportunity to return to the traditions of 214 years and precedents of 214 years to give these nominees fair up-or-down votes.

I hope that progress continues. I am confident it will. I am cautiously optimistic. Fair up-or-down votes is a principle I believe in and will continue to fight for on the floor of the Senate.

I yield the floor.

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

DOING THE WILL OF THE PEOPLE

Mr. REID. Madam President, I support the memorandum of understanding. It took the nuclear option off the table. It is gone for our lifetime. We don't have to talk about it anymore. I am disappointed there are still the threats of the nuclear option. Let's move on. We need not go over this, but there were 218 nominees of the President and we turned down 10.

All filibusters are extraordinary. There will be filibusters of judges and of other things. That is what the Senate is all about. That is what the 14 Senators acknowledged. I admire and respect what they did. I am thankful they kept me advised as to what they were doing. It is too bad there were not other opportunities to make a ''deal'' between the majority leader and me.

We have to understand that the Senate needs to operate. I say to my friend, the distinguished majority leader, there was an agreement made on three judges. We feel the merits of those three judges are not good and that we need time to talk about those three judges. We will continue to do that. The rules of the Senate have not been changed. That is what is so good about the agreement of these 14 Senators, who rose above the battle and did the right thing.

I am willing to work with the majority leader. I have said that publicly and privately. But we have to be realistic. Unless we work into next week, we cannot do all these judges. If that is the order—that we are going to work into next week—people should be told that now. We are willing to work within the confines of the rules of the Senate. If cloture is invoked today, the rule is you get 30 hours. We are happy to work on that to shorten it a little bit and to have a vote sometime tomorrow and then go to other matters. I would think we could go to another judge—a controversial judge. We have indicated that the judges from Michigan are not controversial. They were held up on procedural things because of longstanding problems with the Michigan Senators. We would need to debate that for a while.

We are here to work the will of the Senate. Again, I am somewhat disappointed that we still hear threats of nuclear option. That is gone. Let's forget about it. I am happy that one of the things the 14 talked about is having some consultation with the President. I am confident that will work out better for the White House and the Senate. I hope that transpires. We here want to move forward. We have so much that needs to be done.

The distinguished majority leader has talked about things that need to be done, such as the Bolton nomination, which is also controversial. We will be happy to try to work to some degree to make that as easy as possible for everybody. It is a difficult issue. I have spoken to Senator BIDEN early this morning. He has a plan as to what he feels should be done on Bolton. None of this is going to take an hour or two. There are things we have to talk about with Bolton.

As I indicated last night, last night was a good day for the Senate and today is a good day. Let's move forward and work as the Senate feels it should work. There have been no rule changes. We are here to do the will of the people of this country.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 11:40 shall be equally divided between the two leaders or their designees.

The Senator from Alabama is recognized.

Mr. SESSIONS. Madam President, I will say a few things about the compromise that was reached last night. It has a lot of good things in it. I think, first and foremost, it represented a consensus of a group of Senators who would represent the majority, saying that filibusters are not to be routinely utilized in the confirmation process. As a matter of fact, they said only in ''extraordinary circumstances'' should a filibuster be utilized.

This was a rejection of what we have seen for over 2 years in the Senate. It was a movement toward the historical principles of confirmation that I think are very important. I think it is worthy of note that the majority leader, Senator BILL FRIST, who just left the floor, moved so ably on this issue. He spent nearly 2 years studying the history, seeking compromises, working with colleagues on both sides of the aisle, and as of a few weeks ago had, I believe, quite clearly achieved a majority of the Senators who were prepared to exercise the constitutional option to establish the rule that we would not filibuster judicial nominees. We have not had a judicial filibuster in 214 years and we should not have one now. A majority in this Senate was prepared to act to ensure that we would not have one.

It was only at that point that serious discussions began on a compromise and, as a result of those discussions, seven Senators on each side agreed they would act in a certain way and issued the statement they did. It does not reflect the majority of either party, but it does reflect, in my view, the fact that a majority of this Congress does not believe that filibusters are the way to go and should not occur except in extraordinary circumstances.

Frankly, I think that is not the principle we need to adhere to. When President Clinton was President and he sought nominees that he chose for the Federal bench, and people on the Republican side discussed whether a filibuster was appropriate, the Republicans clearly decided no and allowed nominees such as Berzon and Paez to have an up-or-down vote. They were given an up-or-down vote and both were confirmed, even though they were controversial. I think that was significant.

I have to tell you how thrilled I am that Judge Bill Pryor will be able to get an up-or-down vote. He is one of the finest nominees who has come before this body. The hard left groups out there, who have been driving this process, attacked him early on and misrepresented his positions, his character, his integrity, and his legal philosophy. They called him an activist, when he is exactly the opposite of that, and they created a storm and were able to generate a filibuster against him. He had a majority of votes in the Senate, if he could have gotten an up-or-down vote. But he was denied that through the inability of the majority to cut off debate and have a vote.

I am so glad the group of 14 who met and looked at these nominees concluded he was worthy of being able to get a vote up or down. I have to say that has colored my pleasure with the agreement, even though I know some other good judges or nominees were not part of the agreement.

I want to point this out. The minority leader seems to suggest that filibusters are here to stay and they are normal and logical, and get over it and accept it, and that, oh, no, the constitutional option can never be used. That was not in that agreement and that is not what is in the hearts and minds of a majority of the Senators in this body. If this tactic of filibustering is continued to be used in an abusive way, or in a way that frustrates the ability of this Congress to give an up-or-down vote to the fine nominees of President Bush, there has been no waiver of the right to utilize the constitutional option.

As I understand it, even yesterday Senator BYRD, on the Senate floor, admitted the constitutional option is a valid power of the Senate majority. I would say this. It ought not to be abused; it ought not to be used for light or transient reasons. It ought to be used only in the most serious circumstances—the most serious circumstances of the kind we have today when, after 200 years of tradition, 200 years of following the spirit of the Constitution to give judges up-or-down

votes, the Senate is systematically altered as it was in the last Congress. That is why it was brought out, and with the threat of the constitutional option and a majority of Senators who were prepared to support it, a compromise was reached. I believe it is significant.

Finally, I want to note it is exceedingly important that we, as Members of this Senate, understand how judges should be evaluated, how they have basically always been evaluated, except in recent times. How should they be evaluated? They should be evaluated on their judicial philosophy, not their political views or their religious views. There are nominees who have come before this Senate who have demonstrated through a career of practice that they comply with the law, whether they agree with it or not. Some of them are pro-life, some of them are pro-choice, some of them are for big Government, some of them are for smaller Government, some of them are for strong national defense, some of them are not. That is not the test and cannot be the test.

We had one situation that troubled me. I was pleased eventually that this nominee was confirmed. A man and a woman—the man was nominated for judge and had been No. 1 in his law school class. They had written a letter to the members of their church, a Catholic Church in Arkansas, and they discussed their view of marriage in the Christian tradition. They affirmed that and quoted from Scripture. We had persons attack that nominee because they said it somehow elevated a man over a woman. That is not the rich tradition of marriage as was explained in their letter. But it led to that attack. That made starkly clear in my mind what is at stake here. This is the question: Are we to expect that every nominee that comes here has to lay out their personal philosophy, their marital philosophy, their religious beliefs, and we sit and judge them on whether we agree with that?

Is that the way you judge a judge to see if they are qualified: Do I agree with their theology? Do I agree with their political philosophy? Do I agree with their opinion on Franklin Delano Roosevelt? Is that what we do?

We cannot do that. We should not do that. We ought to be pleased that a nominee has cared enough about his or her country to speak out on the issues that come before the country. We ought to be pleased that they have been active and they care and they participate in the great political debate in America. But we ought not say to them, because you said one thing about abortion, and you are pro-life or you are pro-choice, you can never follow the law of the Supreme Court or the Constitution and, therefore, we are not going to allow you to be a judge. We cannot do that. That is a wrong step.

I think that was implicit in this compromise—at least I hope it was. I think it said that judges, such as Judge Bill Pryor who, when asked did if he said abortion was bad, answered: Yes, sir, I do. And when he was asked: Do you still believe it? He said: Yes, sir. I do. He had a record, fortunately, that he could then call on to show that he was prepared to enforce the law whether he agreed with it or not. If he had been in the legislature, he might have voted differently. But as a judge or as attorney general, he had a record on which he could call to show that he enforced the law.

For example, Judge Pryor would certainly have opposed partial-birth abortion, one of the worst possible abortion procedures. But as attorney general in the 1990s, when Alabama passed a partial-birth abortion ban, he wrote every district attorney in the State on his own motion—he did not have to, but he had the power to do so as attorney general—and told them that portions of that bill, with which he probably agreed, were unconstitutional and should not be enforced.

Later, when the Supreme Court of the United States rendered the Stenberg decision that struck down an even larger portion of the foundation of partial-birth abortion statutes that had passed around the country, he wrote another letter to the district attorneys and told them the Alabama statute was unconstitutional.

Does that not prove what we are about here? It is not your personal belief but your commitment to law that counts?

What about the circumstance when he was accused of being too pro-religion? I do not think the facts show an abuse of his power in any way. In fact, he found himself in the very difficult circumstance in Alabama of being the attorney general and having the responsibility to prosecute or present the case against the sitting chief justice of the Alabama Supreme Court who placed the Ten Commandments in the supreme court building. The chief justice had been ordered to remove it by the Federal courts, and he did not remove it. Other judges removed it. Attorney General Bill Pryor presented that case, and Judge Moore was removed from office.

That was a big deal. It was a tough deal. Time after time, he has done that.

Priscilla Owen also is a nominee of the most extraordinary qualifications. She made the highest possible score on the bar exam in Texas. That is a big State and bar exams are not easy. She is a brilliant lawyer, highly successful in the private practice of law in Texas. They encouraged her to run for the supreme court. She did so. She won. The last time she ran, she received 84 percent of the vote in Texas. This is a professional lawyer/jurist, brilliant, hardworking, a woman of great integrity and decency. She has questioned the concept or the idea that judges have a right to go back and reinterpret the meaning of the Constitution or statutes and read into them whatever they like to make them agree with the judge's philosophy. Many today seem to think they are at liberty to do this. In fact, some judges go back and try to twist, bend, stretch the meaning of words to promote agendas in which they believe. Priscilla Owen does not believe in that and has spoken against it.

Her philosophy as a judge reflects restraint, and a dedication to following the law. That is what she has stood for, and she has been criticized roundly as being an extremist—a judge who received 84 percent of the vote and was endorsed by every newspaper in the State.

Judge Priscilla Owen also was rated by the American Bar Association unanimously well qualified, the highest rating they give. This is not an extremist.

What was it here? Outside groups who have made a history of identifying and attacking these nominees have mischaracterized her, just as they did Judge Pryor. Both of these nominees, for example, have tremendous support within their State, tremendous bipartisan support in conference.

That is why I am confident the 14 people who got together and reviewed this situation felt they could not leave her or the other two judges off this list. They just could not deny Janice Rogers Brown, Priscilla Owen, or Judge Bill Pryor an up-or-down vote. They were too decent, had too much of a good record, too many supporters in the African-American community, in the Democratic leadership of their States, and that is why they were given this vote.

I think perhaps we are now moving forward to a new day in confirmations. I hope so. We have been far too bitter in attacking good people. Records have been distorted dishonestly, particularly by outside groups and sometimes that has been picked up by Senators. My Democratic colleagues have outsourced their decisionmaking process at times, I am afraid. They have allowed the People for the American Way and Ralph Neas and the Alliance for Justice, the people who spend their lives digging up dirt, sullying people's reputations, twisting facts, taking cases out of context, taking statements out of context, taking speeches out of context, posturing and painting nominees as things they are absolutely not, to influence their decisions. It is wrong. Hopefully, we are now moving in a better direction.

I am also hopeful that as a result of this agreement, the nomination process in the future will go better. Maybe even issues such as transportation, energy, and defense will go better in this Congress. I hope so. I will try to do my part.

I want to say one thing, the constitutional option has not been removed from the table. We cannot allow filibusters to come back and be abused. We absolutely cannot. The majority should never allow that historic change

to occur while they have the ability to resist and that ability still exists. I believe the majority leader, BILL FRIST, is correct in that analysis. He has stated the ideals of this Senate. He has reminded us of the history and traditions of the Senate. He has reminded us that Republicans were faithful to that tradition and the Democrats need to be, too. So I hope we will be able to move forward with the consideration of more and more nominees as President Bush goes forward in his term, and that as we do so, they will be given a fair hearing. I hope that Senators on both sides of the aisle will look at the facts and allegations about nominees to make sure those are truthful, accurate, and fair characterizations of them, and not mischaracterizations, not distortions, not misrepresentations of what they are and what they have done. If we do that, we are going to be OK.

Let me say this about President Bush. He has gone to the American people. He has stated his case to them. He stated clearly and effectively he believes that judges should be committed to the rule of law, should follow the law, that they should not be activist, they should not seek to impose personal and political agendas through the redefinition of words of statutes or our Constitution. The American people have affirmed him in that.

The Senate obstruction and filibuster of Federal judges has been a big issue in the last two election cycles in this Senate, and Republicans have, as a result, in my opinion—it is my opinion, I will admit—picked up six new Senate seats. I think a large part of that is because people in these States have been concerned about the obstruction of good and decent nominees, and the people of this country are of the opinion that their liberties are in jeopardy when an unelected lifetime-appointed judge starts setting social policy. If they are not happy with my vote on social policy, I can be removed from office, but a judge has a lifetime appointment, and the American people understand that. They understand that an activist judge is, indeed, antidemocratic. It is an antidemocratic act when a judge, without accountability to the public, starts setting social and political policy, as we have seen too often in recent years.

As a result, I believe we need to return to our traditions that have served both sides well, and if we do that, we can move forward, I believe, to a better process on judges and other issues that come before this body. I am cautiously optimistic for the future.

I yield the floor and reserve the remainder of our time on this side.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I understand that by previous agreement, time is allocated; is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. KENNEDY. And there is to be 1 hour for one side, 1 hour to the other side, prior to the leadership time?

The ACTING PRESIDENT pro tempore. There is 47 minutes remaining for the minority.

Mr. KENNEDY. Madam President, I yield myself 10 minutes.

First, I commend my friend and colleague, our leader, Senator REID, for his perseverance during these past several weeks and adherence to the great traditions of the institution of the Senate. It has been an extraordinary example of devotion to the Senate, to our Constitution, the checks and balances which are written into the Constitution. Our President has a veto, and the Members of Congress have the right to speak. There are those who would like to muzzle, silence, effectively cut off the debate in the Senate. With this agreement of last evening, that time, hopefully, has ended. It certainly has been for this Congress.

I was listening to some of my colleagues earlier. I read from the agreement about rules change:

> In light of the spirit and continuing commitments made in this agreement, we commit to oppose the rules changes in the 109th Congress, which we understand to be any amendment to or interpretation of the Rules of the Senate that would force a vote on a judicial nomination by means other than unanimous consent or rule XXII.

The current rule. There it is. Yet we heard the mention by the leader earlier this morning that he believes somehow the nuclear option is still alive and well.

It does seem to me the American people want to get about the American people's business. This has been an enormous distraction.

I listened to my friend and colleague from Tennessee who says we want to follow the rules and traditions of the Senate, so we are going back to the regular order. If we go back to the regular order, we are going back to the traditions and rules as they stand: You have the vote of every member on this side. That is not what the majority leader was talking about. He was talking about we will go back to the regular order; he was going to change the order with a whole series of changed rules.

That is what the members of this side and the courageous Republicans on the other side found offensive. We believe we ought to be about our people's business. We have approved 95 percent of the Republicans' nominees. I am sure some are, perhaps, pro-choice; many of them—probably most of them—are pro-life. They have still gone through. The real question is whether we are going to be stampeded and be silenced with regard to judges who are so far outside of the mainstream of judicial thinking that it was going to be the judgment of the majority leader that he was going to change the rules in a way that would deny the Senate's Parliamentarian, who has been the safeguarder of these rules for the 214 years of the Senate, and bring in the Vice President, who was going to rule according to his liking rather than to the traditions of the Senate.

That kind of abridgement, that kind of destruction, that kind of running roughshod over the Senate rules is offensive to the American people and offensive to us. It was avoided by the actions that were taken last evening in which our Democratic leader was the principal architect and supporter.

Yesterday was a day that will live in American history, and our grandchildren and their grandchildren will discuss what happened. They will do so with much more insight than we can today because they will know what the results of yesterday's agreements actually turned out to be. I hope that history will judge us well as an institution. We came close to having a vote that threatened the essence of the Senate and of our Government. It risked destruction of the checks and balances among the branches that the Framers so carefully constructed. It risked destruction of the independence of the judiciary, which is at the heart and soul of this issue. It risked an accumulation of power in the President that might have turned back the clock toward the day when we were subjects instead of citizens.

We have avoided that confrontation and have done so within the traditions of the Senate: discussion, debate, negotiation and compromise. Moderation and reason have prevailed. As in any compromise, some on each side are unhappy with specific aspects of the result, but the essence is clear. A majority of this body does not want to break its rules and traditions. Those rules and traditions will be preserved.

This body's self-regulating mechanisms will continue to be a moderating influence, not only within the body but also on the other House and the other branches of Government. Once again, the Senate has reminded the Chief Executive that we are not merely occupants of a beautiful building at the other end of Pennsylvania Avenue. We taught George Washington that lesson when we rejected one of his Supreme Court nominations. We taught Thomas Jefferson that lesson when we refused to convict an impeached Justice whose opinions Jefferson did not like. We taught Franklin Roosevelt that lesson when he tried to pack the Supreme Court. We taught Richard Nixon that lesson when he sent us a worse nominee after we defeated his first nominee for a Supreme Court position.

As even the Republicans in the agreement group said, this agreement should persuade the President to take more seriously the advice portion of the advice and consent. If the President understands the message and takes it to heart, his nominees will be better off, the courts will be better off, and the Nation will be better off.

Our principal goal was to preserve the ability of the Senate to protect the independence of the Federal courts, including the Supreme Court, and we

have succeeded in doing so. We have sent a strong message to the President that if he wants to get his judicial nominees confirmed, his selections must have a broader support from the American people.

As a result of this agreement, we can hope that no Senator will ever again pretend that the Constitution commands a final vote on every Executive nominee, for it has never done so and it does not do so now.

We can hope that no one will again pretend that there has never been a filibuster of a judicial nominee when they can look across the Senate floor at three Democratic Senators who witnessed the Republican filibuster against Justice Fortas and Republican Senators who participated in other judicial filibusters. We can hope that no one again will pretend that it is possible to break the fundamental Senate rule on ending a filibuster without shattering the basic bonds of trust that make this institution the world's greatest deliberative body.

I believe history will judge that we have not failed those who created America two centuries ago by what we have done. We have fought off those who would have destroyed this institution and its vital role in our Government for shameful partisan advantage. By rejecting the nuclear option, the Senate has lived up to its responsibilities as a separate and equal branch of Government.

I say to my colleagues on both sides of the aisle, that agreement does not change the serious objections to the nominations that have been debated in the past days. Those of us who care about the judiciary, who respect mainstream values, who reject the notion that judgeships are spoils to be awarded to political fringe groups, will continue to oppose the nomination of Priscilla Owen, Janice Rogers Brown, and William Pryor because they would roll back rights and freedoms important to the American people.

Now that these nominees are slated to get a vote on the floor, I hope courageous and responsible Republicans will show their independence from the White House and thoroughly examine the records of each of them. If they do, I hope they will agree that these nominees should not be given lifetime appointments to the Nation's courts, where they will wield enormous power over the lives of all Americans.

Those of us who oppose the nomination of Priscilla Owen have done so with good cause because her record makes clear that she puts her own ideology above laws that protect the American people. I have made that case. I just remind our colleagues of what the Houston Chronicle said. The Houston Chronicle, from her own area, wrote that her record shows less interest in impartiality and interpreting law than in pushing an agenda. She too often contorts rulings to conform to her particular conservative outlook. Those are not fringe groups. That is the Houston Chronicle.

Austin American-Statesman: Priscilla Owen is so conservative she places herself outside of the broad mainstream of jurisprudence and she seems all too willing to bend the law to fit her views.

Those are not leftwing fringe groups. That is the Austin American-Statesman.

San Antonio Express News: She has always voted with a small court minority that consistently tries to bypass the law as written by the legislature.

I have included at other times in the RECORD the 10 different occasions when the current Attorney General of the United States criticized Priscilla Owen for being outside of the mainstream of judicial thinking. I ask unanimous consent that six or eight of those, and the cases, be printed in the RECORD.

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

EXAMPLES OF GONZALES'S CRITICISMS OF OWEN

In one case, Justice Gonzales held that Texas law clearly required manufacturers to be responsible to retailers that sell their defective products. He wrote that Justice Owen's dissenting opinion would ''judicially amend the statute'' to let manufacturers off the hook.

In a case in 2000, Justice Gonzales and a majority of the Texas Supreme Court upheld a jury award holding that the Texas Department of Transportation and the local transit authority were responsible for a deadly auto accident. He explained that the result was required by the ''plain meaning'' of Texas law. Justice Owen dissented, claiming that Texas should be immune from these suits. Justice Gonzales wrote that her view misread the law, which he said was ''clear and unequivocal.''

In another case, Justice Gonzales joined a majority opinion that criticized Justice Owen for ''disregarding the procedural limitations in the statute,'' and ''taking a position even more extreme'' than had been argued by the defendant in the case.

In another case in 2000, private landowners tried to use a Texas law to exempt themselves from local environmental regulations. The court's majority ruled that the law was an unconstitutional delegation of legislative authority to private individuals. Justice Owen dissented, claiming that the majority's opinion ''strikes a severe blow to private property rights.'' Justice Gonzales joined a majority opinion criticizing her view, stating that most of her opinion was ''nothing more than inflammatory rhetoric which merits no response.''

Justice Gonzales also wrote an opinion holding that an innocent spouse could recover insurance proceeds when her co-insured spouse intentionally set fire to their insured home. Justice Owen joined a dissent that would have denied coverage of the spouse, on the theory that the arsonist might somehow benefit from the court's decision. Justice Gonzales' majority opinion stated that her argument was based on a ''theoretical possibility'' that would never happen in the real world, and that violated the plain language of the insurance policy.

In still another case, Justice Owen joined a partial dissent that would have limited the right to jury trials. The dissent was criticized by the other judges as a ''judicial sleight of hand'' to bypass the Texas Constitution.

Mr. KENNEDY. This is Attorney General Gonzales on the supreme court with Priscilla Owen, critical of her of being outside the mainstream. That is the point we have basically made.

This week, the American people are saying loudly and clearly that they are tired of the misplaced priorities and abuse of power by the rightwing. This agreement sends a strong message to the President that if he wants to get his judicial nominees confirmed, his selections need to have broad support from the American people.

Going forward on any nomination, the President must take the advice and consent clause seriously. The Senate is not a rubberstamp for the White House. The message of Monday's agreement is clear: Abuse of power will not be tolerated. Attempts to trample the Constitution will be stopped.

Over the last few weeks, the Republican Party has shown itself to be outside the mainstream, holding up the Senate over the judges while gas prices have jumped up through the ceiling, stubbornly insisting on the Social Security plan that cuts benefits and makes matters worse, passing a budget that offers plenty to corporations but little to students, nurses, and cops, and running roughshod over ethics rules. These are not the priorities of the American people. The American people want us to get back to what is of central concern to their lives, the lives of their children, their parents, and their neighbors. That is what we ought to be about doing, and preserving the Constitution and the rules of the Senate. The agreement that was made in a bipartisan way does that, and it should be supported by our colleagues in the Senate.

I reserve the remainder of our time.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. GRAHAM. Madam President, No. 1, there has been a lot said about last night. I was one of the signatories of the agreement. I think last night gives us a chance to start over. Seldom in life do people get a chance to start over and learn from their mistakes.

There have been some mistakes made for about 20 years on judges, and it finally all caught up with us. It started with Judge Bork. He was the first person I can remember in our lifetime who was basically subjected to ''how will he decide a particular case,'' and he was attacked because of his philosophy, not because of his qualifications. It has just gotten worse over time. Clarence Thomas—we all remember that.

The truth is, when the Republicans were in charge of the Judiciary Committee, there is a pretty good case to be made that some of President Clinton's nominees were bottled up when we had control of the Judiciary Committee, and they never got out into the normal process.

Where do we find ourselves now? It started with an attack on one person because people did not like the philosophy of that person, which was new for the Senate. Before that, when a judge

was sent over, we looked at whether they were qualified ethically and intellectually.

One has to understand that there is a consequence to an election. When a President wins an election, that President has a right to send nominees over to the Senate for Federal courts. It has always been assumed that conservative people are going to pick conservative judges, and moderate and liberal people are going to be somewhere in the middle. That has worked for 200 years.

The bottom line is, the President can send over somebody who they think is conservative, and they can be fooled. They can send somebody they think is liberal, and over a lifetime they may change. What we have been able to do as a body is to push back but eventually give people a chance to be voted on.

I was a ''yes'' vote. Senator DEWINE and myself were ready to vote for the nuclear option this morning if we had to, the constitutional option. It can be called whatever one wants to call it, but it would have been a mess for the country. It would have been better to end this mess now than pass it on to the next generation of Senators because if the filibuster becomes an institutional response where 40 Senators driven by special interest groups declare war on nominees in the future, the consequence will be that the judiciary will be destroyed over time. People can get rid of us every 6 years, thank God, but once a judge is put on the bench, it is a lifetime appointment. We should be serious about that.

We should also understand that people who want to be judges have rejected the political life, and when we make them political pawns and political footballs, a lot of good, qualified men and women who are moderate, conservative, or liberal will take a pass on sitting on the bench. If the filibuster becomes the way we engage each other on judges, if it becomes the response of special interest groups to a President who won who they are upset with, the Senate will suffer a black eye with the American people, but the judiciary will slowly but surely become unraveled.

That is why I think we have a chance to start over. That is why I voted for us to start over, and I hope we have learned our lesson.

As to Priscilla Owen, it is the most manufactured opposition to a good person I have seen short of Judge Pickering, only to soon-to-be Judge Pryor and a close third is Justice Brown. What has been said about these people is beyond the pale. They have been called Neanderthals. If one has somebody they know and care about and they are thinking about being a judge, I think they need to be given fair warning that if they decide a case that a special interest group does not like, a lot of bad things are going to be coming their way.

Do we really need to call three people who have graduated near the top of their class, who have had a lifetime of service to the bar, Neanderthals? We have a chance to start over, and we better take it, because one thing the American people have from this whole show is that the Senate is out of touch with who they are and what they believe because we have allowed this thing to sink into the abyss. Priscilla Owen got 84 percent of the vote in Texas, and JOHN CORNYN knows her well. He served with her. She graduated at the top of her class; scored the highest on the bar exam. She has been a solid judge. What has been said about her has been a cut-and-paste, manufactured character assassination. Whether she is in the mainstream, the best way to find out is when people vote. When Priscilla Owen finally gets a vote here soon, you are going to see she is very much in the mainstream, if a supermajority of Senators count for anything. She is going to get votes. She is going to get a lot more than 50 of them. So is Judge Pryor.

The problem I have had with Bill Pryor and the way he has been handled is that he is the type person I grew up with. He is a conservative person. He is a good family man. But he has made some calls in Alabama that are unbelievably heroic, when it comes to politics and the law. Being for the Ten Commandments is a big deal in Alabama. Judge Moore, Justice Moore took that and rode that horse and beat it to death and it got to be a hot issue in Alabama and it got to be a hot issue all over the country. The attorney general of Alabama, Bill Pryor, followed the law and took on Justice Moore. He didn't have to, but he chose to.

At every turn he has proved to me he is bigger than the political moment. When he gets voted on, I am going to take this floor and we are going to talk a little bit longer about him. The people in Alabama across the board should be proud of Bill Pryor. He is going to make a heck of a Federal judge.

Now, where do we go? This agreement was among 14 Senators who believed that starting over would matter—14 Senators from different regions of the country, supported by their colleagues in a quiet fashion, more than you will ever know. What happens in the future depends on all of us working together. It depends on trust and good faith. The White House needs to talk with us more, and they will. Our Democratic friends need to understand that the filibuster as a tool to punish George W. Bush is not going to sustain you very long and will put you on the wrong side of the American people and will eventually destroy the judiciary.

The agreement says that in future nomination battles, the seven Democrats will not filibuster unless there are extraordinary circumstances. What does that mean? Well, we will know it when we see it. It means we will keep talking. It means they don't have to lay down in the road if there is a Supreme Court fight. There is going to be a Supreme Court nomination coming, probably soon, and that is what this is about. But our seven Democratic colleagues decided to find a middle way to bring some calm to the body. I think we can get a conservative justice nominated and confirmed if we try hard. Nobody should expect anything less from George W. Bush. But there is a way to get there from here and I do believe the seven Democrats who signed this agreement will work very hard to make that happen along with all Senators at the end of day.

But if there comes a point in time in the future when one of the seven Democrats believes this person before them is so unacceptable they have to get back in the filibuster business, here is what it means to the Republicans—because I helped write the language. It means we will talk, we will listen, and we will discuss why they feel that way. But it means I am back in the ball game. If one of the seven decides to filibuster and I believe it is not an extraordinary circumstance for the country, for the process, then I have retained my rights under this agreement to change the rules if I think that is best for the country. That is only fair. My belief is we will never have to cross that bridge. But those who say this is a one-sided deal misrepresent what happened in that room. This is about moving forward, avoiding conflict in the future by talking and trusting.

But there may come a time, and I hope to God it doesn't happen, where we go different directions. The only reason we will ever go different directions is that we will start playing politics again and lose sight of the common good.

The two nominees who were in category two I think will get back in the process in a fair way. The truth is all of the nominees were never going to make it. There are some Republicans who will vote against some of these nominees. But they all deserve a fair process and they all deserve to be fairly treated. None of them deserve to be called Neanderthals.

It is my hope and my belief we will get this group of nominees fairly dealt with. Some are going to make it and some will not. But they will get the process back to the way it used to be. As to the future, it is my belief that by talking and working together in collaboration with the White House, we can pick Supreme Court Justices, if that day ever comes, so that everybody can be at least happy with the process, if not proud of the nominee. That is possible because we have done it for 200 years. But please don't say, as a Democrat, you can do anything you want to do in the 109th Congress and nothing can happen, because that is not true.

I have every confidence we can get through this mess, but there is no agreement that allows one side to unilaterally do what it would like to do and the other side be ignored. Because if that were the case, it wasn't much of an agreement.

I look forward to voting for Justice Owen, I look forward to voting for

Judge Pryor, I look forward to voting for Justice Brown, and putting to rest the idea that these nominees were out of the mainstream.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Before my friend and colleague from South Carolina leaves, I want to congratulate him and my colleagues on both sides of the aisle for bringing us to this point. The most important point about what has happened in the last 12 hours is we have maintained the checks and balances in the Senate. We are retaining the ability for minority views to be heard. That is most important.

It is not always Democrats versus Republicans. It could be little States, such as the State of my friend from Delaware, whom I see on the floor, versus Michigan or California. It could be different groups of people. It could be Great Lakes Senators banding together to protect our Great Lakes versus others who want to divert water. It could be a variety of issues.

The fact that the Senate is the place we can come together and minority views can be heard is a part of our democratic process. It is a part of our democracy that has held us together for over 200 years. I commend my colleagues for standing up and saying no to eliminating the filibuster and no to eliminating the checks and balances of our Government.

It involves some compromise, as these agreements always do. While I personally will not support the nomination of the person before us today, I understand that in order to maintain the broad principle of checks and balances in the Senate, in order to allow us to exercise our minority views at a future point if there are extreme nominees coming forward, this was an important compromise to make.

Part of that is an important piece that Senator LEVIN and I contributed to the process of allowing the Senate to move forward on three nominees of the Sixth Circuit from Michigan. So there are compromises that have been made in the interests of the larger good, in the interests of maintaining the checks and balances, the ability for us to work together on both sides of the aisle to get things done for the American people. That is why we are here.

Now we need to get about the business of getting things done for people. When I go home every weekend, when I talk to my family in Michigan, when I talk to everyone I represent—families all across Michigan, they say, We want you to focus on jobs, American jobs. We want our jobs here. We want to reward work in this country and know that when we work hard every day and play by the rules, we are going to be able to care for our families and that we have respect for the dignity of work and that we will reward Americans who are working hard every day.

They say to me they are desperately concerned about their pensions. Look what is happening. We in this body need to be focusing on protecting the pensions, the retirement security of all the Americans who worked all their lives. They put that money aside and they count on that pension in retirement for themselves and their families. Now they are seeing that American dream eroded. Pension security, strengthening Social Security, making sure health care is available to every American—these are the issues that, in this body, we need to be working on together because they directly affect every single person we represent.

I am hopeful we will now be able to put this aside and we will be able to move on with the people's agenda for this country, creating opportunities for everybody to succeed, rewarding work, making sure we are protecting and expanding American jobs and American businesses, making sure we are energy independent.

We will be having legislation brought before us shortly. I know there is important bipartisan work going on. But we need to say we are going to be independent in terms of energy resources and that we are going to move forward as well on issues that relate to national security—not only a strong defense abroad but making sure our police officers and firefighters have what they need, and our emergency responders, so that we have security at home. When somebody calls 911, they will know they are going to get the response they need in terms of their security.

We have a lot of work to do. People are expecting us to get about the people's business. I am very proud that last night our leader on this side of the aisle, the Democratic leader, Senator REID, spoke to those issues. In praising where we are now, the fact that we will continue to have the rules and checks and balances of the Senate, he also then spoke about the fact that we have to get about the people's business because every day when people get up in the morning they are wondering what is going to happen that day for themselves and their families.

It is our job to do everything we can to make sure their hard work is rewarded and opportunities for the future, for our children and grandchildren, are protected. This is a fight for the future. It is a fight about where we need to go as a country. Our families are counting on us to turn to the things they care about every day. The values and priorities of the American people need to be what we are talking about and acting on in this Chamber. I am hopeful we will very quickly turn to those matters: jobs, health care for every single American, opportunities for our kids to be successful, energy independence, a strong defense here and abroad. If we do that, then we will be able to hold our heads high, because we will have done those things that matter most to the families we represent.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, when I was in college and law school, there was a character played by the actress Gilda Radner on ''Saturday Night Live,'' who was known best for purporting to do the news and would engage in this screed about some subject, and then she would be corrected, only to have her then reply, ''Never mind.''

I thought about that when I have contemplated the occurrences of the last few days, particularly the last day when it came to the sort of apocalyptic terms that were used as we approached breaking the logjam over the President's long-delayed judicial nominees. But for this secret negotiation conducted by 14 Senators that none of the rest of the Senate was a party to, we would be, I believe, about the process of reestablishing the precedent of majority rule that had prevailed for 214 years in the Senate, that would say any President's nominees, whether they be Republican or Democrat, if they have the support of a majority of the Senate, will get an up-or-down vote in the Senate. Senators who believe these nominees should be confirmed can vote for them and those who believe they should not be confirmed can vote against them.

I was not a party to the negotiations and what happened in this room off the Senate floor, but I do have some concerns I wanted to express about what has happened.

It is important to recognize what this so-called agreement among these 14 Senators does and what it does not do. First of all, one of the things it does, it means that at least three of the President's nominees—Bill Pryor, Janice Rogers Brown, and Priscilla Owen—will get an up-or-down vote on the Senate floor and that they will be, I trust, confirmed to serve in the Federal judiciary.

What this agreement by these 14 Senators does not do, it does not give any assurance that other nominees of the President—Mr. Myers, in particular, and others—will get an up-or-down vote that they deserve according to the common understanding of the Senate for more than 200 years by which those who enjoyed majority support did get that vote and did get confirmed.

What this agreement says, we are told, is that seven Democrats and, presumably, seven Republicans reserve the right to filibuster judicial nominees under extraordinary circumstances, but we are left to wonder what those extraordinary circumstances might be. What makes me so skeptical about this agreement among these 14 is that extraordinary circumstances are in the eye of the beholder.

Looking at the litany of false charges made against Priscilla Owen for the last 4 years makes me skeptical that any nominee, no matter how qualified, no matter how deserving, that under appropriate circumstances our colleagues, some of our colleagues, will find the circumstances extraordinary and still reserve unto themselves what

they perceive as their right to engage in a filibuster and deny a bipartisan majority our right to an up-or-down vote.

It is clear to me this agreement among these 14 to which 86 Senators were not a party does not solve anything. What it does do is perhaps delay the inevitable. Senator DEWINE, in particular, one of the signatories of this agreement, says this is an effort to break the logjam on these three nominees, hopefully, change the standard by which at least seven Senators on the other side of the aisle will engage in a filibuster, and perhaps start anew.

I hope Senator DEWINE is correct in his reading and his understanding of this agreement. I was not a party to it; presumably, 84 Senators were not a party to it. Negotiations took place in a room where I didn't participate, where the American people were not given the opportunity to listen and judge for themselves.

The thing that disturbs me most about this temporary resolution, if you can call it that, is that while 7 Republicans and 7 Democrats were a party to this agreement, a product of these negotiations, the fact is that the 7 Republicans of this 14 would have agreed to close off debate and would have agreed to allow an up-and-down vote, while it is clear that the 7 Democrats would not have agreed otherwise to withhold the filibuster and allow an up-or-down vote.

What reminds me so much of Roseanne Rosannadanna on Saturday Night Live and Gilda Radner, now in effect what they are saying after 4 years of character assassination, unjustified attacks, and a blatant misrepresentation of the record of these fine nominees, they are saying, in effect, never mind, as if it never happened. But it did happen. It is important to recognize what has happened. It is a blight on the record of this body, and it is further evidence of how broken our judicial confirmation process has been.

I have nothing but admiration for the courage of our majority leader in bringing us to this point. I believe if he had not had the courage and determination—and, I might add, our assistant majority leader, MITCH MCCONNELL—if our leadership had not had the determination to bring us to this point, I have no doubt that we would not have reached at least this temporary resolution. They are entitled to a whole lot of credit for their courage and their willingness to hold the feet to the fire of those in the partisan minority who would have denied a bipartisan majority the right to an up-and-down vote on these nominees.

This agreement of these 14 Senators delays but does not solve the problem. Of course, we all anticipate that before long, there will be a Supreme Court vacancy which will test this definition of what these 14 call extraordinary circumstances. I wonder whether this standard will be applied to the other nominees who were not explicitly covered by this agreement; that is, other nominees who have been pending for years who were not given, as Justice Owen, Justice Brown, and Judge Pryor have been, the opportunity for an up-or-down vote.

Let me say I hope I am wrong. But there is plenty of reason to be skeptical about this so-called agreement of these 14. Perhaps we will see a triumph of hope over experience, but our experience over the last 4 years has been a bad one and one which I don't think reflects well on the Senate.

I hope I am wrong. I hope what has been established is a new precedent that says that the filibuster is inappropriate and will not be used against judicial nominees because of perceived difference in judicial philosophy, that people who have certain fundamental convictions will not automatically be disqualified from judicial office. I hope that is where we are. As we know, though, extraordinary circumstances could be interpreted by some to mean that if you can vilify and demonize a nominee enough, that, indeed, the filibuster continues to be justified. We know from the false accusations made against too many of President Bush's nominees how easy that is to do.

After $10 million—that is one estimate I have heard—in the various special interest attack ads have been run against Priscilla Owen and Janice Rogers Brown and others, after $10 million or more, perhaps, the American people are told, never mind, we did not really mean it; or even if we did mean it, you are not supposed to take us seriously because what this is all about is a game.

This is about the politics of character assassination, the politics of personal destruction. In Washington, perhaps people can be forgiven for believing that happens far too much. Indeed, that is what has happened with these fine nominees. But now they are told, particularly in the case of Justice Owen, after 4 years, never mind, all the things that were said about you, all the questions raised are beside the point, and you are not going to serve on the Fifth Circuit Court of Appeals after waiting 4 years for an up-or-down vote.

I worry some nominees in the future will simply say: I am not going to put my family through that. I think about Miguel Estrada, who waited 2 years for an up-or-down vote with the wonderful American success story, but after 2 years he simply had to say: I can't wait anymore. My reputation cannot sustain the continued unjustified attacks. I am simply going to withdraw.

Unfortunately, when we have good men and women who simply say, I can't pay the price that public service demands of me and demands of my family, I fear we are all losers as a result of that process.

I am skeptical of this agreement made by 14 after secret negotiations that we were not a party to. Perhaps I am being unduly skeptical. I hope I am wrong. I hope what has happened today and I hope we are reassured over the hours and days that lie ahead that what has been established is a new precedent, one that says we will not filibuster judicial nominees, we are not going to assassinate their character, we are not going to spend millions of dollars demonizing them.

I hope I am wrong and that we have a fresh start when it comes to judicial nominations. The American people deserve better. These nominees deserve better. This Senate deserves better than what we have seen over the last 4 years.

I yield the floor.

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

Mr. CARPER. Mr. President, a week ago, I stood in this Chamber and I reminded Members to look back some 200 years. The issue of how we are going to nominate and confirm judicial appointees is not a new issue. At the 1787 Constitutional Convention in Philadelphia, there were many issues to resolve. One of the last issues resolved was, who is going to select these Federal judges to serve a lifetime appointment?

Ben Franklin led the forces on one side in an effort to try to curb the powers of this President we are going to establish to make sure we did not have a king in this country. And Ben Franklin and those who sided with him said the judges ought to be selected by the Senate, by the Congress.

There was another school of thought that prevailed as well in the Constitutional Convention, those forces led by Alexander Hamilton. Hamilton and his allies said: No, the President should choose the people who are going to serve lifetime appointments to the Federal bench.

In the end, a compromise was proposed and voted on. Here is the compromise: The President will nominate, with the advice and consent of the Senate, men and women to serve lifetime appointments to the Federal bench. That compromise was voted on. It was defeated. They wrangled for a while longer and came back and they voted on the same compromise again. It was defeated. They went back and wrangled among themselves and came back and voted a third time on the same compromise. And it was accepted. That was 1787.

A lot of years have passed since then, and this issue, this check and balance that was embedded in our Constitution, is one we have revisited over and over again. We did it this week. It was a big issue when Thomas Jefferson was President, the beginning of his second term when he sought to stack the courts and was rebuffed by his own party. That was in the 1800s. It was a big issue in the 1900s when FDR, at the beginning of his second term, sought to stack the courts, pack the courts. He, too, was rebuffed largely by his own party.

Is this compromise hammered out over the last couple of weeks going to

last forever? My guess is probably not. Just as this has been an issue of contention for over 200 years, it is probably going to be a source of controversy for a while longer.

My friend from Texas, who spoke just before me, talked about the mistreatment of those who have been nominated to serve on the Federal bench by President Bush over the last 4 years. He mentioned a number, as it turns out, about 10 out of over 200, who were confirmed over the last 4 years. He mentions the 10 who, frankly, have had their lives disrupted, and in some cases were held up to poor commentary in the public and in the Senate with respect to their worthiness to serve on the bench for a lifetime appointment.

I like to practice treating other people the way I want to be treated. I know most of us try to live by that credo. Sometimes we fall short. I know I do. But I think just to be fair we ought to go back to the first 4 years of when Bill Clinton was President. It was not just 5 percent of his nominees who were not confirmed. Some 19 percent of his nominees were not confirmed. It was not that they were denied a vote on the floor, they never got out of committee.

One person—one person—could put a hold, stop a nominee from even having a hearing in the Senate Judiciary Committee. A handful of Senators in the committee could deny a nominee ever coming out of committee to be debated and voted on in the Senate. And somehow the idea that Bill Clinton could only get 81 percent of his nominees confirmed the first 4 years was OK for some, but yet a 95-percent approval rate for this President's nominees in his first 4 years was unacceptable. I see an irony there. I hope others do, too.

Let me talk about the compromise that is before us. Most compromises I have been familiar with, frankly, do not leave either side especially happy for the final result. And that certainly is true in this case as well. But in the final analysis, the center of this body has held, barely, but it has held. A critical element of our Nation's system of checks and balances has been tested, but it still lives. For that, most of us should be happy—and if not happy, we should at least be relieved.

I believe the path to a productive legislative session has been reopened, too. And almost like Lazarus rising from the grave, I think prospects for arriving at a middle ground on a whole range of issues we face has a new lease on life. We need to transfer the trust that I hope has grown out of this negotiation among the seven Democrats and seven Republicans. I salute them all for the good work they have done. I am not going to get into naming names, but they know who they are, and I am grateful to each of them.

But what we need to do, as a body, as a Senate, is to transfer some of the trust that is a foundation of this agreement. We need to capture that trust and turn it to addressing some of the most pressing issues that face America: our huge and growing dependence on foreign oil, an enormous trade deficit and budget deficit, reining in the growth of health care and trying to make sure more people have health care available, winning this war on terrorism, and finding ways to improve our Nation's air quality. All those issues beg to be addressed.

For this Senator, the good news that comes out of this agreement over the last 24 hours is that now we can turn to our Nation's business. We can get back to work. We need to. America wants us to.

For the President and our friends in the White House, let me say, in going forward on judicial nominees, if you will consult with the Congress—Democrats and Republicans—we can actually approve most of those nominees. If this President will nominate mainstream judges, conservative judges—I expect them to be Republicans—if he will nominate those, for the most part, if they are not outside the mainstream, they will be approved. If the President will actually consult with the Senate, as the Constitution calls for, we will be better off, he will be better off, and, frankly, our Nation will be better off.

The same applies to the legislative agenda that is now before us. For if the administration, the President, will work not just with Republicans but with Democrats, too, we can make real progress, and when we look back on the 109th Congress, we can say, with pride, that we got a lot done that needed to get done.

I yield back the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. Under the previous order, debate will continue until 11:40. The minority side has 20 minutes remaining. The majority side has 1 minute remaining.

Mr. LEAHY. I thank the distinguished Presiding Officer, my neighbor across the Connecticut River.

Mr. President, last night I spoke, praising the Senators on both sides of the aisle who came together to avert the so-called nuclear option. I see on the floor the distinguished Senator from Pennsylvania, the chairman of the Senate Judiciary Committee. I think those Senators have made his and my work a lot easier. I also commend the distinguished Senator from Delaware for his comments.

This President, with the compliance of the Republican majority, has tried to push the Senate across an unprecedented threshold that would forever change and weaken this body. This move would have stripped the minority of the crucial rights that have been a hallmark of this chamber, and it would have fundamentally altered the brilliant system of checks and balances designed by the Founders.

This misguided bid for one-party rule, the nuclear option, has been deterred for now. This ill-advised power grab was thwarted through the work and commitment of a bipartisan group of 14 Senators who have prevented the Republican majority leader from pulling this potentially devastating trigger. Pursuant to that agreement, I expect a few Democrats who had previously voted against cloture on the Owen nomination in the last Congress to vote in favor of cloture today. I understand that they are taking this action to save the Senate from the nuclear option and to preserve the filibuster.

This Republican tactic put the protection of the rights of the minority in this chamber in serious risk. That protection is fundamental to the Senate and to the Senate's ability to act as a check and balance in our national government. That protection is essential if we are to protect the independence of the Judiciary and the Judiciary is to remain a protector of the rights of all Americans against the overreaching of the political branches.

I will continue to work in good faith, as I have always done, to fulfill the Senate's constitutionally-mandated role as a partner with the Executive branch in determining who will serve in the Judiciary. I urge all Senators to take these matters to heart and to redouble our efforts to invest our advice and consent responsibility with the seriousness and scrutiny it deserves. As I have said before, just as Democratic Senators alone could not avert the nuclear option, Democratic Senators alone cannot assure that the Senate fulfills its constitutional role with the check and balance on the Executive. I believe Republican Senators will also need to evaluate, with clear eyes, each of the President's nominees for fitness. If they have doubts about the suitability of a nominee to a lifetime judicial appointment, well, they can no longer look the other way and wait for Democratic Senators to save them from a difficult vote. And there will be a number of difficult votes on the horizon on a number of problematic nominees. There may be even more.

But I also remind everybody that while the Senate is supposed to serve as a check and balance, the whole process begins with the President. I have served here with six Presidents. Five of them have consulted with the Senate and worked with the Senate. President Ford, President Carter, President Reagan, former President Bush, and President Clinton have done that. Frankly, if this President would work with Senators on both sides of the aisle to identify and nominate consensus choices, we can easily add to the tally of 208 confirmations. If the White House will take the view that the President should be a uniter and not a divider, then we can make significant progress.

The design of checks and balances envisioned by the Founders has served us well for over 200 years, and the agreement made last night has preserved it.

Judicial nominations are for lifetime appointments to what has always been revered as an independent third branch of Government, one that while reliant on the balance between the executive and legislative branches, is actually controlled by neither.

For more than two centuries, these checks and balances have been the source of our Government's stability. It has been its hedge against tyranny. We have to preserve them in the interests of the American people. We do that so the courts can be fair and independent. We should not look at our Federal judiciary as being a Democratic judiciary or a Republican judiciary. It should be independent of all of us because they are the backstop to protect the rights of all Americans against encroachment by the Government. And all Americans have a stake in that, no matter who may control the Government at any given time.

The Senate remains available as a rudder that checks against abuse of power, and as a keel that defends the independence of the judiciary. As the distinguished senior Senator from West Virginia, Mr. BYRD, noted last night, the Senate has answered the call sounded by Benjamin Franklin at the conclusion of the Constitutional Convention by preserving our democracy and our Republic, as the Senate has been called upon to do so many times before.

Now we have before us the controversial nomination of Priscilla Owen. I will probably speak to this nomination more after the cloture vote, the cloture vote which now is a foregone conclusion. For some reason we are still having it, but there is no question, of course, that the Senate will now invoke cloture.

Three years ago, after reviewing her record, hearing her testimony, and evaluating her answers, I voted against her confirmation, and I explained at length the strong case against confirmation of this nomination. Nothing about her record or the reasons that led me then to vote against confirmation has changed.

I believe she has shown herself over the last decade on the Texas Supreme Court to be an ends-oriented judicial activist, intent on reading her own policy views into the law. She has been the target of criticism by her conservative Republican colleagues on the court, in a variety of types of cases where the law did not fit her personal views, including in cases where she has consistently ruled for big business and corporate interests in cases against workers and consumers.

The conservative Republican majority of the Texas Supreme Court has gone out of its way to criticize her and the dissents she joined in ways that are highly unusual and in ways which highlight her ends-oriented activism.

In FM Properties v. City of Austin, the majority called her dissent ''nothing more than inflammatory rhetoric.''

In Montgomery Independent School District v. Davis, the majority, which included Alberto Gonzales and two other appointees of then-Governor George W. Bush, is quite explicit in its view that Justice Owen's position disregards the law and that ''the dissenting opinion's misconception . . . stems from its disregard of the procedural elements the Legislature established,'' and that the ''dissenting opinion not only disregards the procedural limitations in the statute but takes a position even more extreme than that argued for by the board. . . .''

In the case of In re Jane Doe, the majority includes an extremely unusual section explaining its view of the proper role of judges, admonishing the dissenters, including Justice Owen, for going beyond their duty to interpret the law in an attempt to fashion policy. In a separate concurrence, then-Justice Alberto Gonzales says that to construe the law as the dissent did ''would be an unconscionable act of judicial activism.''

I understand he now says that when he wrote that opinion he was not referring to her. I recognize why he is saying that. Of course, he has to defend not Governor Bush's appointment but now President Bush's nomination. But a fair reading of his concurring opinion leads me to see it as a criticism of the dissenters, including Justice Owen. And he admitted as much in published statements in the New York Times before Justice Owen's first hearing before the Judiciary Committee.

In the case of In re Jane Doe III, Justice Enoch writes specifically to rebuke Justice Owen and her fellow dissenters for misconstruing the legislature's definition of the sort of abuse that may occur when parents are notified of the minor's intent to have an abortion, saying:

> Abuse is abuse; it is neither to be trifled with nor its severity to be second guessed.

In Weiner v. Wasson, Priscilla Owen went out of her way to ignore Texas Supreme Court precedent to vote against a young man injured by a doctor's negligence. The young man was only 15 years old. Her conservative Republican colleagues on the court, led by then-Justice JOHN CORNYN—now the junior Senator from Texas—lectured her about the importance of following that 12-year-old case and ruling in the boy's favor, calling the legal standard she proposed ''unworkable.''

In Collins v. Ison-Newsome, yet another case where Justice Owen joined a dissent criticized by the majority, the court was offended by the dissenters' arguments. The majority says the dissenters agree the court's jurisdiction is limited, ''but then argues for the exact opposite proposition. . . . This argument defies the Legislature's clear and express limits on our jurisdiction.''

These examples show a judge out of step with the conservative Republican majority of the Texas Supreme Court, a majority not afraid to explain the danger of Priscilla Owen's activist views.

Justice Owen has made other bad decisions where she skews her decisions to show bias against consumers, against victims, and against just plain ordinary people, as she rules in favor of big business and corporations. In fact, according to a study conducted last year by the Texas Watch Foundation, a nonprofit consumer protection organization in Texas, over the last 6 years, Priscilla Owen has not dissented once from a majority decision favoring business interests over victims, but has managed to differ from the majority and dissent in 22 of the 68 cases where the majority opinion was for the consumer.

As one reads case after case, her legal views in so many cases involving statutory interpretation simply cannot be reconciled with the plain meaning of the statute, the legislative intent, or the majority's interpretation.

This all leads to the conclusion that she sets out to justify a preconceived idea of what the law ought to mean. This is not an appropriate way for a judge to make decisions, but it is a way for a judge to make law from the bench—an activist judge.

Justice Owen's activism and extremism is noteworthy in a variety of cases, including those dealing with business interests, malpractice, access to public information, employment discrimination and Texas Supreme Court jurisdiction, in which she writes against individual plaintiffs time and time again, in seeming contradiction of the law as written. A few examples of this include:

FM Properties v. City of Austin, where Justice Owen showed her willingness to rule in favor of large private landowners against the clear public interest in maintaining a fair regulatory process and clean water. Her dissent, which the majority characterized as, ''nothing more than inflammatory rhetoric,'' was an attempt to favor big landowners. At her first hearing, and since, Justice Owen and her supporters on the Committee have tried to recast this case as something more innocent, but at the time she wrote her dissent, Justice Owen was certainly clear about the meaning of this case—property rights for corporations.

GTE Southwest, Inc. v. Bruce, is another example where Justice Owen wrote in favor of GTE in a lawsuit by employees for intentional infliction of emotional distress. Despite the majority's recitation of an exhaustive list of sickening behavior by the supervisor, and its clear application of Texas law to those facts, Justice Owen wrote a concurring opinion to explain that the conduct was not, as the standard requires, so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency. The majority opinion shows Justice Owen's concurrence advocating a point of view that ignores the facts in evidence in order to reach a predetermined outcome in the corporation's favor.

City of Garland v. Dallas Morning News, Justice Owen dissented from a majority opinion and, again, it is difficult to justify her views other than as

based on a desire to reach a particular outcome. In this case, she seeks to shield government decision-making from public view.

Quantum Chemical v. Toennies, another troubling case where Justice Owen joined a dissent advocating an activist interpretation of a clearly written statute, this time in the context of employment discrimination. The majority concluded that they must rely on the plain language of the statute as amended, which could not be any clearer that under Title VII discrimination can be shown to be a motivating factor, contrary to Justice Owen's more activist view.

Mr. President, I said time and time again that when somebody walks into a Federal court, they should not have to say, I may be treated one way because I am a Republican and a different way because I am a Democrat, or one way because I am a plaintiff and a different way because I am a defendant, or one way because I am rich, and a different way because I am poor. They should be treated on the merits of the case, no matter who they are.

In Priscilla Owen's case, it was almost predetermined how she would rule based upon who you are. The rich and powerful are protected. The poor or those hurt by the rich and powerful—she is going to rule against you. This is judicial activism.

After all these years, I am sure the President will get the votes to put Priscilla Owen on the court. But would it not have been better to have nominated somebody who would unite us and not divide us?

Last night, 14 Senators—7 Republicans and 7 Democrats—said: We will protect the Senate, actually protect the Constitution, protect advice and consent, and protect the checks and balances by giving the death knell to this so-called nuclear option. That was a good first step. But I urge the President to look at what was also said in that agreement. They called upon the President to now finally work with Senators from both parties in these lifetime appointments. No political party should own our Federal courts. In fact, no political party should be able to control our Federal courts. Let us work together to have courts that actually work, that are independent of the executive, independent of being swayed, and are truly independent. We can do that and call on the President to do what every President since I have been here—the five before him—has always done, and that is work with both Republicans and Democrats, work to unite us, not divide us.

The PRESIDING OFFICER. Under the previous order, Member time is reserved until 11:40, and the time between 11:40 and 12 o'clock is reserved for both the majority and minority leaders.

Mr. LEAHY. Mr. President, I yield the balance of my time to the Democratic leader to use as he wishes.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that the couple of extra minutes be divided between the majority leader and me.

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

Mr. REID. Mr. President, in my remarks this morning, I will speak very briefly about the Priscilla Owen nomination and, more generally, about the negotiations that led to the defeat of the so-called nuclear option. As I said this morning, the nuclear option is off the table, and we should stop talking about it after today. I continue, though, to oppose the nomination of Priscilla Owen for the U.S. Court of Appeals.

As a member of the Texas Supreme Court, Justice Owen has consistently ruled for big business, corporate interests, and cases against workers and consumers. Her colleagues on the Texas court, including the man who is now Attorney General of the United States, Alberto Gonzales, have criticized her decisions. Judge Gonzales even called one of her opinions an act of ''unconscionable judicial activism.'' In case after case, her record marks her as a judge who is willing to make law from the bench rather than following the language of the statute and the intent of the legislature. Even on the conservative Supreme Court of Texas, Justice Owen is a frequent dissenter, and her opinions reveal an extreme ideological approach to the law.

As a result of the agreement announced last night, it is clear that this nominee will receive an up-or-down vote. I intend to vote against her confirmation. I urge my colleagues to do so as well. I specifically urge my Republican colleagues to render an independent judgment on this, and the other nominations will follow in the months to come. I am confident they will.

If Justice Owen is confirmed as a Federal judge, I hope she surprises those of us who have fought her nomination. Perhaps her experience as a judicial nominee has exposed her to a broader range of views, and that experience may make her more sensitive to concerns regarding privacy, civil rights, and consumer rights. I have never questioned her intellectual capabilities.

The agreement that will allow Justice Owen to receive an up-or-down vote also had the effect of taking the nuclear option off the table for this Congress and, I think, in our lifetime. I wish to review what I believe was at stake in this debate. The agreement makes clear that the Senate rules have not changed. The filibuster remains available to the Senate minority, whether it be Democrat or Republican.

Last night, the seven Democrats agreed that filibusters will be used only in extraordinary circumstances. In my view, the fact that there have been so few out of the 218 nominations in the last 4 years means that filibusters already are rare.

In any event, the agreement provides that ''each signatory must use his or her own discretion and judgment in determining whether [extraordinary] circumstances exist.'' This, of course, is a subjective test, as it always has been.

The 14 Democrats and Republicans who entered into the agreement last night, and the rest of us who were prepared to vote against the nuclear option, stood for the principles of extended debate, minority rights, and constitutional checks and balances. For 200 years, the Senate rules embodying those principles have protected our liberties and our freedoms. Those rules have not made life easy for Presidents and parties in power, but that is the way our Constitution was written, and that is good.

Most every occupant of the White House, most every majority on Capitol Hill, has grown frustrated with the need to build consensus instead of ruling by their own desires. But that is precisely what our Founding Fathers intended. That is our Constitution.

Those Founders created this body as a place secure from the winds of whim, a place for deliberation and honorable compromise. It is why Nevada, with its little over 2 million people, has as much to say in this body as California, which has 35 million people. It is why sometimes we are governed not by the principles of ''one man, one vote'' but by the principles of one person who rises with a voice of conscience and courage.

When Thomas Jefferson and Franklin Roosevelt tried to pack our courts, patriots of both parties put aside their personal interests to protect our American rights and rules. In Caro's definitive work, ''Master of the Senate,'' he has a wonderful 10 pages where he talks about Roosevelt's attempt to pack the court. It is so revealing. Roosevelt calls Senate leaders to the White House—Democratic leaders—and the President didn't live in the White House, as they do now. His Vice President, James Garner, a former Senator, walked out of that meeting shaking his head and said that the President will not get his support on this, and he didn't. He didn't get the support of a majority of the Democrats. When Jefferson and Roosevelt tried to pack our courts, it didn't work because Members of their own parties rose up against them. They were both Democrats.

Nothing in the advice and consent clause of the Constitution mandates that a nominee receive a majority vote, or even a vote of any kind. According to the Congressional Research Service, over 500 judicial nominees since 1945—18 percent of all judicial nominees—were never voted on by the full Senate. Most recently, over 60 of President Clinton's judicial nominees were denied an up-or-down vote. In contrast, we have approved 208 of President Bush's 218 nominees.

Last night, when I came to the floor, I said it is a happy night for me because the 8 years of the Clinton judicial situation are gone. I said last

night that the 4 years of problems with the Bush administration, as it relates to judges, are gone. Why? Because we are going to start legislating as Senators should. If there is a problem with a judge, that issue will be raised.

There will be occasions, although very infrequent, where a filibuster will take place. That is what the Senate is all about.

The difference between a 95-percent confirmation rate and a 100-percent rate is what this country is all about. That 5 percent reflects the moderating influence and spirit and openness made possible by the advice and consent clause of our Constitution.

When our Founders pledged their lives and fortunes and their sacred honor to the cause of our Revolution, it was not simply to get rid of King George III. It was because they had a vision of democracy. James Madison, the Father of the Constitution, wrote:

> The accumulation of all powers legislative, executive, and judiciary in the same hands, whether of one, a few, or many—and whether hereditary, self-appointed, or elective—may justly be pronounced the very definition of tyranny.

Stripping away these important checks and balances would have meant the Senate becomes merely a rubberstamp for the President. It would have meant one political party, be it Republicans today or Democrats tomorrow, could effectively seize control of our Nation's highest courts. It would have removed the checks on the President's power, meaning one man sitting in the White House could personally hand out lifetime jobs whose rulings on our basic rights can last forever.

It is too much power for one person. It is too much power for one President. It is too much power for one political party. It is not how America works.

Our democracy works when majority rules not with a fist but with an outstretched hand that brings people together. The filibuster is there to guarantee this.

The success of the nuclear option would have marked another sad, long stride down an ever more slippery slope toward partisan crossfire and a loss of our liberties. Instead, this is the moment we turned around and began to climb up the hill toward the common goal of national purpose and rebuilding of America's promise. America owes a debt of gratitude to the 14 Senators who allowed us to be here today.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I begin by thanking the distinguished Democratic leader for his comments and noting with particularity his statement that the use of the filibuster will be occasional and very infrequent. I think that characterization is very important for the future of the Senate in the consideration of judicial nominations.

The term ''extraordinary circumstances'' does not lend itself to any easy interpretation. But when the Democratic leader asserts that this term means occasional and very infrequent, it is very reassuring.

The Senator from Nevada went on to say this wipes away 8 years of Clinton and 4 years of the second President Bush. That puts the whole controversy, in my judgment, into context, because what we have been talking about in the course of these filibusters has been the pattern of payback which began in the last 2 years of President Reagan's administration when Democrats won control of the Senate and the Judiciary Committee, where the nominating process was slowed down, and 4 years of President George H. W. Bush. Then it was exacerbated during the administration of President Clinton when we Republicans won the Senate in the 1994 election. And for the last 6 years of President Clinton's tenure, we had a situation where some 60 judges were bottled up in committee, which was about the same as a filibuster.

I think it is worth noting that both Senator FRIST, our Republican leader, and Senator REID, the Democratic leader, are entitled to plaudits, because a week ago today, late in the afternoon in a room off the first floor, a few steps from where we are at the present time, the leaders met with so-called Republican moderates and Democratic moderates.

While not quite the imprimatur of propriety, their presence signified they knew what was going on, that they were prepared to participate in it, and that, again, while it was not quite the Good Housekeeping stamp of approval, they were interested to see what occurred.

In a series of floor statements on this issue, as the CONGRESSIONAL RECORD will show, I had urged the leaders to remove the party loyalty straitjacket from Senators so the Senators could vote their consciences because of the consistent comments I heard in the corridors and in the cloakrooms by both Republicans and Democrats that they did not like where we were headed; that Democrats were not pleased with this pattern of filibusters, and Republicans were not pleased with the prospect of the so-called constitutional or nuclear option.

And finally, in effect, that did happen when a group of moderate Senators got together, totaling 14 in number, as the parties signatory to the memorandum of understanding of last night, to forge an arrangement where the very important constitutional checks and balances, the very important constitutional separation of powers, would be maintained.

When we talk about the delicate balance of separation of powers, the constitutional scholars traditionally talk about it as so-called play in the joints. Had there been a formal determination of a rule change so that 51 Senators could cut off debate, that would have materially affected the delicate separation of powers where the President would have had much greater authority, be he a Republican President or a Democratic President.

Similarly, had the so-called constitutional or nuclear option been defeated, then I think it is fair to say the minority party—Democrats in this situation—would have been emboldened to go further in the use of the filibuster.

The nominees who have been subjected to the filibuster, in my judgment, have been held hostage, pawns in this escalating spiral of exacerbation by both sides.

In my 25 years in the Senate, during all of which I have served on the Judiciary Committee, I have seen our committee and this body routinely confirm judicial nominees who were the equivalents of those who have been filibustered here. These nominees have every bit the qualification of circuit judges who have been confirmed in the past.

Priscilla Owen, who is the specific nominee in question, would have been confirmed as a matter of routine had she not been caught up in this partisan battle. She has an extraordinary academic record. She was cum laude from Baylor both for an undergraduate degree and a law degree, scored the highest on the Texas bar exam, worked 17 years with a very prestigious law firm in Texas, served 11 years on the Texas State Supreme Court, earned well-qualified ratings from the American Bar Association, and is personally known to President Bush, who speaks of her in the most complimentary terms.

The senior Senator from Texas, KAY BAILEY HUTCHISON, has been a personal friend for years and knows her intimately. She speaks of her glowingly. She shepherded her to many private meetings with Senators. I spoke with Justice Owen at some length and was very much impressed with her on the academic level, on the professional level, and on the personal level.

Our colleague on the Judiciary Committee, Senator JOHN CORNYN, served with her on the Texas Supreme Court and, again, spoke of her in outstanding terms.

I have spoken at length about Justice Owen in the past, and I would simply incorporate by reference the comments which I made which appear in the CONGRESSIONAL RECORD for May 18 of this year, where I cited a selection of cases showing her judicial balance and showing her excellent record on the Texas Supreme Court.

Mr. President, we have been joined by, as I turn around, two distinguished Senators—one a current Member of this body, Senator BILL FRIST, the other a former Member of this body, Senator Alfonse D'Amato. I did not recognize him at first because he was not in his pink suit.

One day, in the back row, Alfonse D'Amato appeared and sang E-I-E-I-O in a pink suit. There was some comment in the Chamber about how much it improved his appearance. I did not agree with this.

I have a very short story. I had a brother who was 10 years older than I. One day he came down from the drugstore to the junkyard where I worked. He said: Arlen, I was just at Russell Drug. Down there they were saying you weren't fit to eat with the pigs. But my brother said: I stuck up for you, Arlen. I said you were. So when I see Alfonse D'Amato on the Senate floor, I remember those good times.

Now I yield to the distinguished majority leader, whose time I hope I have not unduly encroached upon. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, in a few moments, we will vote to conclude debate on the nomination of Judge Priscilla Owen to the Fifth Circuit Court of Appeals. It has been over 4 years since the Senate began consideration of Justice Owen for this position, and the Senate over that time has thoroughly and exhaustively investigated, looked at, examined, and debated Judge Owen's nomination.

She has endured 9 hours of committee hearings, more than 500 questions, and 22 days—it is interesting, 22 days. That is more than all sitting Supreme Court Justices combined have had on the floor of the Senate—all sitting Supreme Court Justices combined. We have had Priscilla Owen's nomination debated on this floor for more days. There has been more than 100 hours of floor debate. Now finally, after more than 4 years of waiting, Judge Owen will receive a fair up-or-down vote on the floor of the Senate.

As her critics now appear to be concede, Judge Owen is a mainstream candidate, who is thoughtful, who is dignified, and imminently qualified. Her academic and professional qualifications are outstanding. The American Bar Association unanimously—unanimously—rated her as well qualified, its highest possible rating. She was reelected to the Texas Supreme Court with 84 percent of the vote. She is supported by Republicans and Democrats on the Texas Supreme Court. She has been endorsed by every major newspaper in her State of Texas.

Moreover, in the face of continuous, sometimes vicious, attacks and distortions of her record in the nominations process, Judge Owen has shown extraordinary patience with this body. Despite 4 years of attacks on her integrity, Priscilla Owen has quietly, has patiently, has gracefully waited for an up-or-down vote.

Priscilla Owen has worked hard, played by the rules, faithfully interpreted the law and gained the respect of her colleagues and constituents. We cannot ask for more from a judicial nominee. It is time to close our debate. It is time to give Justice Owen an up-or-down vote on the floor of the Senate.

Today's vote will allow that up-or-down vote. It will affirm each Senator's right to weigh the facts and vote his or her conscience up or down, yes or no, confirmed or rejected. It is as simple as that. It is about principle. It is about fairness. It is about our constitutional duty to give advice and consent.

Mr. President, I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 12 o'clock having arrived, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

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. 71, the nomination of Priscilla Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Arlen Specter, Trent Lott, Lamar Alexander, Jon Kyl, Jim Talent, Wayne Allard, Richard G. Lugar, John Ensign, C.S. Bond, Norm Coleman, Saxby Chambliss, James Inhofe, Mel Martinez, Jim DeMint, George Allen, Kay Bailey Hutchison, John Cornyn.

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 Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit Court of Appeals, shall be brought to a close? Under the rule, the yeas and nays are mandatory. The clerk will call the roll.

Mr. LEVIN. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Under the rules and precedents of the Senate, how many votes are required to invoke cloture and end debate on the pending nomination?

The PRESIDING OFFICER. Three-fifths of the Senators duly chosen and sworn.

The clerk will call the roll.

Mr. LEVIN. Is there an answer to my parliamentary inquiry?

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURKIN. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

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

The yeas and nays resulted—yeas 81, nays 18, as follows:

[Rollcall Vote No. 127 Ex.]

YEAS—81

Akaka	Burns	Conrad
Alexander	Burr	Cornyn
Allard	Byrd	Craig
Allen	Carper	Crapo
Baucus	Chafee	DeMint
Bayh	Chambliss	DeWine
Bennett	Clinton	Dole
Bingaman	Coburn	Domenici
Bond	Cochran	Durbin
Brownback	Coleman	Ensign
Bunning	Collins	Enzi
Feinstein	Lieberman	Santorum
Frist	Lott	Schumer
Graham	Lugar	Sessions
Grassley	Martinez	Shelby
Gregg	McCain	Smith (OR)
Hagel	McConnell	Snowe
Harkin	Mikulski	Specter
Hatch	Murkowski	Stevens
Hutchison	Nelson (FL)	Sununu
Inhofe	Nelson (NE)	Talent
Isakson	Obama	Thomas
Johnson	Pryor	Thune
Kohl	Reid	Vitter
Kyl	Roberts	Voinovich
Landrieu	Rockefeller	Warner
Leahy	Salazar	Wyden

NAYS—18

Biden	Dorgan	Levin
Boxer	Feingold	Lincoln
Cantwell	Jeffords	Murray
Corzine	Kennedy	Reed
Dayton	Kerry	Sarbanes
Dodd	Lautenberg	Stabenow

NOT VOTING—1

Inouye

The PRESIDING OFFICER. On this vote, the yeas are 81, the nays are 18. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

RECESS

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

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Colorado.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NOMINATION OF PRISCILLA RICHMAN OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT—Continued

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I read from the King James version of the Holy Bible, from the 22nd chapter of Proverbs, the 28th verse:

Remove not the ancient landmark, which thy fathers have set.

Mr. President, in his second inaugural address, Abraham Lincoln observed that:

With malice toward none; with charity for all; with firmness in the right, as God give us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds. . . .

Mr. President, I have always believed that the Senate, by its nature, attracts and probably also creates men and

women of the quality and character who are able to step up when faced with crises that threaten the ship of state, to calm the dangerous seas which, from time to time, threaten to dash our Republic against rocky shoals and jagged shores.

The Senate proved it to be true again yesterday, when 14 Members—from both sides of the aisle, Republicans and Democrats; 14 Members—of this revered institution came together to avert the disaster referred to as the ''nuclear option'' or the ''constitutional option''—these men and women of great courage.

As William Gladstone said, in referring to the Senate of the United States, the Senate is

that remarkable body, the most remarkable of all the inventions of modern politics.

I thank all of those Republicans and Democrats who worked together to keep faith with the Framers and the Founding Fathers. We have kept the faith with those whose collective vision gave us this marvelous piece of work, the Constitution of the United States. Thank God—thank God—that this work has been done and that it has been preserved, that a catastrophe has been averted.

Article II, section 2, of the Constitution gives to the President the power to nominate, and ''by and with the Advice and Consent of the Senate,'' to ''appoint . . . Judges of the supreme Court, and all other Officers of the United States. . . .''

There are two parts to that phrase: the ''advice'' on the one hand, and the ''consent'' on the other, and both must be present before any President can appoint any nominee to the Supreme Court or any other Federal court. It is, therefore, a shared responsibility between the U.S. Senate and the President of the United States.

By its agreement yesterday, the Senate is keeping that construct alive, this shared responsibility between the President of the United States, on the one hand, and the Senate of the United States, on the other.

The agreement that was obtained yesterday by the cooperation between and among the 14 Members of the Senate—representing Republicans and Democrats—it was that agreement that reminds us of the words of our Constitution, by encouraging the President of the United States, on the one hand, to consult with the Senate of the United States, on the other. In other words, the Senate will be in on the takeoff, meaning prior to sending up his nominees for our consideration. In recent times—and by that I mean under Presidents of both parties—there has not been all that much consultation by the President with the Senate.

So here we are, in the Senate, offering the hand of partnership to the Chief Executive and saying: Consult with us. That is what the Framers intended, that the President of the United States should consult with the Senate. You don't have to take our advice, but here it is. And by considering that advice, it only stands to reason that any President will be more assured that his nominees will enjoy a kinder reception in the Senate.

The agreement, which references the need for ''advice and consent,'' as contained in the Constitution, proves once again, as has been true for over 200 years, that our revered Constitution is not simply a dry piece of parchment. It is a living document.

Yesterday's agreement was a real-life illustration of how this historical document continues to be vital in our daily lives. It inspires, it teaches, and yesterday it helped the country and the Senate avoid a serious catastrophe.

Mr. President, for this reason and others, I ask that at the end of my remarks the agreement reached by the 14 Senators be printed in the RECORD.

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

(See exhibit 1.)

Mr. BYRD. Mr. President, I do this so that we in the Senate and the President may all have a way of easily revisiting the text of that agreement for future reference.

On the heels of this agreement, I believe that we should now move forward, propelled by its positive energy, in a new direction. We should make every effort to restore reason to the politically partisan fervor that has overtaken our Senate, this city, and our country. We must stop arguing and start legislating.

Divisive political agendas are not America's goals. The right course lies someplace in the middle. It is our job to work as elected representatives of a reasonable people to do what is right, regardless of threats from any of the angry groups that seem dedicated to intimidation. The skeptics, the cynics, the doubters, the Pharisees, those who are intoxicated by the juice of sour grapes did not prevail and must not prevail. The 14 Republican and Democratic Senators rose above those who do not wish to see accord but prefer discord.

Chaucer's ''Canterbury Tales''—we have all read Chaucer's ''Canterbury Tales'' in high school—contains ''The Pardoner's Tale.''

The story tells about the journey by the pilgrims to Canterbury, to the shrine of Canterbury. The scene took place in Flanders, where once there sat drinking in a tavern three young men who were much given to folly. As they sat, they heard a small bell clink before a corpse that was being carried to the grave. Whereupon, one of the three called to his knave and ordered him to go and find out the name of the corpse that was passing by.

The boy answered that he already knew and that it was an old comrade of the roisterers who had been slain, while drunk, by an unseen thief called ''Death,'' who had slain others in recent days.

And so out into the road the three young ruffians went in search of this monster called Death. They came upon an old man and seized him, and with rough language they demanded that he tell them where they could find this cowardly adversary who was taking the lives of their good friends around the countryside.

The old man pointed to a great oak tree on a nearby knoll, saying, ''There, under that tree you will find Death,'' that monster. In a drunken rage, the three roisterers set off in a run until they came to the tree, and there they found a pile of gold—eight basketfuls of florins, newly minted, round, gold coins. Forgotten was the monster called Death, as the three pondered their good fortune. And they decided that they should remain with the gold until nightfall, when they would divide it among themselves and take it to their respective homes. It would be unsafe, they reasoned, to attempt to do so in broad daylight, as they might be fallen upon by thieves who would take their treasure from them.

It was proposed that the three draw straws, and the person who drew the shortest straw would go into the nearby village and purchase some bread and wine and cheese, which they could then enjoy as they whiled away the daylight hours. So off toward the village the young man who drew the shortest straw went. When he was out of sight, the remaining two decided that there was no good reason why this fortune, this pile of gold, should be divided among three individuals. So one of them said to the other, ''When he returns, you throw your arm around him as if in good sport, as in jest, and I will rive him with my dagger, and with your dagger, you can do the same. Then all of this gold will be divided not among three of us but just between two of us—you and me.''

Meanwhile, while the two were planning the demise of the third, the youngest rogue, as he made his way into the town, thought to himself what a shame it would be that the gold would be divided among three, when it just as well could be so easily belong only to the ownership of one, himself. Therefore, in town the young man went directly to an apothecary and asked to be sold some poison for the large rats and a polecat that had been killing his chickens. The apothecary—the pharmacist—quickly provided some poison, saying that as much as equaled only a tiny grain of wheat would result immediately in sudden death for the creature that drank the mixture.

Having purchased the poison, the young villain crossed the street to a winery, where he purchased three bottles—two for his friends, one for himself. After he left the village, he sat down, opened two bottles of wine and deposited an equal portion in each, and then returned to the oak tree, where the two older villains did as they had planned. One threw his arm, as if in jest, around the shoulders of the third, and both buried their daggers in him. He fell dead on the pile of gold. The

other two villains then sat down, broke the bread, cut the cheese, and opened the two bottles of wine. Each took a good, deep swallow, and then, suffering a most excruciating pain, both fell dead upon the pile of gold and upon the body of the third. So there they were across the pile of gold, all three of them dead.

Their avarice, their greed for gain, their love of material things had destroyed them. There is a lesson here in Chaucer's Tales, as given to us by ''The Pardoner.'' The strong temptation for political partisanship that has prevailed in the Senate can tear this Senate apart and can tear the Nation apart and confront all of us with destruction, so that in the end we three—the President, the Senate, and the people—will all be destroyed, as it were.

So we almost saw that happen here on the Senate floor—until yesterday, when that catastrophe, looming as it was before the Senate, was averted. I applaud the fact that the center, the anchor, held, and we stood together for the good of the country against mean-spirited, shallow, political ends.

Mr. President, I implore all of us to endeavor to lift our eyes to the higher things. We can perform some much needed healing on the body politic. If we can come together in a dignified way to orderly and expeditiously move forward on these nominations, perhaps we can yet salvage a bit of respect and trust from the American people for all of us, for the Senate, and for our institutions of free government.

We have a duty, at this critical time, to rise above politics as usual, in which we savage one another, and in so doing, destroy ourselves, like the three villains in ''The Pardoner's Tale.''

Let us put the Nation first. The American people want us to do that. In the long run, that is how we will be judged and, more importantly, it is how the Senate will be judged.

It is easy to tear down; it is difficult to build.

I saw them tearing a building down,
A group of men in a busy town.
With a ''Ho, Heave, Ho and a lusty yell,
They swung a beam and the sidewall fell.

I said to the foreman, ''Are these men skilled?
The type you would hire if you had to build.''
He laughed, and then he said, ''No indeed,
Just common labor is all I need;
I can easily erect in a day or two,
That which takes builders years to do.''

I said to myself as I walked away,
''Which of these roles am I trying to play?
Am I a builder who works with care,
Building my life by the rule and square?
Am I shaping my deeds by well-laid plan,
Patiently building the best I can?
Or am I a wrecker who walks the town
Content with the labor of tearing down.''

Mr. President, it is easy to tear down, but it takes a long time to build. We have been 217 years in building this Senate, making it what it was intended to be by the Framers who wrote it 219 years ago, who established three equal coordinate branches of Government, who established a separation of powers, who established checks and balances in this Constitution of the United States.

The work of those Framers and the work of the larger group of Founders took 219 years. It was about to be destroyed in a single day, this day. But thank God 14 Senators from both sides of the aisle met and rose above partisan politics and kept the faith with the Framers and with the Founders so that our posterity might enjoy the blessings of liberty, the blessings of freedom of speech, the roots of which go all the way back to the reign of Henry IV, who reigned from 1399 to 1413 and who in 1407 proclaimed that the members of Parliament—the House of Lords and the House of Commons—could speak freely and without fear.

And those words were written into the Declaration of Rights, which declaration was submitted to William III of Orange and Mary, a Declaration of Rights which included freedom of speech in Parliament. That declaration was presented on February 13, 1689, to William III and Mary. They both accepted it and were then proclaimed by the House of Commons joint sovereigns of the nation.

Then, on December 18, 1689, those words were included in a statute, the English Bill of Rights—freedom of speech, the roots going back a long way. That freedom of speech then was provided to those of us in the Senate, provided by the Constitution, and since 1806, when the provision for the previous question was discarded upon the recommendation of Vice President Aaron Burr, since 1806 that provision for the previous question or the sudden cutting off debate was discarded. Since 1806, until the year 1917, the year in which I was born during the administration of Woodrow Wilson, that freedom of speech has prevailed in the Senate, and it has lived since then except for unanimous consent agreements and the cloture provision which was first agreed to in 1917, the cloture provision shutting off debate under the rules of the Senate.

Freedom of speech has reigned in this body, and it still lives, thanks again to the 14 Republicans and Democrats who rose above politics yesterday and came forward with this accord.

So, Mr. President, let us be true to the faith of our fathers and to the expectation of those who founded this Republic. The coming days will test us again and again, but let us go forward together hoping that in the end, the Senate will be perceived as having stood the test, and may we, both Republicans and Democrats and Independents, when our work is done, be judged by the American people and by the pages of history as having done our duty and as having done it well.

Our supreme duty is not to any particular person, not to any particular President, not to any political party, but to the Constitution, to the people of the Nation, and to the future of this Republic. It is in that spirit that we may do well to remember the words of Benjamin Hill, a great Senator, a great orator from the State of Georgia, his words being inscribed on a statue in Atlanta, GA, as they are and as they appear today upon that monument:

Who saves his country saves himself, saves all things, and all things saved do bless him. Who let's his country die dies himself ignobly, and all things dying curse him.

Remember that ancient proverb: Remove not the ancient landmark, which thy fathers have set.

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

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING ON JUDICIAL NOMINATIONS

We respect the diligent, conscientious efforts, to date, rendered to the Senate by Majority Leader Frist and Democratic Leader Reid. This memorandum confirms an understanding among the signatories, based upon mutual trust and confidence, related to pending and future judicial nominations in the 109th Congress.

This memorandum is in two parts. Part I relates to the currently pending judicial nominations; Part II relates to subsequent individual nominations to be made by the President and to be acted upon by the Senate's Judiciary Committee.

We have agreed to the following:

PART I: COMMITMENTS ON PENDING JUDICIAL NOMINATIONS

A. Votes for Certain Nominees. We will vote to invoke cloture on the following judicial nominees: Janice Rogers Brown (D.C. Circuit), William Pryor (11th Circuit), and Priscilla Owen (5th Circuit).

B. Status of Other Nominees. Signatories make no commitment to vote for or against cloture on the following judicial nominees: William Myers (9th Circuit) and Henry Saad (6th Circuit).

PART II: COMMITMENTS FOR FUTURE NOMINATIONS

A. Future Nominations. Signatories will exercise their responsibilities under the Advice and Consent Clause of the United States Constitution in good faith. Nominees should only be filibustered under extraordinary circumstances, and each signatory must use his or her own discretion and judgment in determining whether such circumstances exist.

B. Rules Changes. In light of the spirit and continuing commitments made in this agreement, we commit to oppose the rules changes in the 109th Congress, which we understand to be any amendment to or interpretation of the Rules of the Senate that would force a vote on a judicial nomination by means other than unanimous consent or Rule XXII.

We believe that, under Article II, Section 2, of the United States Constitution, the word ''*Advice*'' speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

We firmly believe this agreement is consistent with the traditions of the United States Senate that we as Senators seek to uphold.

E. Benjamin Nelson, Mike DeWine, Joe Lieberman, Susan Collins, Mark Pryor, Lindsey Graham, Lincoln Chafee, John

McCain, John Warner, Robert C. Byrd, Mary Landrieu, Olympia Snowe, Ken Salazar, and Daniel Inouye.

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

The bill clerk proceeded to call the roll.

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

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

Mr. REED. Mr. President, I ask unanimous consent to speak as in morning business.

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

Mr. REED. Mr. President, I also ask unanimous consent that the time I consume come out of my time postcloture.

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

RETIREMENT OF COLONEL RUSS HOWARD, UNITED STATES ARMY

Mr. REED. Mr. President, I rise today to recognize the accomplishments of Colonel Russ Howard, head of the department of social sciences and director of the Combating Terrorism Center at West Point. Colonel Howard is retiring June 3, 2005, after 37 years of Active and Reserve military service.

In his previous position, he was the deputy department head of the department of social sciences. Prior to that, Colonel Howard was an Army chief of staff fellow at the Center for International Affairs at Harvard University. Formerly, Colonel Howard was the commander of the 1st Special Forces Group (Airborne) at Fort Lewis, WA. Other recent assignments include assistant to the Special Representative to the Secretary General during UNOSOM II in Somalia, deputy chief of staff for I Corps, and chief of staff and deputy commander for the Combined Joint Task force, Haiti/Haitian Advisory Group. He also served as the administrative assistant to ADM Stansfield Turner and as a special assistant to the commander of SOUTHCOM.

When Colonel Howard was commander of 3rd Battalion, 1st Special Warfare Training Group (Airborne) at Fort Bragg, NC, he developed the curriculum for the first ever graduate degree program for the Civil Affairs and Psychological Operations officers.

Prior to Operation Desert Shield/Desert Storm, Colonel Howard took a mobile training team to Kuwait and Saudi Arabia to train the ''lost boys,'' newly appointed Civil Affairs and Psychological Operations officers already deployed to the Persian Gulf.

The newly trained officers performed superbly during operations and 3rd Battalion won the Army Superior Unit Award, largely due to the efforts and foresight of Colonel Howard.

As a newly commissioned officer, a much younger officer, Colonel Howard served as ''A'' team commander in the 7th Special Forces Group from 1970 to 1972.

He left the Active component and served in the U.S. Army Reserve from 1972 to 1980. During this period, he served as an overseas manager, American International Underwriters Melbourne, Australia, and China tour manager and Canadian Pacific Airlines.

He was recalled to active duty in 1980 and served initially in Korea as an infantry company commander. Subsequent assignments included classified project officer, U.S. Army 1st Special Operations Command at Fort Bragg, and operations officer and company commander 1st Battalion, 1st Special Forces Group in Okinawa, Japan.

Colonel Howard earned a bachelor of science degree in industrial management from San Jose State University, bachelor of arts degree in Asian studies from the University of Maryland, a master of arts degree in international management from the Monterey Institute of International Studies, and a masters of public administration degree from Harvard University.

Colonel Howard was an assistant professor of social sciences at the U.S. Military Academy and a senior service college fellow at the Fletcher School of Law and Diplomacy, Tufts University.

During his extraordinary career of public service, Colonel Russ Howard was a dedicated leader, enlightened visionary, effective operator, and exemplary role model for cadets, soldiers, and civilians.

For the past 7 years, he made enormous contributions to the U.S. Military Academy, its graduates, and to the Nation through his relentless pursuits of excellence in the department of social sciences and his advancement of education, research, and policy development in the global war on terror.

He was the right person at the right time in exactly the right job as the Academy and the Nation responded to the events of 9/11 and the global war on terror. Building on his extraordinary skills as a researcher and educator, he knew the intellectual response to the war on terror would have to be as significant as the operational response and set a course for the department and the Academy to lead this response.

Building on an exceptional experience as a Special Forces officer who commanded at every level from team leader to Special Forces Group, he was able to integrate the intellectual issues of understanding terrorism with the practical issues of countering terrorism and include them in the curriculum, and eventually led to the establishment of the Combating Terrorism Center at West Point.

He inspired support from the academy leadership, from General-retired Wayne Downing, Mr. Vinnie Viola, Mr. Ross Perot, and many others, so that the U.S. Military Academy has become the international leader in undergraduate terrorism education and research.

Simultaneously, Colonel Howard enhanced all aspects of the academy and the Department of Social Sciences by supporting a robust teaching program. He taught more than 15 different courses, created 4 new ones, published 3 books and 15 articles, and encouraged and cultivated resources for other faculty to follow his example.

His support for faculty and cadet development through the scholarship, debate, model U.N., domestic affairs forum, finance forum, sports, and a myriad of other activities was exceptional. Most importantly, he is a trusted, caring, concerned, and dedicated leader who evokes the best from everybody with whom he comes in contact.

It has been my privilege to know Colonel Howard for many years, to respect him as a soldier and a scholar, and to at this moment congratulate him on a career of exceptional service to the Army and to the Nation. As he parts for other venues and other responsibilities, I wish him well.

I yield back my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

EMBRYONIC STEM CELL RESEARCH

Mr. BROWNBACK. Mr. President, I rise to speak about an issue that has been worked on in the country for some period of time. Soon, a House vote will take place on embryonic stem cell research. The issue that will soon be voted on in the House—and may come before this body—is whether to allow the taxpayer funding of destruction of young human life.

This legislation being considered in the House of Representatives would take young human embryos, would provide taxpayer dollars to destroy these embryos and conduct research on the stem cells derived from them. I believe we all have a duty to protect innocent life. We have a duty and a responsibility to look out for the downtrodden, those who do not have a voice. These are the youngest of human lives; they should be protected, and they should not be researched on.

We have at times in the past in the United States researched on other human beings. Whenever we have done so, at the moment in time when it was done, people did it on the basis that we need to know, or we need to be able to conduct this research, or this research will provide a cure for something. Yet in every instance—either in this country or others—when it has been done and the society at large has allowed it, we have always, always regretted it later. It has always been wrong for one group of humans who are in a more powerful position to research on somebody in a lesser position. That has always been true, and it remains true today. We should not use taxpayer dollars to fund research on the youngest of human lives. It is wrong, it is not necessary, and it should be stopped.

I am pleased that the President has promised to veto this legislation. However, I also intend to not let this piece of legislation make it forward, to move to the President's desk. If others choose to bring this destruction of human life—taxpayer-funded destruction of human life—in front of this body, I intend that we are going to talk about it for a long time and address a whole series of issues, whether it be human cloning, which is associated with this human destructive legislation, or the creation of human-animal crosses for research purposes. We are going to spend a lot of time discussing this because young human lives are at stake. I will not sit idly by and acquiesce in their tragic destruction.

If this human destructive legislation, or a Senate counterpart, comes before this body, I will use all means available to impede its progress. At the very least, we should have a lengthy debate on this issue before taking any action. The reason is that young human lives are at stake. I believe the very nature of our culture—whether we will have a culture of life or not is at stake. Will we honor human life because it is sacred per se, or are we going to use it for a research apparatus for the benefit of others? We have always regretted that when we have done it before. Today is a similar type of discussion.

Some are saying this doesn't really look like a human life; it is so small, so microscopic in some cases, that some say it really cannot be human life. Yet, according to the biological and scientific definition, this is young human life. If allowed to be nurtured, it becomes you, me, or anybody watching. Life has to be nurtured at all stages. It is no different biologically at that stage versus at a later stage. It has the same biological components, or ''software,'' if you will, or DNA structure. It needs to be nurtured, and it matures into an adult human. If we are going to proceed on this, I think we are really hurting ourselves as a society.

I also point out that some people are saying we need to do this to find cures. I want to find cures, also—cures for people with cancer, Alzheimer's disease, Parkinson's disease, spinal cord injuries, or juvenile diabetes—and I have been working on that. The thing is, we have a route to find these cures that is ethical and moral.

The House is also considering a cord blood bill from Congressman SMITH today, and there are also adult stem cells. We have had this discussion before, but I think people hear ''stem cells,'' and they say: I am for it. We need to be clear that there are different types of stem cells: There are cord blood stem cells in the umbilical cord, there are embryonic stem cells, where you have to destroy the embryo itself to get the stem cells, and there are adult stem cells in my body and yours and anybody watching. These adult stem cells are a kind of repair cell that goes around the body fixing different parts of the body. We have been able to take adult stem cells out and grow them outside the body to the point that, today, over 58 different human diseases are being treated in human patients. There are published clinical studies using adult stem cells—the stem cells from one's own body.

A Parkinson's disease patient, treated with his own adult stem cells, continues to exhibit relief of 80 percent of his symptoms more than 6 years after the surgery. I had the man come in himself, who was treated with his own adult stem cells taken from the base of his nose, grown outside the body, put in the left-hand side of his brain, with a substantial improvement on the right-hand side of his body. That is purely ethical research. It is working and getting the job done.

Spinal cord injuries. Dr. Carlos Limas treated 34 patients in Portugal with their own adult stem cells. I had two of them in to testify at a hearing last year—one is a paraplegic and one is a quadriplegic—and they are walking with the assistance of braces and their own adult stem cells.

Also, umbilical cord blood cells were used to treat a South Korean woman who had been paralyzed for 19 years. She had not walked for 19 years, and she can now walk with braces.

What about juvenile diabetes? This disease affects a lot of people. This is one that has vexed a lot of people. We all want to find a cure for juvenile diabetes.

Dr. Denise Faustman at Harvard is a leading diabetes researcher. She has completely reversed end-stage juvenile diabetes in mice and has FDA approval to begin human clinical trials using adult stem cell therapy.

My point in mentioning these 3 of the 58 different areas is that we have an ethical answer. We have an answer that does not involve the destruction of human life, and it is right before us. We can do it. We can fund it, and we can move forward with it. We do not have to destroy young human life to do this, and it is wrong if we do.

There is going to be a big discussion. We are going to have a lot of debate about this issue on the floor or in committee or other places if people decide to move this legislation forward. This is not about banning human embryonic stem cell research. This is about taxpayer funding of human embryonic stem cell research. Embryonic stem cell research is legal. It is being conducted in this country. It is being funded by the Government of the United States on a limited set of lines. The President had the discussion and put forward the guidelines—a limited set of lines that were identified, on which a life-and-death decision had already been made prior to funding. That research continues and goes on today.

The House bill would expand that and say we can kill young human life today for research on embryonic stem cells, and we want to do it with taxpayer funding. That is what I am saying I am opposed to is the taxpayer funding where a life-and-death decision has not been made, and we involve the destruction of young human lives. The House bill should not move forward.

Mr. President, there are two statements that the President has put forward saying that he would veto such legislation if it comes forward. I ask unanimous consent to print these statements in the RECORD.

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

STATEMENT OF ADMINISTRATION POLICY—MAY 24, 2005

H.R. 2520—STEM CELL THERAPEUTIC AND RESEARCH ACT OF 2005

(Rep. Smith (R) NJ and 78 cosponsors)

The Administration strongly supports House passage of H.R. 2520, which would facilitate the use of umbilical-cord-blood stem cells in biomedical research and in the treatment of disease. Cord-blood stem cells, collected from the placenta and umbilical cord after birth without doing harm to mother or child, have been used in the treatment of thousands of patients suffering from more than 60 different diseases, including leukemia, Fanconi anemia, sickle cell disease, and thalassemia. Researchers also believe cord-blood stem cells may have the capacity to be differentiated into other cell types, making them useful in the exploration of ethical stem cell therapies for regenerative medicine.

H.R. 2520 would increase the publicly available inventory of cord-blood stem cells by enabling the Department of Health and Human Services (HHS) to contract with cord-blood banks to assist them in the collection and maintenance of 150,000 cord-blood stem cell units. This would make matched cells available to treat more than 90 percent of patients in need. The bill would also link all participating cord-blood banks to a search network operated under contract with HHS, allowing physicians to search for matches for their patients quickly and effectively in one place. The bill also would reauthorize a similar program already in place for aiding the use of adult bone marrow in medical care. There is now $19 million available to implement the Cord Blood Cell Bank program; the Administration will work with the Congress to evaluate future spending requirements for these activities. The bill is also consistent with the recommendation from the National Academy of Science to create a National Cord Blood Stem Cell Bank program.

The Administration also applauds the bill's effort to facilitate research into the potential of cord-blood stem cells to advance regenerative medicine in an ethical way. Some research indicates that cord blood cells may have the ability to be differentiated into other cell types, in ways similar to embryonic stem cells, and so present similar potential uses but without raising the ethical problems involved in the intentional destruction of human embryos. The Administration encourages efforts to seek ethical ways to pursue stem cell research, and believes that—with the appropriate combination of responsible policies and innovative scientific techniques—this field of research can advance without violating important ethical boundaries. HR 2520 is an important step in that direction.

STATEMENT OF ADMINISTRATION POLICY—May 24, 2005

H.R. 810—STEM CELL RESEARCH ENHANCEMENT ACT OF 2005

(Rep. Castle (R) DE and 200 cosponsors)

The Administration strongly opposes House passage of H.R 810, which would require Federal taxpayer dollars to be used to encourage the ongoing destruction of nascent human life. The bill would compel all American taxpayers to pay for research that relies on the intentional destruction of human embryos for the derivation of stem cells, overturning the President's policy that supports research without promoting such ongoing destruction. If H.R 810 were presented to the President, he would veto the bill.

The President strongly supports medical research, and worked with Congress to dramatically increase resources for the National Institutes of Health. However, this bill would support and encourage a line of research that requires the intentional destruction of living human embryos for the derivation of their cells. Destroying nascent human life for research raises serious ethical problems, and many millions of Americans consider the practice immoral.

The Administration believes that government has a duty to use the people's money responsibly, both supporting important public purposes and respecting moral boundaries. Every year since 1995, Congress has on a bipartisan basis upheld this balance by prohibiting Federal funds for research in which an embryo is destroyed. Consistent with this provision, the President's policy permits the funding of research using embryonic cell lines created prior to August 9, 2001, along with stem cell research using other kinds of cell lines. Scientists can therefore explore the potential application of such cells, but the Federal government does not offer incentives or encouragement for the destruction of nascent human life.

H.R 810 seeks to replace that policy with one that offers very little additional practical support to the research, while using Federal dollars to offer a prospective incentive for the destruction of human embryos. Moreover, H.R 810 relies on unsupported scientific assertions to promote morally troubling and socially controversial research. Embryonic stem cell research is at an early stage of basic science, and has never yielded a therapeutic application in humans. It is too early to say if a treatment or a cure will develop from embryonic stem cell research.

The Administration believes that the availability of alternative sources of stem cells further counters the case for compelling the American taxpayer to encourage the ongoing destruction of human embryos for research. Researchers are continually exploring alternative ways to derive pluripotent stem cells. And alternative types of human stem cells—drawn from adults, children, and umbilical-cord blood without doing harm to the donors—have already achieved therapeutic results in thousands of patients with dozens of different diseases.

Moreover, private sector support and public funding by several States for this line of research, which will add up to several billion dollars in the coming few years, argues against any urgent need for an additional infusion of Federal funds which, even if completely unrestricted, would not approach such figures. Whatever one's view of the ethical issues or the state of the research, the future of this field does not require a policy of Federal subsidies offensive to the moral principles of millions of Americans.

H.R. 810 advances the proposition that the Nation must choose between science and ethics. The Administration, however, believes it is possible to advance scientific research without violating ethical principles: both by enacting the appropriate policy safeguards and by pursuing the appropriate scientific techniques. HR 810 is seriously flawed legislation that would undo those safeguards and provide a disincentive to pursuing those techniques.

Mr. BROWNBACK. Mr. President, we will have much discussion of this issue if it comes before this body. I am going to be working aggressively with a number of individuals to see that we continue this stem cell work in an ethical manner, but not where it involves the destruction of human life.

Mr. President, I yield the floor, and 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.

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

Mr. FEINGOLD. Mr. President, I voted no on cloture, and I will vote no on the nomination of Priscilla Owen to be a judge on the U.S. Circuit Court of Appeals for the Fifth Circuit Court. I would like to take a few minutes today to explain my votes. I also would like to make a few comments on the events that led up to these votes.

I strongly oppose the threat of the nuclear option. I believe this was an illegitimate tactic, a partisan abuse of power that was a threat to the Senate as an institution and to the country. Attempting to blackmail the minority into giving up their rights that have been part of the Senate's traditions and practices for centuries was a new low for a majority that has repeatedly been willing to put party over principle. Unfortunately, the blackmail was partially successful. While I do applaud the efforts of the Senators who worked hard to broker an agreement, the end result is that three nominees who do not deserve lifetime appointments to the judiciary will now be confirmed.

The agreement reached by our colleagues states that filibusters should be reserved for extraordinary circumstances. For me, that has always been the test. I think Democrats have stuck to that standard in blocking just 10—just 10—out of the 218 nominations of President Bush that have been brought to the floor. A number of very conservative and very controversial nominees have been confirmed by the Senate. Jeffrey Sutton, now a judge on the Sixth Circuit, was confirmed by a vote of 52 to 41. No filibuster was used there. Jay Bybee, the author of the infamous torture memo, now sits on the Ninth Circuit. He was not filibustered. Michael McConnell, a very conservative and anti-choice law professor, often mentioned as a possible Supreme Court nominee, was confirmed for the Tenth Circuit. He was not filibustered. Dennis Shedd was confirmed to the Fourth Circuit by a vote of 55 to 44. He could have been filibustered, but he was not filibustered.

The idea that the filibuster has been used over the past several years as a tool to block all the nominees that the minority opposed is ludicrous. There were, and there continue to be, very good reasons to block a certain small number of nominees. Nothing that occurred last night changed that one iota. I will continue to vote against cloture only in extraordinary circumstances. I did that when we voted on cloture on the Owen nomination in 2003 and each subsequent time, and I have done that again today. For the majority to have created this constitutional crisis over what came down to five nominees was wrong, was an abuse of power. The American people did not support it, and I do not think they will support it in the future.

With respect to the Owen nomination, there are a number of factors that I believe require us to give this nomination very careful consideration. First, we should consider that judges on our courts of appeal have an enormous influence on the law. Whereas, decisions of the district courts are always subject to appellate review, the decisions of the courts of appeals are only subject to discretionary review by the Supreme Court. The decisions of the courts of appeal are, in almost all cases, final, as the Supreme Court agrees to hear only a very small percentage of the cases on which its views are sought. That means that the scrutiny we give to circuit court nominees must be greater than that we give to district court nominees. And then, of course, the scrutiny we give to Supreme Court nominees will even be greater.

Another important consideration is the ideological balance of the Fifth Circuit. The Fifth Circuit is comprised of Texas, Louisiana, and Mississippi. The Fifth Circuit contains the highest percentage of minority residents, over 40 percent of any circuit other than the DC Circuit. It is a court that, during the civil rights era, issued some of the most significant decisions supporting the rights of African-American citizens to participate as full members of our society.

As someone who believes strongly in freedom, liberty, and equal justice under law and the important role of the Federal courts to defend these fundamental American principles, I am especially concerned about the makeup of our circuit courts and their approaches to civil rights issues.

Even after 8 years of a Democratic President, the Fifth Circuit had twice as many Republican appointees as Democratic appointees. That is because during the last 6 years of the Clinton administration, the Judiciary Committee did not report out a single judge to the Fifth Circuit Court of Appeals. As we all know, that was not for a lack of nominees to consider. President Clinton nominated three well-qualified lawyers to the Fifth Circuit—Jorge

Rangel, Enrique Moreno, and Alston Johnson. None of these nominees even received a hearing before the committee.

Then-Chairman LEAHY held a hearing in July 2001 on the nomination of Judge Edith Brown Clement for a seat on the Fifth Circuit only a few months after she was nominated and less than 2 months after Democrats took control of the Senate. It was the first hearing in the Judiciary Committee for a Fifth Circuit nominee since September 1994. And Judge Clement, of course, was confirmed later in the year.

The fact is, there is a history here and a special burden on President Bush to consult with our side on nominees for this circuit; otherwise, we will be simply rewarding the obstructionism that the President's party engaged in over the last 6 years of the Clinton administration by allowing him to fill, with his choices, seats that his party held open for years, even when qualified nominees were advanced by President Clinton.

I say, once again, my colleagues on the Republican side bear some responsibility for this situation. There was a time when I thought they might help resolve it by urging the administration to address the Senate's failure to take up Clinton nominees. This entire controversy over judges that has come to a head over the last several weeks could have been avoided if our Republican colleagues had convinced the President to renominate even a few of those Clinton nominees who never received a hearing or vote in the committee, including nominees to the Fifth Circuit. But, of course, that did not happen. There was no effort to reach a real compromise to take into account the concerns of all parties.

A compromise at the point of a gun is not a compromise. That, I'm afraid, is what we had last night.

With that background, let me outline the concerns that have caused me to reach the conclusion that Justice Owen should not be confirmed.

Justice Owen has had a successful legal career. She graduated at the top of her class from Baylor University Law School, worked as an associate and partner at the law firm of Andrews and Kurth in Houston, and has served on the Texas Supreme Court since January 1995. These are great accomplishments.

But Justice Owen's record as a member of the Texas Supreme Court leads me to conclude that she is not the right person for a position on the Fifth Circuit. I am not convinced that Justice Owen will put aside her personal views and ensure that all litigants before her on the Fifth Circuit received a fair hearing. Her decisions in cases involving consumers' rights, worker's rights, and reproductive rights suggest that she would be unable to maintain an open mind and provide all litigants a fair and impartial hearing.

Justice Owen has a disturbing record of consistently siding against consumers or victims of personal injury and in favor of business and insurance companies. When the Texas Supreme Court, which is a very conservative and pro- business court, rules in favor of consumers or victims of personal injury, Justice Owen frequently dissents. According to Texas Watch, during the period 1999 to 2002, Justice Owen dissented almost 40 percent of the time in cases in which a consumer prevailed. But in cases where the consumer position did not succeed, Justice Owen never dissented.

At her first hearing, Senator KENNEDY and then-Senator Edwards asked Justice Owen to cite cases in which she dissented from the majority and sided in favor of consumers. Justice Owen could cite only one case, Saenz v. Fidelity Guaranty Insurance Underwriters. But Justice Owen's opinion in this case hardly took a pro-consumer position since it still would have deprived the plaintiff of the entire jury verdict. She did not join Justice Spector's dissent, which would have upheld the jury verdict in favor of Ms. Saenz.

Also during that first hearing, Senators FEINSTEIN and DURBIN questioned Justice Owen about Provident American Ins. Co. v. Castaneda. In that case, the plaintiff sought damages against a health insurer for denying health care benefits, after the insurer had already provided pre-operative approval for the surgery. Justice Owen, writing for the majority, reversed the jury's verdict in favor of the plaintiff and rejected the plaintiff's claim that the health insurer violated the Texas Insurance Code and the Deceptive Trade Practices Act. At the hearing, Justice Owen defended her opinion by saying that she believed that the plaintiff was seeking extra-contractual damages and that the plaintiff had already received full coverage under the policy and statutory penalties. But, in the words of her colleague, Justice Raul Gonzalez, who wrote a dissent, Justice Owen's opinion ''may very well eviscerate the bad-faith tort as a viable case of action in Texas.'' The cause of action for bad faith is designed to deter insurers from engaging in bad faith practices like denying coverage in the first place.

In addition, with respect to several decisions involving interpretation and application of the Texas parental notification law, I am deeply troubled by Justice Owen's apparently ignoring the plain meaning of the statute and injecting her personal beliefs concerning abortion that have no basis in Texas or U.S. Supreme Court law. In 2000, the Texas legislature enacted a parental notification law that allows a minor to obtain an abortion without notification of her parents if she demonstrates to a court that she has complied with one of three ''judicial bypass'' provisions: (1) that she is ''mature and sufficiently well informed'' to make the decision without notification to either of her parents; (2) that notification would not be in her best interest; or (3) that notification may lead to her physical, sexual, or emotional abuse.

During Justice Owen's first confirmation hearing, Senator CANTWELL questioned Justice Owen about her positions in cases interpreting this law, focusing on Justice Owen's insistence in In re Jane Doe. In that case, a teenager is required to consider ''philosophic, social, moral, and religious'' arguments before seeking an abortion. In her opinion, Justice Owen cited the Supreme Court's decision in Planned Parenthood of Southeastern Pennsylvania v. Casey to support her contention that States can require minors to consider religious views in their decision to have an abortion. But, as Senator CANTWELL noted, Casey in no way authorizes States to require minors to consider religious arguments in their decision on whether to have an abortion. Upon this further questioning, Justice Owen then said that she was referring to another Supreme Court case, H.L. v. Matheson, even though her opinion only cited Casey for this proposition. And even Matheson does not say that minors can be required by State law to consider religious arguments. It is my view that Justice Owen was going beyond not only a plain reading of the Texas statute, but Supreme Court case law, and inappropriately injecting her own personal views to make it more difficult for a minor to comply with the statute and obtain an abortion.

I was also not satisfied with Justice Owen's responses to my questions about bonuses to Texas Supreme Court law clerks. I asked her at the hearing whether she saw any ethical concerns with allowing law clerks to receive bonuses from their prospective employers during their clerkships. I also explored the topic further with her in followup written questions. Justice Owen stated repeatedly in her written responses to my questions that she is not aware of law clerks actually receiving bonuses while they were employed by the court. She reaffirmed that testimony in her second hearing. This seems implausble given the great amount of publicity given to Ian investigation pursued by the Travis County attorney of exactly that practice and the well publicized modifications to the Texas Supreme Court's rules that resulted from that investigation and the accompanying controversy.

Even more disturbing, Justice Owen took the position, both at the first hearing and in her responses to written questions, that because the Texas Supreme Court Code of Conduct requires law clerks to recuse themselves from matters involving their prospective employers, there really is no ethical concern raised by law clerks accepting bonuses while employed with the court. I disagree. It is not sufficient for law clerks to recuse themselves from matters involving their prospective employers if they have received thousands of dollars in bonuses while they are working for the court. The appearance

of impropriety and unfairness that such a situation creates is untenable. As I understand it, the Federal courts have long prohibited Federal law clerks both from receiving bonuses during their clerkships and from working on cases involving their prospective employers. I am pleased that the Texas Supreme Court finally recognized this ethical problem and changed its code of conduct for clerks. Justice Owen, in contrast, seems intent on defending the prior, indefensible, practice.

Finally, I want to note the unusual nature of this particular nomination. Unlike so many nominees during the Clinton years, Justice Owen was considered in the Judiciary Committee under Senator LEAHY's leadership in 2002. She had a hearing, and she had a vote. Her nomination was rejected. This has been the first time in history that a circuit nominee who was formally rejected by the committee, or the full Senate for that matter, has been renominated by the same President to the same position. I do not believe that defeated judicial nominations should be reconsidered like legislation that is not enacted. After all, legislation can be revisited after it is enacted. If Congress makes a mistake when it passes a law, it can fix that mistake in subsequent legislation. Let us all remember that judicial appointments are for life. Confirmations cannot be taken back or fixed. A vote to confirm a nominee is final. A vote to reject that nominee should be final as well. For the President to renominate a defeated nominee and the Senate to reconsider her simply because of the change of a few seats in an election cheapens the nomination process and the Senate's constitutional role in that process.

I believe Justice Owen is bright and accomplished, but I sincerely believe that based on her judicial record, Justice Owen is not the right choice for this position.

Ms. CANTWELL. Mr. President, I discuss the nomination of Priscilla Owen to the Fifth Circuit Court of Appeals, and to briefly discuss the compromise before us on the so-called nuclear option.

I continue to oppose all three of the nominees that will proceed to up-or-down votes as the result of this compromise, and I will be voting against cloture on Priscilla Owen as a result. But I do acknowledge the importance of preserving the process of debating judicial nominees. I do not feel that the filibuster has been misused with regard to President Bush's nominees, as I'll explain shortly, but I am impressed at the efforts of my colleagues on both sides of the aisle to avoid the all-or-nothing nuclear option vote that threatened to cause us to break down as an institution.

I also express my hope that the term ''extraordinary circumstances'' that is in this compromise is interpreted sensibly. When extreme nominees threaten the balance of our federal courts, I view those as extraordinary circumstances. I will continue to vote to block any nominee who is not suitable for the bench, and it will continue to be an unusual exception for me not to support a nominee. My standard has been extraordinary circumstances all along.

As a former member of the Judiciary Committee, I attended a hearing on Priscilla Owen that lasted a full day. During that hearing, Owen's record showed a particular disregard for precedent and the plain rule of law.

Anyone who walks into a courtroom as a plaintiff or a defendant in this country should do so having the full confidence that there is impartiality on the part of the judge on the bench. They should have total confidence that the rule of law will be followed, and believe the issues will be judged on their merits rather than viewed through the prism of an individual judge's personal values or beliefs.

There is reason to be concerned about the record of Priscilla Owen. Time after time, even her own Republican colleagues, on a predominantly Republican Texas Supreme Court bench, criticized her for failing to follow precedent or interpreting statutes in ways that ignore the clear intent of the law.

What some of Owen's colleagues on the bench have said about her opinions I think is important. In a case dealing with a developer seeking to evade Austin's clean water laws, her dissent was called ''nothing more than inflammatory rhetoric.''

In another case, her statutory interpretation was called ''unworkable.'' In yet another case, the dissent she joined was called ''an unconscionable act of judicial activism.''

There is another reason this nomination is so important. This is critical to all the nominees we are considering for appointment to the Federal bench, and especially important for you here this morning. That is, what is the judicial philosophy and commitment to upholding current law as it relates to a citizen's right to privacy. I asked Justice Owen at her hearing about her beliefs on the right to privacy. I asked her if she believed there was constitutional right to privacy and where she found that right in the Constitution.

She declined at the time to answer that question without the relevant case information and precedents before her. When Senator FEINSTEIN followed up with a similar question, Owen against would not answer whether she believes a right to privacy does exist within the Constitution.

The question of whether a nominee believes that the right to privacy exists with regard to the ability to make decisions about one's own body is only the tip of the privacy iceberg. I believe that we are in an information age that poses new challenges in protecting the right to privacy. We are facing difficult issues including whether U.S. citizens have been treated as enemy combatants in a prison without access to counselor trial by jury, whether businesses have access to some of your most personal information, whether the Government has established a process for eavesdropping or tracking U.S. citizens without probable cause, and whether the Government has the ability to develop new software that might track the use of your own computer and places where you might go on the Internet without your consent or knowledge. There are a variety of issues that are before us on an individual's right to privacy and how that right to privacy is going to be interpreted. A clear understanding of a nominee's willingness to follow precedent on protecting privacy is a very important criterion for me, and it should be a concern for all Members.

Of course, some of my concern and skepticism about Justice Owen's views on privacy results from the opinions she wrote in a series of cases interpreting the Texas law on parental notification. In 2000 the State of Texas passed a law requiring parental notification. But they also included a bypass system for extreme cases.

Eleven out of 12 times Owen analyzed whether a minor should be entitled to bypass the notice requirement, she voted either to deny the bypass or to create greater obstacles to the bypass.

Owen wrote in dissent that she would require a minor to demonstrate that she had considered religious issues surrounding the decision and that she had received specific counseling from someone other than a physician, her friend, or her family. Requirements, I believe, that go far beyond what the statute requires.

In interpreting the ''best interest'' arm of the statute, Owen held that a minor should be required to demonstrate that the abortion itself—not avoiding notification—was in the individual's best interests. In this particular case, I think she went far beyond what the statue required.

Where does that put us? Women in this country rely on the right to choose. It is an issue on which we have had 30 years of settled law and case precedent. In the Fifth Circuit, there are three States that continue to have unconstitutional laws on the books, and legislatures that are hostile to that right to choose. The Federal courts are the sole protector of women's right to privacy in these states. I do not believe that the rights of the women of the Fifth Circuit can be trusted to Justice Priscilla Owen.

The Senate provides each of us with the procedural privilege to thoroughly discuss my concerns about this nominee—the filibuster. The filibuster has been used against me on issues I care deeply about, just as I have used this procedure when it was necessary to protect the people of my state. This body, in which I am so privileged to serve, is more important than any one of us, precisely because even one Senator can stand up for her state in the face of a powerful majority.

This agreement, whatever else I might think of it, preserves the rights in this body that make it unique and that give it the most credibility. Each of us has to respect the views of the rest. When 40 of us stand together, the other 60 must negotiate. That is healthy and that is what happened here. The rules of the Senate, and the existence of the Federal judiciary itself, pose proper checks on majority and Presidential power. That is the way it should stay.

Mr. KYL. Mr. President, I want to respond to a statement that the Senior Senator from West Virginia made yesterday. In his remarks, the Senator conceded the legitimacy of the constitutional option, what he called the ''nuclear option,'' as a way for the Senate to determine its practices and procedures. The option is, of course, the leader's right to obtain a ruling from the presiding officer that certain actions of Senators are dilatory and cannot preclude the Senate from voting on a judicial nomination.

Here is what he said: ''The so-called nuclear option has been around for a long time. It doesn't take a genius to figure that out.'' He went on to explain that this constitutional option had been available since at least 1917, and he repeatedly emphasized that this tool has been around ''for a long time.''

I appreciate this acknowledgment from the Senator from West Virginia, because I know he has studied the history of the Senate, and I know he has intimate familiarity with the workings of the Constitutional Option. There is nothing new about the constitutional option, as I discussed in my May 19 floor speech outlining the legal and constitutional rationale for its exercise. The constitutional option is simply the Senate's exercise of its power to define its own procedures—a power that comes directly from the Constitution and has been affirmed by the Supreme Court. (U.S. v. Ballin, 144 U.S. 1 (1892)) I appreciate that the Senator has acknowledged its legitimacy.

The Senator from West Virginia also argued, however, that past majority leaders have never used the constitutional option to ''tamper'' with extended debate. As my May 19 statement established, as did yesterday's statements by Senators MCCONNELL, HATCH, and BENNETT, that is not actually the case.

The fact is that the Senator himself used the constitutional option four times when serving as majority leader—in one case to outright eliminate the filibuster for motions to proceed to Executive Calendar nominations. Moreover, in February 1979, he forced the minority to agree to a formal rules change after credibly threatening that he would exercise the constitutional option. At that time, the Senator said on this floor, ''if I have to be forced into a corner to try for a majority vote, I will do it because I am going to do my duty as I see my duty, whether I win or lose.''

The Senate was nearly forced into a similar ''corner'' this week. Had Democrats not supported cloture on Priscilla Owen today, then all Senators would have had to make a conclusive decision as to whether it should take 60 or 51 votes to confirm a judge. Instead, we are putting off that decision until another day.

That may still come. And if it does come, I hope that we hear no more talk of the ''illegitimacy'' of the constitutional option. There is plenty to discuss as to whether exercising the option is prudential in a particular case. Some of the debate these past few days has addressed that prudential question, including some of the discussion from the Senator from West Virginia. But there has also been talk about the constitutional option being a case of ''lawlessness'' or ''breaking the rules to change the rules.'' The constitutional option is a part of Senate history. In Senator BYRD's words, it ''has been around for a long time.''

And it will always be with us. The constitutional option is not, as the minority leader has repeatedly insisted, ''off the table.'' It is simply unnecessary at present. If it becomes necessary again, we may be called on to live up to our responsibilities to the Constitution and to the Senate to ensure that we restore our traditions and guarantee up-or-down votes to all judicial nominees who reach the Senate floor.

Mr. CORNYN. Mr. President, at various times during the course of debate in recent days over the nomination of Justice Priscilla Owen, a number of her previous rulings have been badly mischaracterized. Last Thursday, May 19, I rose to speak about a number of those cases and to correct the record. And just this morning, I published an op-ed in National Review Online to further rebut these baseless criticisms. I ask unanimous consent that an excerpt of that op-ed be printed in the RECORD.

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

It is now conceded that Justice Owen, Justice Brown, and Judge Pryor all deserve up-or-down votes. I happen to know personally that the case against Justice Owen was especially weak, because I know Priscilla personally from our service together on the Texas supreme court. Just consider the following litany of supposedly ''out of the mainstream'' rulings for which she was criticized:

A number of senators criticized Justice Owen's opinion in *Montgomery Independent School District* v. *Davis*. One senator specifically attacked her for failing to protect a teacher who was ''wrongly dismissed.'' The case involved the authority of a local school board to dismiss a poorly performing and abusive teacher. The teacher had admitted that she had referred to her students as ''little s***s.'' When confronted, the teacher justified the use of the expletive on the bizarre ground that she used exactly the same language when talking to her own children. The teacher regularly insulted parents as well. The opinion joined by Justice Owen concluded that the school board was authorized to dismiss this teacher. It noted that the majority's ruling ''allows a state hearing examiner to make policy decisions that the Legislature intended local school boards to make,'' and that the majority had ''misinterpreted the Education Code.''

One senator attacked Justice Owen for her opinion in *Texas Farmers Insurance Co.* v. *Murphy*. In this case, Justice Owen simply joined an opinion holding that neither an arsonist nor his spouse should benefit from his crime by recovering insurance proceeds. The opinion followed two unanimous decisions of the Fifth Circuit, the very court to which Justice Owen has been nominated.

Justice Owen was also criticized for a ruling she and I both joined in *Peeler v. Hughes & Luce and Darrell C. Jordan*—in which we simply held that an admitted criminal could not benefit from criminal activity by suing the criminal-defense attorney for malpractice.

A number of senators focused on Justice Owen's opinion in *FM Properties Operating Co. v. City of Austin*. One senator specifically criticized her for refusing to rule that a Texas water law ''was an unconstitutional delegation of legislative authority.'' Yet liberal attorneys regularly criticize the nondelegation doctrine and claim that conservatives wrongly use it to invalidate laws duly enacted by the legislature. In fact, just last month one senator criticized another nominee, Bill Pryor, for championing the nondelegation doctrine. So Justice Owen's critics seem to argue that if you support the nondelegation doctrine, you are out of the mainstream, and that if you oppose the nondelegation doctrine, you are out of the mainstream. It reminds me of a country-western song: ''Darned If I Don't, Danged If I Do.''

One senator claimed that, in *Read v. Scott Fetzer Co.*, Justice Owen ruled that a woman raped by a vacuum-cleaner salesman could not sue the company that had employed him after failing to undertake a standard background check—an allegation recently articulated in an op-ed in *Roll Call*. Yet as my letter to the editor noted, that allegation is plainly false. As the opinion joined by Justice Owen noted, ''[n]o one questions that [the company that had hired the rapist] is liable.'' The justices simply disagreed on whether another company—one that had not hired the rapist and had no relationship with the rapist—should also have been held liable.

Justice Owen was also criticized for her ruling in *Hyundai Motor Co. v. Alvarado*. In that case, an automobile alleged to be defective had in fact fully satisfied the federal standard then in effect. The plaintiff chose to sue anyway, despite federal law. Justice Owen simply held that Congress had forbidden such lawsuits once the federal standard had been met—a technical legal doctrine known as federal preemption. For this, she was sharply criticized. Yet her opinion simply followed the ''solid majority of the courts to consider this issue''—including precedents authored by judges appointed by President Jimmy Carter. Moreover, the U.S. Supreme Court later adopted Justice Owen's approach (*Geier v. American Honda Motor Co., Inc.*), in an opinion authored by Clinton appointee, and former Democrat chief counsel of the Senate Judiciary Committee, Justice Stephen Breyer.

Justice Owen was likewise criticized for her rulings in *Quantum Chemical Corp. v. Toennies*, a case involving a Texas civil-rights law expressly modeled after Title VII of the federal Civil Rights Act of 1964, and *City of Garland v. Dallas Morning News*, a Texas open-government law modeled after the federal Freedom of Information Act. Once again, all she did was follow precedents adopted by appointees of Presidents Carter and Clinton.

Justice Owen and I happened to disagree in *Weiner v. Wasson*, a case involving a technical matter of applying a statute of limitations to a medical malpractice suit. One senator argued that my opinion was ''a lecture

to the dissent'' about the importance of *stare decisis* and following precedent. The argument is baseless. In fact, Justice Owen didn't try to overturn precedent in that case; only the defendant did. Moreover, Justice Owen's ruling contained an equally emphatic ''lecture'' to the defendant about the importance of following precedent.

And of course, there were the now-famous cases involving the popular Texas parental-notification law—a parental-rights law that generally requires minors to notify one parent before obtaining an abortion. Readers should ask themselves one simple question: Who would you trust to analyze and determine the quality of Justice Owen's legal analysis in those cases? The author of the Texas law—who supports Owen? Her former colleagues on the court, including former Justices Alberto Gonzales and Greg Abbott, who support her? Now-Attorney General Alberto Gonzales, who has testified—under oath—that he supports Justice Owen and that, contrary to false reports, he never accused her of ''judicial activism''? The prochoice Democrat law professor appointed by the Texas supreme court to set up procedures under the statute—who supports Owen, and who has written: ''If this is activism, then any judicial interpretation of a statute's terms is judicial activism''? Or do you trust the liberal special-interest groups who sharply opposed the Texas law, and never wanted that law to be enacted in the first place? Or the groups who literally make a living destroying the reputation of this president's nominees?

The attacks on these rulings by Justice Owen reminded me of what Mark Twain once said: ''A lie can travel halfway around the world while the truth is still putting on its shoes.'' But let's keep our eye on the ball. The American people know a controversial ruling when they see one—whether it's the redefinition of marriage, or the expulsion of the Pledge of Allegiance and other expressions of faith from the public square—whether it's the elimination of the three-strikes-and-you're out law and other penalties against convicted criminals, or the forced removal of military recruiters from college campuses. Justice Owen's rulings fall nowhere near this category of cases. There is a world of difference between struggling to interpret the ambiguous expressions of a legislature, and refusing to obey a legislature's directives altogether.

Thankfully, the Senate has now effectively acknowledged this important distinction, by guaranteeing Justice Owen an up-or-down vote after four long years.

I yield the floor and 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. 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.

Mr. INHOFE. What is the regular order?

The PRESIDING OFFICER. The Senate business is the nomination of Priscilla Owen to be United States Circuit Court Judge.

Mr. INHOFE. I ask unanimous consent I be allowed to speak as in morning business for such time as I consume.

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

GLOBAL WARMING

Mr. INHOFE. Mr. President, over the past few weeks, I have debunked the notion of scientific consensus about global warming. The claim there is consensus rests on four fundamental pillars. My previous talks made clear that the first three pillars are made of sand.

It is not true, for example, that the National Academy of Sciences believes the science of climate change is settled. In fact, the report is replete with caveats, warning the reader of the many uncertainties associated with claims of global warming. Yet advocates continue to recite small excerpts while ignoring the caution about uncertainties contained within the same paragraph or even the same science.

It is also not true that the second pillar, the U.N. science report known as the IPCC, proves a consensus. The flagship study on which the IPCC report relies, known as the hockey stick, which shows an unprecedented rise in 20th century temperatures, has been thoroughly discredited by scientists on both sides of the debate. In fact, recently, and since 1999, there hasn't been anyone who has agreed there is authenticity to the issue. In addition, the U.N. report relies on an explosive increase in emissions from poor countries over the next century based on the political decision by the report's author that countries such as Algeria will be as wealthy or wealthier than the United States.

The third pillar, supposedly proving that the science is settled that the Arctic is melting, is based on political science. Arctic temperatures are no warmer than they were in the 1930s. Similarly, the thickness of the Arctic glaciers and the sea ice appears to vary naturally by as much as 16 percent annually.

These and other factors which the alarmists find inconvenient would seem to indicate that projections of an Arctic climate catastrophe are speculative, at best.

Today I conclude the series on the four pillars of climate alarmists by discussing the problems associated with global climate models.

Let me begin by briefly explaining the climate models and how they function. Climate models help scientists describe changes in the climate system. They are not models in the conventional sense; that is, they are not physical replicas. Rather, they are mathematical representations of the physical laws and processes that govern the Earth's climate. According to Dr. David Legates of the University of Delaware, climate models ''are designed to be descriptions of the full three-dimensional destruction of the earth's climate.'' Dr. Legates claims models are used ''in a variety of applications, including the investigation of the possible role of various climate forcing mechanisms and the simulation of past and future climates.''

Thousands of climate changes studied rely on computer models. The Arctic Council, whose work I addressed last week, stated that arctic warming and the impact stemming from that warming are firmly established by computer models.

Quoting from him:

> While the models differ in their projections of some of the features of climate change, they are all in agreement that the world will warm significantly as a result of human activities, and that the Arctic is likely to experience noticeable warming, particularly early and intensely.

Similarly, the IPCC, which I also discussed in the earlier talks, relied on such earlier models to project a long-term temperature increase ranging from 2.5 to 10.4 degrees Celsius and assorted and potentially dangerous climate changes over the next century.

According to Dr. Kenneth Green, Dr. Tim Ball, and Dr. Steven Schroeder, the politicians clearly do not realize that the major conclusions of the IPCC's reports are not based on hard evidence and observation but, rather, largely upon the output of assumption-driven climate models.

The alarmists cite the results of climate models as proof of the catastrophic warming hypotheses. Consider one alarmist's description, who wrote recently:

> Drawing on highly sophisticated computer models, climate scientists can project, not predict, how much temperatures may rise by say 2100 if we carry on with business as usual.

He continues:

> Although scenarios vary, some get pretty severe, and so do the projected impacts of climate change, rising sea levels, species extensions, glacier melting and so forth.

It sounds pretty scary, but the statement is completely false. It sheds no light on the likelihood or reliability of such projections. If, for example, a model shows a significant temperature increase over the next 50 years, how much confidence do we have in that projection? Attaching probabilities to model results is extremely difficult and rife with uncertainties.

In the 2000 edition of ''Nature,'' four climate modelers noted that:

> A basic problem with all such predictions to date has been the difficulty of providing any systematic estimate of uncertainty.

This problem stems from the fact that:

> These [climate] models do not necessarily span the full range of known climate system behavior.

According to the National Academy of Sciences:

> . . . without an understanding of the sources and degree of uncertainty, decision-makers could fail to define the best ways to deal with the serious issue of global warming.

This fact should temper the enthusiasm of those who support Kyoto-style regulations that will harm the American economy.

Previously, we have talked about the harm to the economy and have referred to the Wharton Econometric Survey which was conducted by the Wharton School of Economics. It gets into a lot of detail as to what is going to happen.

For example, to comply with Kyoto, it would cost the average family of four some $2,700 a year. So it is a very significant thing.

Now note, too, the distinction between ''project'' and ''predict.'' The alarmist writer noted earlier creates the misimpression that a projection is more solid than a prediction. But a projection is the output of a model calculation. Put another way, it is only as good as the model's equations and inputs. As we will see later in this presentation, such inputs or assumptions about the future can be extremely flawed, if not totally divorced from reality. And this, to be sure, is only one of the many technical shortcomings that limit the scientific validity of climate modeling.

Unfortunately, rarely does any scrutiny accompany model simulations. But based on what we know about the physics of climate models, as well as the questionable assumptions built into the models themselves, we should be very skeptical of their results. This is exactly the view of the National Academy of Sciences. According to the NAS:

> Climate models are imperfect. Their simulation skill is limited by uncertainties in their formulation, the limited size of their calculations, and the difficulty of interpreting their answers that exhibit as much complexity as in nature.

At this point, climate modeling is still a very rudimentary science. As Richard Kerr wrote in Science magazine:

> Climate forecasting, after all, is still in its infancy.

Models, while helpful for scientists in understanding the climate system, are far from perfect. According to climatologist Gerald North of Texas A&M University:

> It's extremely hard to tell whether the models have improved; the uncertainties are large.

Or as climate modeler Peter Stone of the Massachusetts Institute of Technology put it:

> The major [climate prediction] uncertainties have not been reduced at all.

Based on these uncertainties, cloud physicist Robert Charlson, professor emeritus at the University of Washington-Seattle, has concluded:

> To make it sound like we understand climate is not right.

This is not to deny that climate modeling has improved over the last three decades. Indeed, scientists have constructed models that more accurately reflect the real world. In the 1970s, models were capable only of describing the atmosphere, while over the last few years models can describe, albeit inadequately, the atmosphere, land surface, oceans, sea ice, and other variables.

But greater complexity does not mean more accurate results. In fact, the more variables scientists incorporate, the more uncertainties arise. Dr. Syukuro Manabe, who helped create the first climate model that coupled the atmosphere and oceans, has observed:

> Models that incorporate everything from dust to vegetation may look like the real world, but the error range associated with the addition of each new variable could result in near total uncertainty. This would represent a paradox: The more complex the models, the less we know.

We are often reminded that the IPCC used sophisticated modeling techniques in projecting temperature increases for the coming century. But as William O'Keefe and Jeff Kueter of the George C. Marshall Institute pointed out in a recent paper:

> The complex models envisioned by the IPCC have many more than twenty inputs, and many of those inputs will be known with much less than 90 percent confidence.

Also, tinkering with climate variables is a delicate business—getting one variable wrong can greatly skew model results. Dr. David Legates has noted that:

> Anything you do wrong in a climate model will adversely affect the simulation of every other variable.

Take precipitation, for example. As Dr. Legates noted:

> Precipitation requires moisture in the atmosphere and a mechanism to cause it to condense (causing the air to rise over mountains, by surface heating, as a result of weather fronts, or by cyclonic rotation). Any errors in representing the atmospheric moisture content or precipitation-causing mechanisms will result in errors in the simulation of precipitation.

Dr. Legates concluded:

> Clearly, the interrelationships among the various components that comprise the climate system make climate modeling difficult.

The IPCC, in its Third Assessment Report, noted this problem, and many others, with climate modeling, including—this is a quote from their report; the very basis that many of the alarmists are basing their decisions on:

> Discrepancies between the vertical profile of temperature change in the troposphere seen in observations and models.
>
> Large uncertainties in estimates of internal climate variability (also referred to as natural climate variability) from models and observations.
>
> Considerable uncertainty in the reconstructions of solar and volcanic forcing which are based on limited observational data for all but the last two decades.
>
> Large uncertainties in anthropogenic forcings associated with the effects of aerosols.
>
> Large differences in the response of different models to the same forcing.

I want to delve a little deeper into the first point concerning the discrepancies between temperature observations in the troposphere and the surface. This discrepancy is very important because it tends to undermine a key assumption supporting the warming hypothesis—that more rapid warming should occur in the troposphere than at the surface, creating the so-called greenhouse ''fingerprint.'' But the National Research Council believes real-world temperature observations tell a different story.

In January of 2000, the NRC panel examined the output from several climate models to assess how well they mimicked the observed surface and lower atmospheric temperature trends. They found that:

> Although climate models indicate that changes in greenhouse gases and aerosols play a significant role in defining the vertical structure of the observed atmosphere, model-observation discrepancies indicate that the definitive model experiments have not been done.

John Wallace, the panel chairman and professor of atmospheric sciences at the University of Washington, put it more bluntly. He said:

> There really is a difference between temperatures at the two levels that we don't fully understand.

More recently, researchers at the University of Colorado, Colorado State University, and the University of Arizona, examined the differences between real-world temperature observations with the results of four widely used climate models. They probed the following question: Do the differences stem from uncertainties in how greenhouse gases and other variables affect the climate system or by chance model fluctuations; that is, the variability caused by the model's flawed representation of the climate system?

As it turned out, neither of these factors was to blame. According to the researchers:

> Significant errors in the simulation of globally averaged tropospheric temperature structure indicate likely errors in tropospheric water-vapor content and therefore total greenhouse-gas forcing, precipitable water, and convectively forced large-scale circulation.

Moreover, based on the ''significant errors of simulation,'' the researchers called for ''extreme caution in applying simulation results to future climate-change assessment activities and to attributions studies.

They also questioned ''the predictive ability of recent generation model simulations, the most rigorous test of any hypothesis.''

There does not seem to be much wiggle room here: Climate models are useful tools, but unable, in important respects, to simulate the climate system, undermining their ''predictive ability.''

Based on this hard fact, let me bring you back to the alarmist writer I referenced earlier. As he wrote recently:

> Drawing on highly sophisticated computer models, climate scientists can project—not predict—how much temperature may rise by, say, 2100, if we carry on with business as usual.

Again, based on what I have just recounted, this is disingenuous at best. I think a fairminded person would find it horribly misleading and inaccurate.

Another serious model limitation concerns the interaction of clouds and water vapor with the climate system.

Dr. Richard S. Lindzen, professor of meteorology at MIT, reports of ''terrible errors about clouds in all the

models.'' He noted that these errors ''make it impossible to predict the climate sensitivity because the sensitivity of the models depends primarily on water vapor and clouds. Moreover, if clouds are wrong,'' Dr. Lindzen said, ''there's no way you can get water vapor right. They're both intimately tied to each other.''

In fact, water vapor and clouds are the main absorbers of infrared radiation in the atmosphere. Even if all other greenhouse gases, including carbon dioxide, were to disappear, we would still be left with over 98 percent of the current greenhouse effect. But according to Dr. Lindzen, ''the way current models handle factors such as clouds and water vapor is disturbingly arbitrary. In many instances the underlying physics is simply not known.''

Dr. Lindzen notes that this is a significant flaw, because ''a small change in cloud cover can strongly affect the response to carbon dioxide.'' He further notes, ''Current models all predict that warmer climates will be accompanied by increasing humidity at all levels.'' Such behavior ''is an artifact of the models since they have neither the physics nor the numerical accuracy to deal with water vapor.''

I think sometimes you have to look at the science and the contradictions, and even if we don't thoroughly understand what these people are saying, the fact is, they contradict each other. Sometimes you have to go back and look at reality. If they say the increase in the use of carbon dioxide and the presence of it is the major thing causing anthropogenic gases and global warming temperatures, look at what happened right after the war. After the war, they increased the use of CO_2 by 85 percent. You would think that would precipitate a warmer period, but it didn't. It precipitated a cooling period. When you get back to the arguments and discrepancies, they agree there are problems.

Along with water vapor and clouds, aerosols, or particles from processes such as dust storms, forest fires, the use of fossil fuels, and volcanic eruptions, represent another major uncertainty in climate modeling. To be sure, there is limited knowledge of how aerosols influence the climate system. This, said the National Academy of Sciences, represents ''a large source of uncertainty about future climate change.''

Further, the Strategic Plan of the U.S. Climate Change Science Program, CCSP, which was reviewed and endorsed by the National Research Council, concluded that the ''poorly understood impact of aerosols on the formation of both water droplets and ice crystals in clouds also results in large uncertainties in the ability to project climate changes.''

Climate researcher and IPCC reviewer Dr. Vincent Gray reached an even stronger conclusion, stating that ''the effects of aerosols, and their uncertainties, are such as to nullify completely the reliability of any climate models.''

Another issue affecting model reliability is the relative lack of available climate data, something the National Research Council addressed in 2001. According to the NRC, ''[a] major limitation of these model forecasts for use around the world is the paucity of data available to evaluate the ability of coupled models to simulate important aspects of past climate.''

There is plenty of evidence to support this conclusion. Consider, for example, that most of the surface temperature record covers less than 50 years and only a few stations are as much as 100 years old. The only reliable data come from earth-orbiting satellites that survey the entire atmosphere. Notably, while these temperature measurements agree with those taken by weather balloons, they disagree considerably with the surface record.

There is also concern of an upward bias in the surface temperature record, caused by the ''urban heat island effect.'' Most meteorological stations in Western Europe and eastern North America are located at airports on the edge of cities, which have been enveloped by urban expansion. In the May 30, 2003, issue of Remote Sensing of Environment, David Streutker, a Rice University researcher, found an increase in the Houston urban heat island effect of nearly a full degree Celsius between 1987 and 1999. This study confirmed research published in the March 2001 issue of Australian Meteorological Magazine, which documented a significant heat island effect even in small towns.

Although climate modelers have made adjustments to compensate for the urban heat island effect, other researchers have shown such adjustments are inadequate. University of Maryland researchers Eugenia Kalnay and Ming Cai, in Nature magazine, concluded that the effect of urbanization and land-use changes on U.S. average temperatures is at least twice as large as previously estimated.

Finally, to expand on a point I raised earlier, climate models are helpful in creating so-called ''climate scenarios.'' These scenarios help scientists describe how the climate system might evolve. To arrive at a particular scenario, scientists rely on model-driven assumptions about future levels of economic growth, population growth, greenhouse gas emissions, and other factors. However, as with the IPCC, these assumptions can create wildly exaggerated scenarios that, to put it mildly, have little scientific merit. In 2003, scientists with the Federal Climate Change Science Program agreed that potential environmental, economic, and technological developments ''are unpredictable over the long time-scales relevant for climate research.''

William O'Keefe and Jeff Keuter of the George C. Marshall Institute reiterated this point recently. As they wrote, ''The inputs needed to project climate for the next 100 years, as is typically attempted, are unknowable. Human emissions of greenhouse gases and aerosols will be determined by the rates of population and economic growth and technological change. Neither of these is predictable for more than a short period into the future.''

Put simply, computer model simulations cannot prove that greenhouse gas emissions will cause catastrophic global warming. Again, here's the National Academy of Sciences: ''The fact that the magnitude of the observed warming is large in comparison to natural variability as simulated in climate models is suggestive of such a linkage, but it does not constitute proof of one because—and this is a point I want to emphasize—the model simulations could be deficient in natural variability on the decadal to century time scale.''

It's clear that climate models, even with increasing levels of sophistication, still contain a number of critical shortcomings. With that in mind, policymakers should reject ridiculous statements that essentially equate climate model runs with scientific truth.

As I discussed today, climate modeling is in its infancy. It cannot predict future temperatures with reasonable certainty that these predictions are accurate. The physical world is exceedingly complex, and the more complex the models, the more potential errors are introduced into the models. We understand little about how to accurately model the troposphere and about the role of aerosols, clouds and water vapor. Moreover, there are enormous data gaps in the very short temperature records that we have. And surface data often conflict with more accurate balloon and satellite data.

Models can enhance scientists' understanding of the climate system, but, at least at this point, cannot possibly serve as a rational basis for policymaking. It seems foolish in the extreme to undermine America's economic competitiveness with policies based on computer projections about what the world will look like in 100 years. In short, we have no idea what the world will look like in 20 years, or even 10 years.

So this concludes the fourth of the pillars of climate alarmists, hopefully just to show the science is flawed.

I think it is clear, as I mentioned a minute ago, that the science is not there. Since 1999, the old argument of Michael Mann, the guy who invented the hockey-stick theory, where he was measuring the Earth's temperatures, we come into the 20th century—and that is the blade on the hockey stick—he intentionally left out the fact that between the years 700 A.D. and 1100 A.D., there is another blade on the hockey stick that went up the other way and temperatures were warmer than they are today.

If you read the Wharton Econometrics Survey, you will realize what will happen to America if we were to

sign on to this, the economic damage we would have to sustain, the fact it would double the cost of energy, double the cost of gasoline to run our cars, and it would cost the average American family $2,700, and you have to ask the question: If the science is not real and it would inflict that much danger, what is the reason we are doing it?

I think we can find the answer in quoting from Margot Wallstrom. Margot Wallstrom is the European Union's Environment Commissioner. She states that Kyoto is not about climate change, it is ''about leveling the playing field for big businesses worldwide.''

One of your favorite people, I am sure, French President Jacques Chirac, in a speech during The Hague in 2000, said that Kyoto represents ''the first component of an authentic global governance.''

I think we have had an opportunity to discuss this over and over, and it is somewhat warming to me to realize that things are not getting that much warmer, and if that is happening, the science is not showing it is due to anthropogenic gases.

Consequently, we as policymakers, have to look at this and be sure before we make any rash decisions that the science is there. Clearly, the science is not there.

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

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

STEM CELL RESEARCH

Mr. HARKIN. Mr. President, the House of Representatives just minutes ago took a historic stand on behalf of the millions of Americans who can benefit from the enormous promise of stem cell research. By a vote of 238 yeas to 194 nays, the House passed H.R. 810. I congratulate both Congressman CASTLE, a Republican from Delaware, and Congresswoman DEGETTE, a Democrat from Colorado, who led a bipartisan effort in this regard to have this very historic vote in the House of Representatives.

Indeed, a bipartisan majority rejected the restrictive policies of this administration and voted to expand the number of stem cell lines that are eligible for federally funded research. In doing so, they have brought new hope to Americans who suffer from diseases such as Parkinson's and juvenile diabetes, ALS, as well as spinal cord injuries.

Now it is up to us in the Senate to pass the same bill without amendments so we can send it to the President's desk as soon as possible. The American people cannot afford to wait any longer for our top scientists to realize the full potential of stem cell research.

Regrettably, research has been stymied and slowed under the President's stem cell policy. When President Bush announced his policy, the administration said that 78 stem cells lines were eligible for federally funded research, meaning they had to be derived before the totally arbitrary date and time of August 9, 2001, at 9 p.m. Why it was permissible to use stem cell lines derived before 9 p.m. but not at 9:01 or 9:05 p.m. has always eluded me. Again, it is just an arbitrary time and date.

The administration said there were 78 stem cell lines, but now we know today that only 22 of those are available for research, not nearly enough to reflect the genetic diversity that scientists need. But more importantly, all 22 stem cell lines—all 22—that are available under the President's policy are contaminated with mouse feeder cells, making them useless for humans.

So the President's policy is not a way forward; it is, indeed, a dead-end street. It offers only false hope to the millions of people across this country who are suffering from diseases that could be potentially cured or treated through stem cell research.

We need a policy that offers true, meaningful hope to these patients and their loved ones. That is why Senator SPECTER and I, along with Senators HATCH, FEINSTEIN, SMITH, and KENNEDY, introduced a companion bill to the Castle-DeGette legislation that just passed the House. Our bill expands the number of stem cell lines that federally funded scientists can study by lifting the arbitrary eligibility date of August 9, 2001.

Under our legislation, all stem cell lines would be eligible for Federal research regardless of the date they were derived, as long as they met strict ethical requirements.

Since August of 2001, scientists have made great strides and great advances in deriving stem cell lines. Many of the new lines were grown without mouse feeder cells. So I ask, should not our top scientists be studying those lines that have great potential and which could be used to alleviate human suffering, instead of being limited to the 22 cell lines contaminated with mouse cells that will never be used in humans?

We do not require our astronomers to explore the heavens with 19th century telescopes. We do not require our geologists to study the Earth with a tape measure. If we are serious about realizing the promise of stem cell research, our biomedical researchers need access to the best stem cell lines available.

I also emphasize that none of the additional lines would require the creation of any new embryos. Instead, these lines could be derived from any of the more than 400,000 embryos that remain from fertility treatments and will otherwise be discarded. We are talking about embryos that are going to be thrown away, legally. Should we not use them instead to ease human suffering?

Think about this: We have 400,000 frozen embryos left over from in vitro fertilization. When a woman who has been a donor of these eggs notifies that they are no longer wanted, that she is not going to use them—maybe she has already had a child or two and does not need these embryos—that person can give permission to discard them. Why should that person not be able to give permission to allow them to be used by our top scientists for stem cell research that could then save other lives? That is what some people are asking us to do—just throw them away, do not let them be used for research that could save human suffering and save human lives. To this Senator, that simply does not make any sense.

So as I said, we have strict ethical guidelines that are set up so that they cannot be used for cloning, they cannot be used for other things; only to derive the stem cells. That is all. If there is a person who can give the authority right now to the in vitro fertilization clinic to discard them, why should that person not have the right to say, No, use those frozen embryos to derive stem cells so that someone with a spinal cord injury might walk again, so that someone with ALS can escape the death sentence, so that someone with Parkinson's can be returned to normal functioning?

The House performed a great public service today. I thank both sides of the aisle, Republicans and Democrats, who stepped up and voted for this bill. By passing the Castle-DeGette bill, they have given hope to millions of suffering humans that we will indeed proceed with stem cell research that will alleviate their suffering. It is now time for the Senate to act.

So together with Senator SPECTER, we are going to urge the majority leader to bring up the bill as soon as possible and let us have a vote in the Senate and get this bill to the President so we can move ahead with embryonic stem cell research in this country.

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

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

Mr. FRIST. I ask unanimous consent that when the Senate resumes consideration of the Owen nomination tomorrow morning, the time until 12 noon be equally divided between the two leaders or their designees; provided further that at noon, all time be expired under rule XXII and the Senate proceed to the vote on the confirmation of the nomination with no intervening action or debate; and provided further, following that vote, the President be immediately notified of the Senate's action.

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

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

HONORING OUR ARMED FORCES

MARINE CORPORAL TODD GODWIN

Mr. DEWINE. Mr. President, I rise this afternoon to pay tribute to an exceptional young man who gave his life in the defense of freedom. Marine Cpl Todd Godwin, from Zanesville, OH, died on July 20, 2004, when the Humvee he was riding in was struck by shrapnel from a roadside explosive in the Al Anbar province in Iraq. He was 21 years old.

CPL Godwin was a sniper with the 1st Battalion, 8th Marines, 2nd Marine Division and was on his second tour-of-duty in Iraq. Always ready with a smile or a joke, Todd was an easy going, respectful person with a big heart. He was also a Marine through and through—something he took very seriously—something he had been training for his whole life.

Born on March 4, 1983, to Bill and Kathy Godwin, Todd was an alert, energetic child who grew up with an interest in the military. His father remembers him playing with G.I. Joes, wearing fatigues, and simulating wars. According to his brother, Aaron, the two boys would hang dolls outside and shoot at them with a BB gun, honing their targeting skills.

Apart from these activities, Todd sought to perfect his body. He could often be found working out at ''the Fieldhouse'' fitness center or practicing his Tae Kwon Do, for which he received two black-belts. Whether intentional or not, Todd seemed to be grooming himself for the military, acquiring a host of skills that would serve him well in the Marines.

After graduating from Zanesville Christian School in June 2001, he joined the Marines. His high school principal said that Todd ''had a goal of being a Marine, and he wasn't going to let anything get in the way of that.''

Todd excelled as a Marine and completed the intensely competitive and selective sniper training to win a spot in the sniper platoon. It was a spot he wanted because, according to his mother, ''He wanted to be with people who were really serious about what they did.'' Indeed, Todd Godwin was a serious Marine who took pride in his duty to defend our country and to spread freedom to other parts of the world.

Todd was an exemplary Marine and also just a good, decent person—the type of person others remember as having ''a way about them''—the type of person who was quick to smile, who was compassionate, and who was good at making people feel at ease. It seems as though everyone who knew Todd liked him.

One of his friends, Austin Thompson, remembers Todd's ability to laugh in almost any situation: ''He always had a great sense of humor, and he was also very loyal to his friends. He always looked out for them and loved to be with them.''

Todd encouraged one of his friends, Josh Carpenter, to ''hang tough'' in Marine boot camp. He wrote a letter to Josh that said, ''I'm sure you can't wait to graduate and get some of the comforts of life back. Just remember you have to pay your dues, just like every Marine. I'm sure you'll do fine—I have confidence you'll succeed.'' Josh had joined the Marines because he looked up to Todd. Todd's letter helped Josh get through the challenges of boot camp, so that he, too, could be one of the few and the proud.

A letter like that is a little thing, a small deed, but Todd Godwin was always doing those ''little things'' for others. That is just who he was. When Todd saw that his fiancee's younger brother, Caleb, was wearing a U.S. Navy tie clasp, he brought him a Marine clasp to wear, instead. It was a small gift that meant a great deal to Caleb, who describes Todd as ''my best buddy I ever had.''

One of Todd's friends from high school, Kimberly Burley, remembers another of his deeds that took place on the night of the Zanesville Christian School junior-senior banquet:

> It was raining that night, and he came out to greet all the girls at their car with an umbrella.

Such a gallant act was really typical of Todd. It was just another ''little thing'' he had done for others.

But, when we look at all the ''little things'' together—the letters, the tie clasps, the way he acted always, the jokes that made people smile—we see such a much bigger picture, a picture of an exceptionally caring, thoughtful, generous young man. We see that he did the ''little things'' for people because he had a very big heart.

Todd also had big plans. He was engaged to Andrea Mendenhall, whom he loved dearly. They were planning on getting married when Todd finished his tour of duty in Iraq. Todd and Andrea were going to go to college with money Todd was saving through the GI bill. They also talked of someday moving to Corpus Christi, TX. These plans, of course, were not realized because Todd, once again, was looking out for others, as he did all his life. His dreams were put on hold so that others could be free and safe and able to fulfill their own dreams.

Mr. President, and Members of the Senate, a uniform does not make a marine. The person wearing that uniform makes a marine. And, each color of that uniform signifies the characteristics of the marine inside it. Todd Godwin wore his uniform with pride. He exemplified the blue standing for bravery, the white standing for honor, and the red standing for sacrifice. Unique to the Marine uniform, of course, is the bright, red stripe that runs the length of each trouser leg—the ''bloodstripe.'' It represents all the blood shed by marines in battle. It is a red stripe of sacrifice—and for Todd Godwin, it represents the ultimate sacrifice.

Todd was truly a man of faith, who lived the Marine credo ''Semper Fidelis,'' which means, of course, ''always faithful.'' Todd was forever faithful to his friends and family, through his love and care; to his community, through his respect and good deeds; and to his country, through his courage and his sacrifice. For all that Todd gave us, we honor him today.

My wife, Fran, and I continue to keep Todd's parents, Bill and Kathy; his brother, Aaron; his sisters, Sarah and Anna; his grandparents, Clement and Esther Jones; and, the love of his life, Andrea Mendenhall, in our thoughts and in our prayers.

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

THE HEAD START REAUTHORIZATION BILL

Mr. ALEXANDER. Mr. President, I cosponsor 1107, the Head Start Improvements for School Readiness Act, a bill to reauthorize Head Start. I join my colleagues Senators ENZI, KENNEDY, and DODD in support of this legislation.

I would like to see Head Start expanded and serve more children but first we must ensure that this program is accountable, financially solvent, and meeting the purpose for which it was intended.

This bill strengthens the Head Start program, making four key improvements by:

No. 1, establishing 200 Centers of Excellence that would serve as model Head Start programs across the country;

No. 2, providing that grantees shall re-compete to receive grants every 5 years to help ensure a constant, high level of quality;

No. 3, clearly defining ''deficiency'' so that local Head Start providers know the standards by which they will be held accountable; and

No. 4, providing clear authority to the governing boards to administer—and be held accountable for—local Head Start programs while ensuring policy councils, on which parents sit, continue to play an important advisory role.

Head Start has been one of our country's most successful and popular social programs. That is because it is based upon the principle of equal opportunity, which is at the core of the American character. Americans uniquely believe that each of us has the right to begin at the same starting line and that, if we do, anything is possible for anyone one of us.

We also understand that some of us need help getting to that starting line. Most Federal funding for social programs is based upon this understanding of equal opportunity. Head Start began

in 1965 to make it more likely that disadvantaged children would successfully arrive at one of the most important of our starting lines: the beginning of school.

Head Start over the years has served hundreds of thousands of our most at-risk children. The program has grown and changed. It has been subjected to debates and studies touting its successes and decrying its deficiencies. But Head Start has stood the test of time because it is so very important.

We have made great progress in what we know about the early growth and development of young children since Head Start began in 1965. At that time very few professionals had studied early childhood education. Even fewer had designed programs specifically for children in poverty with their many challenges.

The origins of Head Start come from an understanding that success for these children was not only about education. The program was designed to be certain these children were healthy, got their immunizations, were fed hot meals, and—of crucial importance—that their parents were deeply involved in the program.

From the beginning comprehensive services and parent and community involvement were essential parts of good Head Start programs. And that is still true today. In the early days, teacher training and curriculum were seen as less important. But we now know a great deal more about brain development and how children learn from birth.

Today young children are expected to learn more and be able to do more in order to succeed in school. Public schools offer kindergarten in response to these changes. And 40 States now offer early childhood programs.

As we reauthorize the Head Start program, it is important to recognize its importance and commit to making it stronger. But we must also recognize that the program is not fulfilling its promise. Head Start is not meeting its purpose of serving our children who are most at risk when dollars are being squandered by those people who have been charged with providing this service. Current practices do not meet my personal standard for managing and running a program.

This bill attempts to address this issue by holding up successful local programs so that others may follow their example and by clarifying lines of accountability so that any corrupt practices may be rooted out. The bill would create a way for States to help strengthen and coordinate Head Start, but would continue to send Federal funds directly to nearly 1,700 grantees that provide services in over 29,000 Head Start centers that serve just over 900,000 disadvantaged children.

First, the bill authorizes the Secretary of HHS to create a nationwide network of 200 Centers of Excellence in Early Childhood built around exemplary Head Start programs. These Centers of Excellence would be nominated by governors. Each Center of Excellence would receive a Federal bonus grant of at least $200,000 in each of 5 years, in addition to its base funding.

The Centers of Excellence bonus grants will be used for centers:

No. 1, to work in their community to model the best of what Head Start can do for at-risk children and families, including getting those children ready for school and ready for academic success;

No. 2, to coordinate all early childhood services in their community;

No. 3, to offer training and support to all professionals working with at-risk children;

No. 4, to track these families and ensure seamless continuity of services from prenatal to age 8;

No. 5, to become models of excellence by all performance measures and be willing to be held accountable for good outcomes for our most disadvantaged children; and

No. 6. to have the flexibility to serve additional Head Start or Early Head Start children or provide more full-day services to better meet the needs of working parents.

While Head Start centers are uneven in performance, they have generally excelled in two areas critical to success in caring for and educating children—developing community support and encouraging parental involvement. Alex Haley, the author of Roots, lived by these six words, ''Find the good and praise it.'' For me that was an invaluable lesson. That's what I hope these centers will do.

In addition to providing for the establishment of Centers of Excellence to highlight and encourage better practices among local Head Start programs, the bill establishes three new methods for ensuring accountability in the management and running of the programs.

First, it provides that grantees shall re-compete for grants every 5 years. This ensures that, after 5 years, their program is still meeting its standards. I recognize that consistency is very important for the Head Start programs, especially for the children served by these grants. Many Head Start grantees are doing a very good job administering their grants, and I hope this reapplication process will highlight their success. To help streamline the process for successful programs, grantees that have not been found deficient nor to have had an area of noncompliance left unresolved for more than 120 days will receive a priority designation during the re-competition process.

Second, the bill for the first time defines what makes a local program ''deficient.'' This will provide clarity for Head Start grantees so that they know the precise standards to which they will be held. Under the bill, a program may be deemed deficient if it is found to threaten the health, safety, or civil rights of children or staff, deny parents the exercise of their full roles and responsibilities, misuse funds, lose its legal status or financial viability, or violates other standards specified in the bill.

Finally, the bill makes clear that the Governing Board shall be the body that is charged with running local programs and which will be held accountable for those programs. During our hearing on April 5, we learned from Mayor Wharton of Shelby County, TN, and other witnesses, that the dual governance structure between the governing board and the policy council was inadequate and neither body had decision-making authority. This bill gives governing boards direct authority—and holds them accountable—while ensuring that policy councils, on which parents sit, continue to play an important advisory role in the running of local Head Start programs.

My mother taught me the importance of preschool education. When I was growing up, she ran a kindergarten in a converted garage in our backyard in Maryville, TN. She helped our community appreciate the value of a good preschool program. I have remembered both lessons in working with my colleagues to fashion this proposal to bring out the best in Head Start.

I hope that my colleagues will join me in advancing this critical legislation to ensure the Head Start program meets its full potential.

ADDITIONAL STATEMENTS

LINCOLN FINANCIAL GROUP: CELEBRATING A CENTURY OF EXCELLENCE—1905–2005

• Mr. LUGAR. Mr. President, I rise today in celebration of the centennial anniversary of Lincoln Financial Group.

In 1905, Lincoln Financial Group began with one product, one company, four employees and a small rented space above a telegraph office in downtown Fort Wayne, Indiana. Amid the stir of controversy that gripped the big, established insurers at the time, Lincoln's founders envisioned a new insurance enterprise—one based on dependability and honesty. Believing that the name of Abraham Lincoln would powerfully convey this spirit, the founders wrote the 16th President's only surviving son, Robert Todd Lincoln, to ask for permission to use a portrait of his father on the company stationery. Robert Todd Lincoln agreed, and that is how Lincoln's legacy began with a name that reflects its character.

Since its founding, Lincoln Financial has consistently leveraged its strong capital foundation to grow. From 1905–1955, Lincoln Life grew to become the ninth largest life insurance company in the United States. Even during the Great Depression, Lincoln acquired three companies. In 1968, Lincoln National Corporation was formed as an Indiana corporation. At the time, it

was one of the first holding companies in the insurance industry.

In the last decades of the 20th century, Lincoln transformed itself from a life insurance company into a nationally recognized financial services enterprise. The corporation adopted the name Lincoln Financial Group as its marketing name in 1998. In addition to Fort Wayne, Lincoln maintains primary offices in Philadelphia, PA; Hartford, CT; Chicago, IL; Portland, ME; and Barnwood, Gloucester, England.

Today, Lincoln is a family of companies working together to provide an array of financial planning, retirement income, life insurance, annuity, mutual fund, and investment management solutions to its clients. As of year-end 2004, Lincoln had consolidated assets of $116 billion and annual consolidated revenues of $5.4 billion in 2004.

Lincoln's growth has been spurred by a corporate culture that rewards creativity and believes that success is derived from a diverse and talented workforce. The people of Lincoln have always valued the trust customers place in the company each time they seek financial advice, purchase a Lincoln product or recommend the company to a friend. The company has seven shared values that reflect the principles expressed by its namesake and characterize the quality of its products: integrity; commitment to excellence; responsibility; respect; fairness; diversity; and employee ownership.

Lincoln's sense of responsibility shapes not only its business practices, but also its commitment to the communities where it operates. Since its founding, Lincoln has recognized that investing in these communities is fundamental to its success. The company's spirit of philanthropy led to the establishment of the Lincoln Financial Group Foundation in 1962, which further inspired a rich tradition of giving. Today, Lincoln sets aside 2 percent of its pre-tax earnings for philanthropy. Over the past 30 years, the Lincoln Financial Group Foundation has given over $70 million in charitable giving in Indiana.

In addition to the company's monetary donations, its employees bring the company's spirit of philanthropy to life every day. Collectively, they donate thousands of hours each year in personal volunteerism and participation in various company-sponsored community activities. To encourage and recognize their efforts, Lincoln provides employees with paid time off to participate in various volunteer projects. The company's Matching Gifts program to colleges and universities also maximizes employee donations. From food drives to donating blood, homebuilding projects to tutoring, Lincoln employees actively make a difference in the communities they call home.

As it celebrates its centennial, Lincoln's name gives a distinctive character to its legacy.

As the next 100 years begin, there is much to celebrate for the company as it looks to build a future of opportunity, focused on its shared values.●

HONORING THE CITY OF REDFIELD, SD

● Mr. JOHNSON. Mr. President, I rise today to honor and publicly recognize the 125th anniversary of the founding of the city of Redfield, SD. As the 125th anniversary approaches, Redfield looks back on a proud history and looks forward to a promising future.

Located in east central South Dakota, Redfield is the county seat for Spink County, the largest wheat-producing county in our State. First settled in 1878 by Frank Meyers and a party of Chicago and Northwestern surveyors, Redfield was originally known as ''Stennett Junction;'' named after an official with the Chicago and Northwestern Railroad. The term ''Junction'' was added in anticipation of the railroad's popularity. Meyers established the first post office in 1880, thus marking the town's official birth. In February of 1881, however, the town's name was changed to Redfield, after Joseph Barlow Redfield, an auditor with the Chicago and Northwestern Railroad Company who purchased a great deal of the area's land for investors in Chicago.

Although Redfield now serves as the county seat for Spink County, prior to 1886, that was not the case. In fact, Redfield supporters fought a contentious and controversial county seat battle between Old Ashton, Ashton, Frankfort and Redfield. Despite these efforts, old Ashton retained its position as county seat. All that changed, however, in 1886, when Redfield honestly won the majority of the votes in Spink County and was awarded the seat it still proudly claims.

Among the city's many landmarks is the historic Carnegie Library. In 1902, Redfield welcomed a grant from the Andrew Carnegie Foundation that made the library possible. This contribution transformed a simple reading club into a majestic red brick building adorned with a tan sandstone foundation, a domed cupola and beautiful oak columns and woodwork. In the library's early years, it housed the Redfield city offices, in addition to the collections; the City Auditor doubled as librarian. Recently, I had the pleasure of helping the community of Redfield secure $100,000 to renovate and expand this historic structure, which is the oldest continuous-use Carnegie Library in South Dakota.

The South Dakota Developmental Center, SDDC, is another notable Redfield landmark. Opened in 1902, the SDDC originally housed the staff and the patients in a single building, which is still used for office space today. There are currently 175 disabled individuals receiving services from SDDC today, ranging in age from 13 months to 78 years of age. Their disabilities range from moderate to profound.

Redfield also is home to one of the last surviving drive-in movie theaters. Erected in 1952, Pheasant City Drive-in Theater still entertains more than 2,800 Redfield residents.

In the twelve and a half decades since its founding, Redfield has proven its ability to thrive and serve farmers and ranchers throughout the region. Redfield's proud residents celebrate its 125th anniversary July 1–3, 2005, and it is with great honor that I share with my colleagues the achievements made by this great community.●

FRIENDS AND FOOD FOR FIFTY YEARS IN ST. ANTHONY, ID

● Mr. CRAPO. Mr. President, there is a small town in Idaho that celebrates a very special anniversary this year. Fifty years ago in 1955, the St. Anthony, ID Chamber of Commerce paid for travelers to have coffee and donuts at any of the local cafes to celebrate the opening day of fishing season. The effort, which encouraged fishermen and women to stop in St. Anthony for supplies, was so successful that this tiny town decided to prepare and serve a full breakfast of pancakes, sausage, hash browns and beverages for hungry travelers every year. By 1966, 10,000 people were served over the course of one day, more than three times the current population of the town. Today, about 5,000 people a year get to enjoy the great food and super hospitality of this small town in southeast Idaho that serves as a gateway to the Snake River and some of the best fishing in the West.

I congratulate the St. Anthony Chamber of Commerce and all of the volunteers who this year and in years past have come together to give people a smile, laughter and a delicious hot breakfast.●

CHILDREN'S HOSPICE INTERNATIONAL

● Mr. BENNETT. Mr. President, on May 23 of this year, Children's Hospice International celebrates its 22nd anniversary of helping children with life-threatening illnesses find comfort and care through hospice care programs around the country and the world.

Several members of this distinguished body, including former Senate Majority Leader Robert K. Dole of Kansas and former Senator Claiborne Pell of Rhode Island, were among the organization's early supporters because they recognized the need to provide comprehensive hospice care for children who are suffering from difficult medical conditions.

In 1977, when CHI was founded by Ann Armstrong-Dailey, there were no hospice care programs for children in the United States. In 1983, only four of 1,400 hospice programs in the United States were willing to accept children. Now, close to 450 of 3,000 U.S. hospices include child-specific services. And while that is good news, there is much more to be done.

Of the 10 million children in America who are living with a serious chronic

condition, each year about 54,000 will die; another 1.3 million will live but could greatly benefit from hospice and palliative care.

Historically, hospice reimbursement guidelines, in Medicaid and most private plans, have required that patients forego all life-saving care before they can be admitted to hospice. They have also required the patient to be within the last 6 months of life. However, this does not work with pediatric patients for whom aggressive treatment is sought and life-expectancy cannot be estimated.

Families should not be expected to give up on hope for a cure in order to receive that help. Because of the unpredictable course of many serious childhood illnesses, it is often very difficult for doctors to know when a child is within 6 months of death. Parents should not have to choose between hospice care and the hope for a cure. Parents should not have to keep their child in a hospital or other facility simply because insurance will not pay for the child to receive the same care, at a lower cost, at home.

The most critical time for children and family members is at the point of diagnosis—when they need the intensive support and guidance that hospice and palliative care programs can provide.

Since 1997, CHI has worked with the Centers for Medicare and Medicaid Services, CMS, to set up the Program for All-Inclusive Care for Children and their Families, CHI PACC. CHI PACC programs provide a continuum of care for children and their families from time of diagnosis, with hope for a cure, through bereavement, if needed.

With Congressional support, a total of 18 States are already benefiting from this initiative through CHI PACC programs in six States and two regions. States currently implementing CHI PACC are Colorado, Florida, Kentucky, New York, Virginia, and my home State of Utah, which will be among the first to implement this model.

Utah has been one of the leaders in this effort. Utah's Department of Health has spearheaded the effort in Utah, and the Primary Children's Medical Center in Salt Lake City, UT has been a central point of developing these pediatric palliative services to assist families from the point of diagnosis.

The New England Region is also preparing to implement CHI PACC to serve six States—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. The Colorado program extends to patients in six additional States—Kansas, Montana, Nebraska, New Mexico, South Dakota and Wyoming. In Pennsylvania, the Department of Defense is working to adopt the CHI PACC model for its health care system. The goal of all of these efforts is to prove the effectiveness of the CHI PACC model so that it can be adopted universally through Medicaid, S-SCHIP and private insurers.

As we approach Memorial Day, it should be noted that Children's Hospice International is a living memorial to Ensign Alan H. Armstrong and his shipmates lost aboard the U.S.S. Frank E. Evans during the conflict in Vietnam. Armstrong is the brother of CHI Founder Ann Armstrong-Dailey. I deeply appreciate Ensign Armstrong's service to our country.

I commend Children's Hospice International on its 22nd anniversary as it seeks to remove the roadblocks in private and public insurance programs that prevent these children and their families from receiving the care and support they need.

I too believe in the vision that Ann Armstrong-Dailey, along with original honorary board members Barbara Bush, and Senators Claiborne Pell and Robert Dole, put forth 22 years ago when they launched this very important effort to provide dignified care and support to children with life-threatening conditions and their families.●

NATIONAL HISTORY DAY 2005

● Mr. CONRAD. Mr. President, today I wish to say a few words about National History Day. For the past 25 years, National History Day has provided students in grades 6–12 with opportunities to study different periods or trends in American history. National History Day is a year-long educational opportunity for students to examine a period of American history closely through extensive research, development of exhibits and presentations, and multimedia documentaries. This year's national competition topic is ''Communication in History,'' and the competition will be held on the campus of the University of Maryland in June.

I am especially proud of the students from my State of North Dakota who have been selected to participate in this program this year. These students participated in the North Dakota State competition and were selected to represent the State in the national competition. They include Edward Gallegos, Kelbi Clarke, Lyndsie Cossel, Sejal Parikh, Sarak Shirek, Amirah Ahmed, Amber Guseman, Annah Klamm, Meghan Graham, Katie Sanner and Amanda Malm from Grand Forks. They also include Erin Droske, Aaron Christianson, Jessica King, Micah Gilleshammer and Sarah Lunde of St. Thomas. These students represent the Schroeder Middle School and Red River High School in Grand Forks and the St. Thomas Public School in St. Thomas, ND. I congratulate them and wish them much success in the national competition.●

MESSAGE FROM THE HOUSE

At 12:10 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced the the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 29. An act to protect users of the Internet from unknowing transmission of their personally identifiable information through spyware programs, and for other purposes.

H.R. 32. An act to amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.

H.R. 606. An act to authorize appropriations to the Secretary of the Interior for the restoration of the Angel Island Immigration Station in the State of California.

H.R. 744. An act to amend title 18, United States Code, to discourage spyware, and for other purposes.

H.R. 849. An act to provide for the conveyance of certain public land in Clark County, Nevada, for use as a heliport.

H.R. 1101. An act to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California.

H.R. 1499. An act to amend the Internal Revenue Code of 1986 to allow members of the Armed Forces serving in a combat zone to make contributions to their individual retirement plans even if the compensation on which such contribution is based is excluded from gross income, and for other purposes.

H.R. 2046. An act to amend the Servicemembers Civil Relief Act to limit premium increases on reinstated health insurance on servicemembers who are released from active military service, and for other purposes.

H.R. 2066. An act to amend title 40, United States Code, to establish a Federal Acquisition Service, to replace the General Supply Fund and the Information Technology Fund with an Acquisition Services Fund, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 89. Concurrent resolution honoring the life of Sister Dorothy Stang.

H. Con. Res. 149. Concurrent recognizing the 57th anniversary of the independence of the State of Israel.

H. Con. Res. 153. Concurrent resolution welcoming His Excellency Hamid Karzai, the President of Afghanistan, on the occasion of his visit to the United States in May 2005 and expressing support for a strong and enduring strategic partnership between the United States and Afghanistan.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 29. An act to protect users of the Internet from unknowing transmission of their personally identifiable information through spyware programs, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 32. An act to amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks; to the Committee on the Judiciary.

H.R. 606. An act to authorize appropriations to the Secretary of the Interior for the restoration of the Angel Island Immigration Station in the State of California; to the Committee on Energy and Natural Resources.

H.R. 744. An act to amend title 18, United States Code, to discourage spyware, and for other purposes; to the Committee on the Judiciary.

H.R. 849. An act to provide for the conveyance of certain public land in Clark County, Nevada, for use as a heliport; to the Committee on Energy and Natural Resources.

H.R. 1101. An act to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California; to the Committee on Energy and Natural Resources.

H.R. 1499. An act to amend the Internal Revenue Code of 1986 to allow a deduction to members of the Armed Forces serving in a combat zone for contributions to their individual retirement plans even if the compensation on which such contribution is based is excluded from gross income, and for other purposes; to the Committee on Finance.

H.R. 2046. An act to amend the Servicemembers Civil Relief Act to limit premium increases on reinstated health insurance on servicemembers who are released from active military service, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 2066. An act to amend title 40, United States Code, to establish a Federal Acquisition Service, to replace the General Supply Fund and the Information Technology Fund with an Acquisition Services Fund, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 89. Concurrent resolution honoring the life of Sister Dorothy Stang; to the Committee on the Judiciary.

H. Con. Res. 149. Concurrent resolution recognizing the 57th anniversary of the independence of the State of Israel; to the Committee on Foreign Relations.

H. Con. Res. 153. Concurrent resolution welcoming His Excellency Hamid Karzai, the President of Afghanistan, on the occasion of his visit to the United States in May 2005 and expressing support for a strong and enduring strategic partnership between the United States and Afghanistan; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 1098. A bill to prevent abuse of the special allowance subsidies under the Federal Family Education Loan Program.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated.

POM–57. A resolution adopted by the General Assembly of the State of Ohio relative to the exclusion of the 179th Airlift Wing, Ohio Air National guard, at the Mansfield Lahm airport from the list of base closures for the Base Realignment and Closure process; to the Committee on Armed Services.

CONCURRENT RESOLUTION 9

Whereas the 179th Airlift Wing, Ohio Air National Guard, at the Mansfield Lahm Airport in Mansfield, Ohio, has a mission ''to develop highly qualified operations, logistics, support and medical professionals who provide airlift to serve the state and nation'' and a vision to ''be an outstanding airlift unit with a reputation for professionalism and world-class service—our customers' first choice''; and

Whereas the 179th Airlift Wing has won several awards, including the Air Force Outstanding Unit Award, the Alan P. Tappan Memorial Trophy, and the Rusty Metcalf Award, the latter of which acknowledges the unit as one of the best in the Air Force, and all of these awards demonstrate the high capability of the unit and the unit's ability to perform at the Mansfield Lahm Airport; and

Whereas Congress authorized a new round of the Base Realignment and Closure process to occur this year, which has the potential to affect the 179th Airlift Wing, Ohio National Guard, and the community of Mansfield that supports the unit; and

Whereas the 179th Airlift Wing is active in the community through various events and organizations, employs approximately 1,000 individuals, and provides economic support and benefits to the city of Mansfield and the surrounding communities; now therefore be it

Resolved, That the 126th General Assembly of the State of Ohio supports the 179th Airlift Wing, Ohio Air National Guard, at the Mansfield Lahm Airport and firmly believes that the unit and base should not be included in the Defense Base Closure and Realignment Commission's list of proposed bases to be closed, as it is a valuable asset to the state of Ohio and the defense of our nation, and memorializes Congress to take appropriate action so that this base is not included in the Commission's list; and be it further

Resolved, That the Clerk of the Senate transmit duly authenticated copies of this resolution to the President of the United States, the Secretary of Defense of the United States, the members of the Ohio Congressional delegation, the Speaker and Clerk of the United States House of Representatives, the President Pro Tempore and the Secretary of the United States Senate, and the news media of Ohio.

POM–58. A resolution adopted by the General Assembly of the State of Ohio relative to the exclusion of the 178th Fighter Wing, Ohio Air National Guard, at the Springfield-Beckley Municipal Airport in Springfield, Ohio from the list of base closures for the Base Realignment and Closure process; to the Committee on Armed Services.

CONCURRENT RESOLUTION 10

Whereas the 178th Fighter Wing, Ohio Air National Guard at the Springfield-Beckley Municipal Airport in Springfield, Ohio, trains the fighter pilots of the future, and its goals are to have highly trained professionals providing world-class training air combat capability and resources in times of national emergency or war and to provide protection of life and property and to preserve peace, order, and public safety during natural disasters; and

Whereas in addition to working to protect our nation by sending unit members to participate in engagements around the world, the 178th Fighter Wing works in the community, participating in such activities as the Adopt-A-Family program, the Combined Federal Campaign, Help-A-Needy Family program, and Red Cross blood drives, as well as other activities; and

Whereas Congress authorized a new round of the Base Realignment and Closure process (BRAC) to occur this year, which has the potential to affect the 178th Fighter Wing, the base, and the community of Springfield that supports the base; and

Whereas the unit is a key component of the community, employing approximately 409 people in the unit, and the airport provides for air travel and cargo needs for citizens and business in the region; now therefore be it

Resolved, That the 126th General Assembly of the State of Ohio supports the 178th Fighter Wing, Ohio Air National Guard at the Springfield-Beckley Municipal Airport and firmly believes that the unit and the base should not be included in the Defense Base Closure and Realignment Commission's list of proposed bases to be closed, as it is a valuable asset to the state of Ohio and the defense of our nation, and memorializes Congress to take appropriate action so that this base is not included in the Commission's closure list; and be it further

Resolved, That the Clerk of the Senate transmit duly authenticated copies of this resolution to the President of the United States, the Secretary of Defense of the United States, the members of the Ohio Congressional delegation, the Speaker and Clerk of the United States House of Representatives, the President Pro Tempore and the Secretary of the United States Senate, and the news media of Ohio.

POM–59. A resolution adopted by the House of Representatives of the Commonwealth of Pennsylvania relative to a postage stamp commemorating coal miners; to the Committee on Banking, Housing, and Urban Affairs.

HOUSE RESOLUTION 108

Whereas our entire nation owes our coal miners a great deal more than we could ever repay them for the difficult and dangerous job which they perform so that we can have the fuel we need to operate our industries and to heat our homes; and

Whereas coal mining is as much of a culture as it is an industry; and

Whereas coal miners sacrifice life and limb for little recognition, and it would be proper and fitting for our nation to recognize our coal miners, past and present, for their contributions; therefore be it

Resolved, That the General Assembly of the Commonwealth of Pennsylvania memorialize the Citizens' Stamp Advisory Committee of the United States Postal Service to issue a commemorative stamp honoring our coal miners and their contributions to our nation and its citizens; and be it further

Resolved, That copies of this resolution be delivered to the Citizens' Stamp Advisory Committee, c/o Stamp Development, United States Postal Service, 1735 North Lynn Street, Room 5013, Arlington, VA 22209–6432, to the presiding officers of each house of congress and to each member of Congress from Pennsylvania.

POM–60. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Kentucky relative to legislation urging the Federal Communications Commission not to preempt state do not call legislation; to the Committee on Commerce, Science, and Transportation.

HOUSE RESOLUTION 191

Whereas the Commonwealth of Kentucky has enacted legislation, KRS 367.46951 et seq., to protect the privacy of Kentucky consumers from unwanted, unsolicited telemarketing phone calls and created a ''zero call list'' on which Kentucky consumers may place their residential phone numbers and which numbers may not be called by telemarketers for the purpose of making a telephone solicitation as defined by Kentucky law, and which list is administered by the Office of Attorney General; and

Whereas the United States Federal Trade Commission and Federal Communications Commission have established a federal registry, the National Do Not Call Registry, on which Kentucky consumers may have their residential phone numbers placed for purposes of preventing telemarketers from making unsolicited telephone solicitations, which list is administered by the Federal Trade Commission and enforced by the Federal Trade Commission as well as the Federal Communications Commission and the Attorneys General of the 50 states; and

Whereas the Attorney General has implemented the Kentucky zero call list effectively and enforced the Kentucky and federal law in such a manner as to dramatically reduce the number of complaints from Kentucky consumers regarding unsolicited telemarketing calls; and

Whereas the Kentucky House of Representatives is aware that petitions are pending before the Federal Communications Commission which seek to declare state laws in Wisconsin, New Jersey, North Dakota and Indiana preempted by federal telemarketing legislation, the Telephone Consumer Protection Act, 47 U.S.C. sec. 227; and

Whereas the Kentucky House of Representatives wishes to express its satisfaction with the enforcement efforts of the Office of the Attorney General to date and its desire that these efforts continue in the future; and

Whereas neither the Telephone Consumer Protection Act nor any other federal law expressly or by reasonable implication preempts KRS 367.46951 et seq., nor any other state telemarketing legislation establishing a state do not call registry; now therefore, be it

Resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The House of Representatives urges the Federal Communications Commission to clearly state that the National Do Not Call Registry does not preempt Kentucky's zero call list.

Section 2. The House of Representatives also urges the legislature of each state that has not yet done so to make a similar request to the Federal Communications Commission.

Section 3. The Clerk of the House of Representatives shall transmit copies of this Resolution to the President and Vice President of the United States, the presiding officer in each house of the legislature in each of the states in the Union, the Speaker of the United States House of Representatives, the President of the United States Senate, and to each member of the Commonwealth of Kentucky's Congressional Delegation.

POM–61. A resolution adopted by the Senate of the General Assembly of the State of Ohio relative to the Energy Policy Act of 1992; to the Committee on Commerce, Science, and Transportation.

SENATE RESOLUTION 35S

Whereas the United States; increasing dependence on imported oil and the relative instability of foreign oil-producing countries prompted Congress to enact the Energy Policy Act of 1992. The policy goals of the Act are to reduce our nation's reliance on foreign petroleum and to improve air quality; and

Whereas to achieve these goals, certain portions of the Act establish provisions that are designed to encourage the use of alternative fuels. One such provision, 42 U.S.C. 13257(o), specifies that pursuant to rules adopted by the Department of Energy, 75% of new light duty motor vehicles acquired annually for state government fleets must be alternative fueled vehicles; and

Whereas rules adopted by the Department of Energy, which are codified at 10 C.F.R. Part 490 and are commonly known as the Energy Policy Act State and Alternative Fuel Provider Rules, exclude electric-hybrid vehicles that run in part on gasoline from the definition of ''alternative fueled vehicle,'' thus prohibiting states from receiving credit toward the alternative fueled vehicle quota for the acquisition of an electric-hybrid vehicle; and

Whereas this inability of states to use electric-hybrid vehicles in order to receive credit toward the quota is unfortunate and, in fact, does not make sense because these vehicles exhibit excellent fuel efficiency that would serve to accomplish the policy goals of the Energy Policy Act of 1992 by reducing dependence on petroleum products; now therefore be it

Resolved, That we the members of the Senate of the 126th General Assembly of Ohio, request Congress to amend the Energy Policy Act of 1992 to specify that an electric-hybrid vehicle must receive credit as being an alternative fueled vehicle for purposes of the requirement that 75% of new light duty motor vehicles acquired annually for state government fleets be alternative fueled vehicles, and be it further

Resolved, That the Clerk of the Senate transmit daily authenticated copies of this resolution to the Speaker and Clerk of the United States House of Representatives, to the President Pro Tempore and Secretary of the United States Senate, to the members of the Ohio Congressional delegation, to the Speaker of the House of Representatives of the General Assembly of Ohio, and to the news media of Ohio.

POM–62. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to highway funding; to the Committee on Commerce, Science, and Transportation.

HOUSE CONCURRENT RESOLUTION 4

Whereas the sixth short-term extension of the federal road and transit funding authorization act known as the Transportation Equity Act for the 21st Century, or TEA 21, expires on May 31, 2005. The uncertainty regarding long-term federal funding hampers Michigan's ability to effectively plan investments in infrastructure and may contribute to delays in critical highway and transit projects; and

Whereas Michigan has long been a ''donor state,'' contributing a greater share to the Federal Highway Trust Fund and Mass Transit Account than the share of federal transportation funds returned for use in Michigan; and

Whereas last session, the United States Senate passed highway reauthorization legislation that would have provided $318 billion for highways and transit systems nationwide over six years and increased Michigan's rate of return on our federal transportation taxes from 90.5 percent to 95 percent. In addition, the bill would have provided up to $300 million more for Michigan transportation systems each year, and could have created several thousand new jobs. The House passed reauthorizing legislation that would have provided $284 billion for highways and transit systems and would have reduced Michigan's rate of return below the current level of 90.5 percent. The Conference Committee narrowed the funding difference to between $284 and $299 billion, but left unRESOLVED the question of funding equity for donor states such as Michigan; now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That we memorialize Congress to enact highway reauthorization legislation with a level of funding that closes the gap between federal fuel tax dollars paid by Michigan motorists and dollars received to address Michigan's transportation needs; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–63. A resolution adopted by the Legislature of the State of Michigan relative to highway funding; to the Committee on Commerce, Science, and Transportation.

SENATE CONCURRENT RESOLUTION 12

Whereas the sixth short-term extension of the federal road and transit funding authorization act known as the Transportation Equity Act for the 21st Century, or TEA 21, expires on May 31, 2005. The uncertainty regarding long-term federal funding hampers Michigan's ability to effectively plan investments in infrastructure and may contribute to delays in critical highway and transit projects; and

Whereas Michigan has long been a ''donor state,'' contributing a greater share to the Federal Highway Trust Fund and Mass Transit Account than the share of federal transportation funds returned for use in Michigan; and

Whereas last session, the United States Senate passed highway reauthorization legislation that would have provided $318 billion for highways and transit systems nationwide over six years and increased Michigan's rate of return on our federal transportation taxes from 90.5 percent to 95 percent. In addition, the bill would have provided up to $300 million more for Michigan transportation systems each year, and could have created several thousand new jobs. The House passed reauthorizing legislation that would have provided $284 billion for highways and transit systems and would have reduced Michigan's rate of return below the current level of 90.5 percent. The Conference Committee narrowed the funding difference to between $284 and $299 billion, but left unresolved the question of funding equity for donor states such as Michigan; now, therefore be it

Resolved by the Senate (the House of Representatives concurring), That we memorialize Congress to enact highway reauthorization legislation with a level of funding that closes the gap between federal fuel tax dollars paid by Michigan motorists and dollars received to address Michigan's transportation needs; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–64. A concurrent resolution adopted by the Legislature of the State of North Dakota relative to the Grand Forks Automated Flight Service Station; to the Committee on Commerce, Science, and Transportation.

HOUSE CONCURRENT RESOLUTION 3058

Whereas the Grand Forks Automated Flight Service Station provides pilots with weather and aeronautical data to help them make critical and often lifesaving decisions; and

Whereas whether assisting University of North Dakota student pilots, coordinating air ambulance flights to our rural communities, relaying data to commercial operators flying passengers and supplies over the state, often in the worst of weather, or assisting the military in matters of national security, the Grand Forks Automated Flight Service Station provides an invaluable service that is intimately related to the public interest; and

Whereas the Grand Forks Automated Flight Service Station is responsible for the continuous monitoring of international border air space and daily support of the missions of the Minot Air Force Base, Grand Forks Air Force Base, Fargo Air National Guard, and Bismarck National Guard flight operations; and

Whereas maintaining the Grand Forks Automated Flight Service Station with proper staffing levels and equipment is a fundamental necessity in the continuation of these crucial services; and

Whereas the Federal Aviation Administration is primarily responsible for the safety and security of aviation; Now, therefore, be it

Resolved by the House of Representatives of North Dakota, the Senate Concurring therein:

That the Fifty-ninth Legislative Assembly urges the Federal Aviation Administration to maintain the Grand Forks Automated Flight Service Station as a federal air traffic facility properly staffed by government employees; and be it further

Resolved, That the Secretary of State forward copies of this resolution to the President and Vice President of the United States, the administrator of the Federal Aviation Administration, and to each member of the United States Senate and United States House of Representatives.

POM–65. A resolution adopted by the Senate of the General Assembly of the State of Tennessee relative to federal reauthorization of federal-aid highway and transit programs; to the Committee on Commerce, Science, and Transportation.

SENATE RESOLUTION 13

Whereas legislation to reauthorize the federal-aid highway and transit programs is more than 17 months overdue; and

Whereas the six short-term program extensions enacted by the U.S. Congress have forced states and localities to delay construction of critical highway and transit projects, impeded job creation, and postponed life-saving safety improvements and the completion of congestion-reducing measures; and

Whereas further delay will increase project costs and dilute the purchasing power of federal transportation dollars; and

Whereas investments in transportation are investments in people, and our transportation network is the means through which our children return from school safely, aging Americans and the disabled gain mobility, and commuters have affordable mass transit options to get to work; and

Whereas a well-functioning transportation system is critical to America's security, productivity and global competitiveness; and

Whereas inadequate funding proposals impede the ability of the U.S. Congress to reach agreement on a long-term bill; now, therefore, be it

Resolved by the Senate of the One Hundred Fourth General Assembly of the State of Tennessee, that the Senate hereby most fervently urges and encourages the U.S. Congress and the administration to immediately enact a well-funded, multi-year reauthorization of federal highway and transit programs, be it further

Resolved, That enrolled copies of this resolution be transmitted to the President, the Vice President, the Secretary of Transportation and to each member of Tennessee's congressional delegation.

POM–66. A resolution adopted by the Senate of the Legislature of the State of Louisiana relative to Weekly Natural Gas Storage Report procedures; to the Committee on Energy and Natural Resources.

SENATE RESOLUTION NO. 6

Whereas Louisiana serves as a major energy source and hub for the entire nation; and

Whereas information that impacts energy markets throughout the nation is of critical importance to Louisiana; and

Whereas the Department of Energy, Energy Information Administration (EIA), solicited public comments regarding its present policies and procedures concerning revision of information contained in the Weekly Natural gas Storage Report; and

Whereas the Weekly Natural Gas Storage Report identifies the amount of natural gas stored and the amount withdrawn in underground storage on a weekly basis; and

Whereas the contents of such report are critical factors in the pricing of natural gas, and have a direct and immediate impact upon markets and consumers; and

Whereas the EIA's current revision policy provides that any errors in the Weekly Natural Gas Storage Report will not be corrected for up to one week; and

Whereas such policy is seriously flawed, as demonstrated by the events of November 24, 2004; and

Whereas the November 24, 2004, Weekly Natural Gas Storage Report contained information that had been submitted with a clerical error; and

Whereas shortly after such information had been submitted, EIA personnel requested that the company review the accuracy of its submission; and

Whereas within thirty minutes from EIA's request the correct information was obtained and submitted to EIA; and

Whereas although EIA and private sector personnel acted promptly and appropriately to discover and correct the clerical error, the contents oft he Weekly Natural Gas Storage Report were not publicly revise, updated, or corrected, due to EIA's regulations preventing the disclosure and dissemination of such information until the next week's report; and

Whereas such failure and delay in disclosure and dissemination of the corrected information had disastrous economic consequence, in that Federal Energy Regulatory Commission analysts later estimated the cost to the marketplace in relying upon the erroneous and uncorrected information was between $200 million and $1 billion; and

Whereas such cost is an unconscionable burden upon consumers and businesses for an easily correctable and actually corrected error, especially when it is within the powers of agencies overseeing the report process to diminish these costs by prompt disclosure and dissemination of revised information; and

Whereas under 15 U.S.C.A. §764(b)(5), the secretary of energy has the duty to ''promote stability in energy prices to the consumer, promote free and open competition in all aspects of the energy field prevent unreasonable profits . . . and promote free enterprise''; and

Whereas in light of the events of November 24th, the Energy Information Administration has proposed new policies and procedures concerning the disclosure and dissemination of revised or corrected information; and

Whereas Congress should act to ensure that the proposed changes promote market fairness and equality by mandating the corrected information is disclosed and disseminated rapidly, and that all participants in the natural gas industry markets have the ability to obtain essential information at he same time, therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to require Weekly Natural Gas Storage Report policies and procedures that mandate the prompt disclosure and dissemination of corrected information, in order to promote market equality and fairness, be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives, and to each member of the Louisiana delegation to the United States Congress.

POM–67. A House Joint Memorial adopted by the Legislature of the State of Idaho relative to funding for the Idaho National Laboratory; to the Committee on Energy and Natural Resources.

HOUSE JOINT MEMORIAL 6

Whereas at the direction of the United States Government, through its Department of Energy, a new national laboratory ''Idaho National Laboratory'' was, on February 1, 2005, formed from the former Argonne National Laboratory-West and Idaho National Engineering and Environmental Laboratory; and

Whereas the United States Department of Energy's stated vision for the new Idaho National Laboratory is to: enhance the Nation's energy security by becoming the preeminent, internationally recognized nuclear energy research, development and demonstration laboratory within ten years; establish itself as a major center for national security technology development and demonstration; be a multiprogram, national laboratory with world-class nuclear capabilities; and foster new academic, industry, government and international collaborations to produce the investment, programs and expertise that assure this vision is realized; and

Whereas the Idaho National Laboratory is considered an essential partner alongside Idaho state government, Idaho's universities and industry in carrying out the state's Science and Technology Strategic Plan and building on Idaho's key industry strengths in energy and power, imaging, new materials and nanotechnology, and ag/biotechnology; and

Whereas the state of Idaho has for fifty-six years willingly and dutifully hosted Department of Energy, Energy Research and Development Administration and Atomic Energy Commission operations at the current Idaho National Laboratory site; and

Whereas both the federal government and the state of Idaho have significant financial interests in seeing operations at the Idaho National Laboratory succeed. Now, therefore, be it

Resolved by the members of the First Regular Session of the Fifty-eighth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we herewith respectfully petition the President and Congress to pledge continued support and provide sufficient long-term funding to assure execution of the federal government's stated, public record vision for the Idaho National Laboratory, allowing this great institution to advance, as it is uniquely able to, our collective interests in strengthened energy, national and economic security for these United States, be it further

Resolved, That the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the United States, the Secretary of Energy of the United States, the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

POM–68. A House Joint Memorial adopted by the Legislature of the State of Idaho relative to Power Marketing Administrations (PMAs) rates; to the Committee on Energy and Natural Resources.

HOUSE JOINT MEMORIAL 9

Whereas Power Marketing Administrations (PMAs) market electricity generated primarily by federal hydropower projects in thirty-three states served by the 1,190 consumer-owned electric utilities giving preference to public bodies and cooperatives; and

Whereas Bonneville Power Administration provides a substantial amount of the electric power consumed in Idaho, including the sale of firm and surplus electric power to Idaho's investor-owned utilities and directs wholesale power to 26 rural electric cooperatives and municipalities in Idaho serving over 250,000 Idaho citizens; and

Whereas the Administration's budget proposes to sell electric power from PMAs at

market rates rather than the current practice of selling at cost-based rates; and

Whereas the Pacific Northwest region has experienced a nearly fifty percent increase in wholesale power rates since the energy crisis of 2001–2002; and

Whereas the current federal power program of cost-based rates ensures that all federal costs, with interest, from the generation, transmission and sale of federal power are recovered from purchasers through the rates charged; and

Whereas the proposal contains a projected rate increase of twenty percent each year until it totals a one hundred percent increase, which is an escalation of significant magnitude and will severely harm the region's businesses and industries, as well as all the residents of the region; and

Whereas the budget proposal constitutes a thinly disguised tax on the millions of Americans who purchase power through utilities supplied by PMAs; and

Whereas recognizing the true costs of this proposal and assessing the economic impacts it entails, we find that the proposal is not a prudent choice and should be rejected: Now, therefore, be it

Resolved by the members of the First Regular Session of the Fifty-eighth Idaho Legislature, the House of Representatives and the Senate concurring therein, That we urge the Congress to reject the Administration proposal to move PMA rates to market rates thereby ensuring the continued responsible management of power generation, transmission and sale; and be it further

Resolved, That the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, the congressional delegation representing the State of Idaho in the Congress of the United States and to the Secretary of the United States Department of Energy, Samuel W. Bodman.

POM–69. A House Joint Memorial adopted by the Legislature of the State of Idaho relative to a feasibility study by the U.S. Corps of Engineers relating to the possibilities, benefits, and costs of providing flood control above Bear Lake; to the Committee on Environment and Public Works.

HOUSE JOINT MEMORIAL 1

Whereas the ongoing drought in the state of Idaho has had a profound impact throughout the state, including the area of southeastern Idaho known as the Bear River Basin. Although inadequate, during times of high water such as spring runoff, Bear Lake is the major reservoir for containing flood waters of the Bear River within the Bear River Basin. The effects of drought in the Bear River Basin would be significantly reduced in the event alternative storage sites were available; and

Whereas the Bear River Basin encompasses 7,400 square miles with 2,700 square miles in the state of Idaho. Originating in Utah's Uintah Mountains, the Bear River crosses state boundaries five times, has tributaries in Idaho, Utah and Wyoming, and ultimately discharges into the Great Salt Lake; and

Whereas the Bear River did not naturally divert into Bear Lake. The Utah Sugar Company and the Telluride Power Company first proposed diversion of the Bear River into Bear Lake for water storage in 1898. That project was taken over by Utah Power and Light Company for the purpose of producing hydropower. The project, which included a diversion dam on the Bear River, a canal, and a pumping station was completed in 1918; and

Whereas a multistate compact between the states of Idaho, Utah and Wyoming, known as the Bear River Compact, was entered into in 1958 and amended in 1980. The Compact governs the operation of the Bear River and, for management purposes, the Compact divides the river into three segments. The three segments are known as the Upper Division, located in Utah and Wyoming, the Central Division, located in Wyoming and Idaho, and the Lower Division, located in Idaho and Utah. The Bear River Commission, made up of three members from each of the Compact states, a chairman appointed by the President of the United States, and an engineer/manager, manages the day-to-day operation of the river; and

Whereas as a result of two lawsuits against Utah Power and Light Company during the 1970's, which claimed damage to crops due to flooding along the Bear River, the power company is under court order to keep the Bear River within its banks. Based on the court order, in the event the irrigation season ends with Bear Lake above 5,918 feet in elevation, water is released downstream to make room in Bear Lake for the spring runoff; and

Whereas since the 1970's, millions of acre feet of water have been released to provide capacity for flood control. Releases carry the river as well as the surface water removed from Bear Lake downstream to the Great Salt Lake where the principal beneficiary is the Great Salt Lake ecosystem. The most recent releases were in 1997, 1998 and 1999; and

Whereas lowering the elevation of Bear Lake in the Lower Division for flood control also impacts water users in the Upper and Central Divisions. Under the Compact, Woodruff Narrows Reservoir located in the Upper Division is not allowed to fill whenever the elevation of Bear Lake is below 5,911 feet above sea level, affecting both ground and surface water in that area. In addition, when Woodruff Narrows Reservoir is not full, no water is available for irrigation in a ten mile stretch of river in the Central Division leaving irrigators in that area without water for their crops; and

Whereas dredging has been necessary to provide water for irrigation due to low lake levels; and

Whereas studies to date have shown that use of Bear Lake for flood control has resulted in tons of suspended sediment solids to be deposited in the lake during the spring runoff. This is highly detrimental to the ecosystem. Increases in algae blooms on Bear Lake due to nitrates being carried in have been documented; and

Whereas in the event the water had not been released in the interest of flood control, it is likely that Bear Lake would now be full or nearly full. In that event, it is probable that there would be no need to pump water out of Bear Lake for irrigation because there would be enough capacity to allow the water to flow out by gravity, there would be no need to dredge in Bear Lake in that the elevation of the lake would be high enough to make dredging unnecessary, and an elevation above 5,911 feet would allow upstream storage at the Woodruff Narrows Reservoir; and

Whereas extremely low levels in Bear Lake could cause a water emergency to be declared by the state of Utah. The declaration would lead to closer scrutiny of the natural flow rights administered under the interstate accounting system. The lack of adequate storage water to supplement natural flow could result in the curtailment of rights in Idaho; and

Whereas if alternate storage sites were available, several hundred thousand acre feet of water would still be in Bear Lake to mitigate the effects of the drought. Pursuant to the Bear River Compact, Idaho is entitled to store approximately 125,000 acre feet of water annually and Utah about 390,000 acre feet annually. Provided adequate storage, this water, which is usually available during the spring runoff, could be stored to prevent any flooding of the Bear River. The water could then be used for irrigation, domestic and commercial development and recreation. A reservoir above Bear Lake would allow chemicals to be neutralized and suspended solids to settle out that are now entering Bear Lake. Alternative storage sites would provide for the conservation, preservation and best utilization of the water to which the state is entitled. This storage is desperately needed to allow residential, commercial and municipal development in the Bear River drainage without reducing irrigated agricultural lands; and

Whereas flood control above Bear Lake would make possible a policy that Bear Lake would be the first to fill and the last to empty. This would provide more water for irrigation, minimize fluctuations of lake levels, improve spawning habitat for Bear Lake cutthroat trout, provide boat-launching capability at Idaho state parks, and allow the filling of Woodruff Narrows Reservoir. Flood control above Bear Lake would greatly benefit the economy of all three states in the Bear River drainage; and

Whereas the United States Army Corps of Engineers is the federal agency responsible for flood control. The Corps has indicated a willingness to conduct a feasibility study of possible water storage sites upstream from Bear Lake which could be used for flood control of the Bear River. Costs of the study could range from $600,000 to $2,000,000 depending on the areas the study would include. The study will require an equal match of federal and nonfederal funds. However, with congressional approval, past local expenditures may be used as the local match; and

Whereas past local expenditures that have been made include $174,000 by the state of Wyoming for the Cokeville Reservoir project on Smith's Fork, $350,000 by the State of Wyoming for the Bear River Plan and over $2,000,000 of state funds from Idaho, Wyoming, and Utah through the Bear River Commission for stream gaging; and

Whereas concerned citizens of the Bear River drainage, including the Bear Lake County Commission, the Bear Lake Regional Commission, Bear Lake Watch, Inc., and Love Bear Lake, Inc., are asking for Congressional approval to recognize past expenditures as the local match to make the Corps of Engineers feasibility study possible: Now, therefore, be it

Resolved by the members of the first Regular Session of the Fifty-eighth Idaho Legislature, the House of Representatives and the Senate concurring therein, That we respectfully urge the Congress of the United States and our Idaho delegation, as well as the Utah and Wyoming delegations in Congress, to support, work to pass and vote for legislation that will authorize and fund a feasibility study by the United States Corps of Engineers relating to the possibilities, benefits and cost of providing flood control above Bear Lake; and be it further

Resolved, That we urge Congress to allow and approve past local expenditures, equivalent to fifty percent of the total cost of the study, as the required local match and that local expenditures to be allowed and approved include $174,000 by the state of Wyoming for the Cokeville Reservoir project on Smith's Fork, $350,000 by the state of Wyoming for the Bear River Plan and $2,000,000 of state funds from Idaho, Wyoming, and Utah for stream gaging; and be it further

Resolved, That the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate

and the Speaker of the House of Representatives of Congress, and the congressional delegations representing the states of Idaho, Utah and Wyoming in the Congress of the United States.

POM–70. A House Joint Memorial adopted by the Legislature of the State of Idaho relative to the Central America Free Trade Agreement (CAFTA) and the Free Trade Area of the Americas (FTAA); to the Committee on Finance.

Whereas the state of Idaho is very diversified in its agricultural production; and

Whereas in January 2002, the federal government announced that it was initiating negotiations on a free trade agreement involving the countries of El Salvador, Guatemala, Honduras and Nicaragua. These negotiations concluded in December 2003. Negotiations with Costa Rica and the Dominican Republic were subsequently completed and are now included in the agreement. Congress must now decide whether to ratify the Central America Free Trade Agreement (CAFTA); and

Whereas the federal government is also negotiating the Free Trade Area of the Americas (FTAA) agreement; and

Whereas both CAFTA and the FTAA would allow these foreign countries to export commodities to the United States, harming Idaho agricultural industry in the process; and

Whereas the agricultural producers of the United States cannot be expected to compete with these foreign countries under the trade agreements due to the labor practices, lack of environmental regulations and subsidized agricultural production of these foreign countries; and

Whereas sugar is an import-sensitive commodity which will be negatively impacted by CAFTA. Idaho is our nation's second-largest producer of sugarbeets and a recent University of Idaho study concludes that the demise of the sugar industry in the state would also have a serious impact on market prices relating to other Idaho crops such as potatoes and onions which would be grown in place of sugarbeets; and

Whereas the CAFTA nations already enjoy preferential, duty-free access into the United States market for 311,700 metric tons of sugar. The United States is presently the world's fourth-largest net importer of sugar under existing trade agreements and its sugar market is already oversupplied, resulting in our region's sugarbeet processing company recently announcing the temporary closure of one of its factories due to the existing low sugar marketing allocations for United States producers; and

Whereas the United States International Trade Commission in August 2004, concluded that the Central American Free Trade Agreement would actually increase the U.S. trade deficit with the region by $100 million a year to $24 billion a year; and

Whereas concerns over free trade agreements face the agriculture industry at a time when the domestic consumption of United States agricultural products is declining, forcing domestic producers out of business; and

Whereas the state of Idaho stands to lose thousands of jobs and millions of dollars if these free trade agreements are implemented, potentially devastating the state's agricultural industry, moving production into other supply-sensitive crops, and severely harming the state's economy as a whole; and

Whereas the economic impact of any trade agreement must be recognized and considered to maintain viable economic health of agricultural industries, as well as all industries, with an emphasis on fair trade, rather than free trade; and

Whereas the provisions of CAFTA and FTAA should be renegotiated to limit exports from foreign countries to a needs-based access, allowing the United States agricultural policy to properly function and fairly treat agricultural producers in the United States: Now, therefore, be it

Resolved by the members of the First Regular Session of the Fifty-eighth Idaho Legislature, the House of Representatives and the Senate concurring therein, That in negotiating any national trade agreements, the federal government is urged to recognize the economic impact of such trade agreements on the states and consider those impacts in order to maintain the viable economic health of agricultural industries, as well as all industries, with an emphasis on fair trade, rather than free trade, and be it further

Resolved, That the federal government is urged to renegotiate the provisions of CAFTA and the FTAA to limit exports from the involved foreign countries to fairly protect agricultural producers in the United States; and be it further

Resolved, That the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

POM–71. A resolution adopted by the Senate of the Legislature of the State of Louisiana relative to the Breast Cancer Patient Protection Act; to the Committee on Energy and Natural Resources.

SENATE RESOLUTION 10

Whereas individuals and organizations, including many congressmen, have been fighting for access to quality health care for a women since 1996; and

Whereas the Breast Cancer Patient Protection Act is bi-partisan legislation co-sponsored by Senator Mary Landrieu of Louisiana which would create a ban on ''drive through'' mastectomies, in which a woman is forced out of the hospital sometimes only hours after breast cancer surgery; and

Whereas this legislation would require insurance companies to cover a 48-hour hospital stay for a woman undergoing a mastectomy and a 24-hour hospital stay for a woman undergoing a lymph node dissection; and

Whereas this legislation ensures that a physician and the patient will make a decision together regarding staying at a hospital following a mastectomy; and

Whereas both the American College of Surgeons and the American Medical Association have taken the position that most patients require a longer hospital stay than those that ''drive-by'' mastectomies afford; and

Whereas among the groups supporting this legislation are the American Medical Association, the American College of Surgeons, the Association of Women's Health, the Society for Advancement of Women's Health, the Susan G. Komen Foundation, and Families USA: Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to enact the Breast Cancer Patient Protection Act; and be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–72. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to ''Amyotrophic Lateral Sclerosis Awareness Month'', to the Committee on Health, Education, Labor, and Pensions.

HOUSE RESOLUTION 225

Whereas Amyotrophic Lateral Sclerosis (ALS) is better known as Lou Gehrig's disease; and

Whereas ALS is a fatal neurodegenerative disease characterized by degeneration of cell bodies of the lower motor neurons in the gray matter of the anterior horns of the spinal cord; and

Whereas the initial symptom of ALS is weakness of the skeletal muscles, especially those of the extremities; and

Whereas as ALS progresses, the patient experiences difficulty in swallowing, talking and breathing; and

Whereas ALS eventually causes muscles to atrophy, and the patient becomes a functional quadriplegic; and

Whereas ALS does not affect a patient's mental capacity, so a patient remains alert and aware of the loss of motor functions and the inevitable outcome of continued deterioration and death; and

Whereas ALS occurs in adulthood, most commonly between 40 and 70 years of age, with the peak at about 55 years of age, and affects men two to three times more often than women; and

Whereas more than 5,000 new ALS patients are diagnosed annually; and

Whereas on average, patients diagnosed with ALS survive two to five years from the time of diagnosis; and

Whereas ALS has no known cause, prevention or cure; and

Whereas ''Amyotrophic Lateral Sclerosis (ALS) Awareness Month'' will increase public awareness of ALS patients' circumstances, acknowledge the terrible impact this disease has on patients and families and recognize the research for treatment and cure of ALS: Therefore, be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania recognize the month of May 2005 as ''Amyotrophic Lateral Scerosis (ALS) Awareness Month'' in Pennsylvania; and be if further

Resolved, That the House of Representatives urge the President and Congress of the United States to enact legislation to provide additional funding for ALS research, and be it further,

Resolved, That copies of this resolution be transmitted to the President of the United States, to the Vice President of the United States, to the Speaker of the House of Representatives, to the members of Congress from Pennsylvania and to the United States Secretary of Health and Human Services.

POM–73. A concurrent resolution adopted by the House of Representatives and the Senate of the Legislature of the State of Hawaii relative to the No Child Left Behind Act of 2001; to the Committee on Health, Education, Labor, and Pensions.

HOUSE CONCURRENT RESOLUTION

Whereas in 2002, the No Child Left Behind Act of 2001 was enacted on a bipartisan basis and signed into law by President George W. Bush; and

Whereas all states that accept federal Title I education funds, including Hawaii, are subject to the requirements of the Act; and

Whereas the purpose of the Act is to compel all public schools to make adequate yearly progress toward the goal of 100 percent student proficiency in math and reading by 2013–2014; and

Whereas these expectations are unreasonable for students with limited English proficiency and students with disabilities, making it impossible for many of Hawaii's

schools, that have a high population of these students, to comply with the law; and

Whereas the Act does not allow states that may already have successful accountability systems in place to use their system to comply with the spirit of the Act; and

Whereas states should be allowed to use a value-added or student growth approach in their state accountability plan; and

Whereas the Act is an under-funded mandate that causes states and school districts to spend more money than the amounts appropriated by Congress to implement the Act; and

Whereas the Act coerces participation by placing punitive financial consequences on states that refuse to participate; and

Whereas in 2004, the National Conference of State Legislatures created a bipartisan task force to study the Act, resulting in suggestions for specific changes to make the Act more workable, more responsive to variations among the states, and more effective in improving elementary education; and

Whereas the recommendations of the task force's February 2005 Final Report include the following:

(1) Substantially increasing federal funding for the Act;

(2) Reexamining the financial consequences for states that choose not to participate;

(3) Reevaluating the 100 percent proficiency goal established by the Act;

(4) Conducting a Government Accountability Office study of the compliance and proficiency costs associated with the Act;

(5) Giving the Individuals with Disabilities Education Act primacy over the Act in cases where these laws may conflict; and

(6) Providing states with much greater flexibility to meet the objectives of the adequate yearly progress provisions of the Act; and

Whereas although the Act aims to provide flexibility for states to improve academic achievement and to close the achievement gap, the task force found that little flexibility has been granted to states to implement the Act: Now, therefore, be it

Resolved, by the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2005, the Senate concurring, That the United States Congress is respectfully requested to amend the No Child Left Behind Act of 2001 according to the recommendations of the February 2005 Final Report of the National Conference of State Legislatures' Task Force on No Child Left Behind; and be it further

Resolved, That the current law and any revisions thereof recognize that under our federal system of government, education is primarily a state and local responsibility; and be it further

Resolved, That Congress is requested to allow states more flexibility to continue to work toward the goal of closing the achievement gap without the threat of losing federal funds; and be it further

Resolved, That Congress is requested to appropriate federal funding in amounts consistent with the levels authorized in the Act for education programs and expanded information systems needed to accurately reflect student, school, and school district performance and to pay the costs of ensuring student proficiency; and be it further

Resolved, That Congress is requested to authorize appropriate assessment methods and an alternative methodology for determining adequate yearly progress targets and progress for students who are not yet proficient in English and who have certain disabilities; and be it further

Resolved, That Congress is requested to amend the No Child Left Behind Act's current provisions relating to adequate yearly progress to apply sanctions only when the same groups or subgroups within a grade level fail to meet adequate yearly progress targets in the same subject area for two consecutive years; and be it further

Resolved, That Congress is requested to amend the Act to allow flexibility in:

(1) Determining adequate yearly progress using models that measure individual student growth or growth in the same cohort of students from year to year;

(2) Calculating adequate yearly progress for students belonging to multiple groups and subgroups; and

(3) Determining whether certain categories of teachers, such as special education teachers, are highly qualified; and be it further

Resolved, That Congress is requested to modify the No Child Left Behind Act's provisions relating to school choice by limiting the option only to those students whose performance is consistently below the proficiency level; and be it further

Resolved, That certified copies of this Concurrent Resolution be transmitted to the President of the United States, the President and Secretary of the United States Senate, the Speaker and Clerk of the United States House of Representatives, and members of Hawaii's congressional delegation.

POM–74. A concurrent resolution adopted by the Legislature of the State of North Dakota relative to a human life amendment to the Constitution of the United States; to the Committee on the Judiciary.

HOUSE CONCURRENT RESOLUTION 3017

Whereas the Legislative Assembly finds that the state of North Dakota has compelling and paramount interest in the preservation and protection of the life of all human beings; and

Whereas the Legislative Assembly finds that the life of a human being should be protected at every stage of biological development; and

Whereas the Legislative Assembly finds that abortion procedures impose significant risks to the health and life of a pregnant mother, including subjecting her to significant risk of severe depression, suicidal ideation, suicide, attempted suicide, posttraumatic stress disorders, physical injury, and a greater risk of death than risks associated with carrying the unborn child to full term and childbirth; and

Whereas the inalienable right to life is found not only in the Declaration of Independence but also in the Constitution of the United States which the senators and representatives of Congress, the members of the several state legislatures, and all federal and state executive and judicial officers are sworn to preserve, protect, and defend; and

Whereas the 5th and 14th Amendments to the Constitution of the United States guarantee that no person may be deprived of life without due process of law; and

Whereas Congress has the power and responsibility to enforce the guarantees contained in the 5th, 13th, and 14th Amendments to the Constitution of the United States of America, which guarantee to all persons the right not to be deprived of life without due process of law, the right to the equal protection of the law, and the right to be free from involuntary servitude and the power to enforce such guarantees include the power to expand the definition of persons entitled to such guarantees; and

Whereas abortion is a deprivation of the right to life and the right to the equal protection of the law and is the ultimate manifestation of the involuntary servitude of one human being to another: Now, therefore, be it

Resolved, by the House of Representatives of North Dakota, the Senate concurring therein, That the Fifty-ninth Legislative Assembly strongly urges the Congress of the United States to pass and all state executive and judicial officers to support an amendment to the Constitution of the United States recognizing that the inalienable right to life is vested in each human being and guaranteeing that no human being may be deprived the equal protection of the law without due process; and be it further

Resolved, That the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation, the Speaker of the United States House of Representatives, the President of the United States Senate, the Governor of North Dakota, and the Chief Justice of the North Dakota Supreme Court.

POM–75. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to the Republic of Poland and the United States Department of State's Visa Waiver Program; to the Committee on the Judiciary.

Whereas the Republic of Poland is a free, democratic and independent nation; and

Whereas in 1999 the United States and the Republic of Poland became formal allies when Poland was granted membership in the North Atlantic Treaty Organization; and

Whereas the Republic of Poland has proven to be an indispensable ally in the global campaign against terrorism; and

Whereas the Republic of Poland has actively participated in Operation Iraqi Freedom and the Iraqi reconstruction, shedding blood along with American soldiers; and

Whereas the President of the United States and other high-ranking officials have described the Republic of Poland as ''one of our closest friends''; and

Whereas on April 15, 1991, the Republic of Poland unilaterally repealed the visa obligation to United States citizens traveling to Poland; and

Whereas the United States Department of State's Visa Waiver Program currently allows approximately 23 million citizens from 27 countries to travel to the United States for tourism or business for up to 90 days without having to obtain visas for entry; and

Whereas the countries that currently participate in the Visa Waiver Program include Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland and the United Kingdom; and

Whereas it is appropriate that the Republic of Poland be made eligible for the United States Department of State's Visa Waiver Program: Therefore, be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania respectfully urge the President and Congress of the United States to make the Republic of Poland eligible for the United States Department of State's Visa Waiver Program; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress, to the member of Congress from Pennsylvania and to Przemyslaw Grudzinski, Ambassador of the Republic of Poland to the United States.

POM–76. A joint resolution adopted by the Legislature of the State of Idaho relative to the Radiation Exposure Compensation Act (RECA); to the Committee on the Judiciary.

Whereas on October 15, 1990, Congress passed the Radiation Exposure Compensation Act (RECA), which provides for compassionate payments to persons or to their

beneficiaries who developed diseases as a result of exposure to radiation from U.S. atmospheric nuclear weapons testing; and

Whereas currently, a study is underway by the National Academy of Sciences and a report will be filed with Congress to address the adequacy of the initial geographic coverage provided in RECA; and

Whereas compelling anecdotal evidence has been accumulated at public meetings and in written reports, to indicate the impact of atmospheric testing on the downwinder populations in Idaho; and

Whereas preliminary evidence suggests that scientific documentation being gathered and assessed for inclusion in the report will find that risk factors present in Idaho equal or exceed the factors present in areas previously included in RECA coverage; and

Whereas members of Idaho's congressional delegation have worked and will continue to press for responsible legislative action to address the claims of Idahoans based upon radiation exposure; and

Whereas it is appropriate that members of the Idaho Legislature, speaking on behalf of the citizens of the state, express support for the efforts of Idaho's congressional delegation in their representation of downwinders in Idaho: Now, therefore, be it

Resolved by the members of the First Regular Session of the Fifty-eighth Idaho Legislature, the House of Representatives and the Senate concurring therein, That we anticipate the findings of the National Academy of Sciences will verify the impact of testing on residents of Idaho, and we conclude that it is appropriate to compensate these downwinders in the same manner and to the same extent as those individuals previously compensated for similar exposures. We urge the members of Idaho's congressional delegation to continue in their endeavors on behalf of Idaho's citizens; and be it further

Resolved, That the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

POM–77. A resolution adopted by the Board of the Town of Brookhaven of the State of New York relative to the opposition of the elimination of the Community Development Block Grant Program (CDBG); to the Committee on Banking, Housing, and Urban Affairs.

POM–78. A resolution adopted by the Mayor and City Council of Atlanta, Georgia relative to proposed cuts in Community Development Block Grant Funds (CDBG); to the Committee on Banking, Housing, and Urban Affairs.

POM–79. A resolution adopted by the City of Pembroke Pines, Florida relative to the Community Development Block Grant Program (CDBG); to the Committee on Banking, Housing, and Urban Affairs.

POM–80. A resolution adopted by the California State Lands Commission relative to the lifting of the Federal Moratorium on Oil and Gas Leasing off the California Coast; to the Committee on Environment and Public Works.

POM–81. A resolution adopted by Hudson County (New Jersey) Board of Chosen Freeholders relative to the Passaic River Restoration Initiative; to the Committee on Environment and Public Works.

POM–82. A resolution adopted by the Mayor and Council of the Town of Harrison, Hudson County, New Jersey, relative to the Passaic River Restoration Initiative; to the Committee on Environment and Public Works.

POM–83. A resolution adopted by the Macomb County Board of Commissioners of the State of Michigan relative to the Social Security program; to the Committee on Finance.

POM–84. A resolution adopted by the Board of Directors of the New Jersey Association of Counties relative to Perkins Funding; to the Committee on Health, Education, Labor, and Pensions.

POM–85. A resolution adopted by the Board of Directors of the New Jersey Association of Counties relative to the Community Development Block Grant Program (CDBG); to the Committee on Health, Education, Labor, and Pensions.

POM–86. A resolution adopted by the Borough of Maywood, State of New Jersey relative to cloture rules adopted by the United States Senate; to the Committee on Rules and Administration.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. COLLINS, from the Committee on Homeland Security and Governmental Affairs, with an amendment in the nature of a substitute:

S. 21. A bill to provide for homeland security grant coordination and simplification, and for other purposes (Rept. No. 109–71).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CONRAD (for himself, Mr. ROBERTS, Mr. HARKIN, and Mr. NELSON of Nebraska):

S. 1108. A bill to amend title XVIII of the Social Security Act to make improvements to payments to ambulance providers in rural areas, and for other purposes; to the Committee on Finance.

By Mr. LOTT (for himself, Mr. DAYTON, Mr. SESSIONS, Mr. SCHUMER, Mr. JEFFORDS, Mr. HARKIN, and Mr. LEAHY):

S. 1109. A bill to amend title XVIII of the Social Security Act to provide payments to Medicare ambulance suppliers of the full cost of furnishing such services, to provide payments to rural ambulance providers and suppliers to account for the cost of serving areas with low population density, and for other purposes; to the Committee on Finance.

By Mr. ALLEN (for himself, Mr. PRYOR, and Mr. SANTORUM):

S. 1110. A bill to amend the Federal Hazardous Substances Act to require engine coolant and antifreeze to contain a bittering agent in order to render the coolant or antifreeze unpalatable; to the Committee on Commerce, Science, and Transportation.

By Mr. HATCH (for himself, Mr. BENNETT, and Mr. ALLARD):

S. 1111. A bill to promote oil shale and tar sand development, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. SMITH, Mr. WYDEN, Mr. MCCONNELL, Mr. JEFFORDS, Mr. LOTT, Mr. SCHUMER, Mr. KERRY, Mr. BINGAMAN, Mr. ROCKEFELLER, Mrs. LINCOLN, Ms. LANDRIEU, Mr. CORZINE, Mr. TALENT, and Mr. HAGEL):

S. 1112. A bill to make permanent the enhanced educational savings provisions for qualified tuition programs enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. LOTT, Mr. SANTORUM, and Mr. ENSIGN):

S. 1113. A bill to provide that no Federal funds may be expended for the payment or reimbursement of a drug that is prescribed for the treatment of sexual or erectile dysfunction; to the Committee on Finance.

By Mr. MCCAIN (for himself and Mr. STEVENS):

S. 1114. A bill to establish minimum drug testing standards for major professional sports leagues; to the Committee on Commerce, Science, and Transportation.

By Ms. MURKOWSKI (for herself and Mr. JOHNSON):

S. 1115. A bill to amend the Internal Revenue Code of 1986 to allow Indian tribes to receive charitable contributions of inventory; to the Committee on Finance.

ADDITIONAL COSPONSORS

S. 300

At the request of Ms. COLLINS, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 300, a bill to extend the temporary increase in payments under the medicare program for home health services furnished in a rural area.

S. 333

At the request of Mr. SANTORUM, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. 333, a bill to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran.

S. 438

At the request of Mr. ENSIGN, the names of the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 440

At the request of Mr. BUNNING, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 440, a bill to amend title XIX of the Social Security Act to include podiatrists as physicians for purposes of covering physicians services under the medicaid program.

S. 451

At the request of Mr. AKAKA, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 451, a bill to amend the Animal Welfare Act to ensure that all dogs and cats used by research facilities are obtained legally.

S. 467

At the request of Mr. DODD, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 467, a bill to extend the applicability of the Terrorism Risk Insurance Act of 2002.

S. 470

At the request of Mr. DODD, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S.

470, a bill to amend the Public Health Service Act to expand the clinical trials drug data bank.

S. 526

At the request of Mr. REED, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 526, a bill to amend the Child Care and Development Block Grant Act of 1990 to provide incentive grants to improve the quality of child care.

S. 603

At the request of Ms. LANDRIEU, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. 603, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 627

At the request of Mr. HATCH, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Nevada (Mr. ENSIGN), the Senator from California (Mrs. BOXER) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 627, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 633

At the request of Mr. JOHNSON, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 633, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 685

At the request of Mr. AKAKA, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of S. 685, a bill to amend title IV of the Employee Retirement Income Security Act of 1974 to require the Pension Benefit Guaranty Corporation, in the case of airline pilots who are required by regulation to retire at age 60, to compute the actuarial value of monthly benefits in the form of a life annuity commencing at age 60.

S. 713

At the request of Mr. ROBERTS, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 713, a bill to amend the Internal Revenue Code of 1986 to provide for collegiate housing and infrastructure grants.

S. 811

At the request of Mr. DURBIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 811, a bill to require the Secretary of the Treasury to mint coins in commemoration of the bicentennial of the birth of Abraham Lincoln.

S. 836

At the request of Ms. CANTWELL, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 836, a bill to require accurate fuel economy testing procedures.

S. 843

At the request of Mr. SANTORUM, the names of the Senator from Minnesota (Mr. COLEMAN) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 843, a bill to amend the Public Health Service Act to combat autism through research, screening, intervention and education.

S. 914

At the request of Mr. ALLARD, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 914, a bill to amend the Public Health Service Act to establish a competitive grant program to build capacity in veterinary medical education and expand the workforce of veterinarians engaged in public health practice and biomedical research.

S. 1022

At the request of Mrs. LINCOLN, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 1022, a bill to amend the Internal Revenue Code of 1986 to allow for an energy efficient appliance credit.

S. 1055

At the request of Mr. DODD, his name was added as a cosponsor of S. 1055, a bill to improve elementary and secondary education.

S. 1063

At the request of Mr. NELSON of Florida, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1063, a bill to promote and enhance public safety and to encourage the rapid deployment of IP-enabled voice services.

S. 1064

At the request of Mr. COCHRAN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 1064, a bill to amend the Public Health Service Act to improve stroke prevention, diagnosis, treatment, and rehabilitation.

S. 1067

At the request of Mrs. LINCOLN, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 1067, a bill to require the Secretary of Health and Human Services to undertake activities to ensure the provision of services under the PACE program to frail elders living in rural areas, and for other purposes.

S. 1075

At the request of Mr. THUNE, the names of the Senator from Montana (Mr. BURNS) and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. 1075, a bill to postpone the 2005 round of defense base closure and realignment.

S. 1076

At the request of Mrs. LINCOLN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1076, a bill to amend the Internal Revenue Code of 1986 to extend the excise tax and income tax credits for the production of biodiesel.

S. 1103

At the request of Mr. BAUCUS, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. 1103, a bill to amend the Internal Revenue Code of 1986 to repeal the individual alternative minimum tax.

S. 1105

At the request of Mr. DODD, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1105, a bill to amend title VI of the Higher Education Act of 1965 regarding international and foreign language studies.

S. 1107

At the request of Mr. ENZI, the names of the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 1107, a bill to reauthorize the Head Start Act, and for other purposes.

S.J. RES. 14

At the request of Mr. BROWNBACK, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S.J. Res. 14, a joint resolution providing for the recognition of Jerusalem as the undivided capital of Israel before the United States recognizes a Palestinian state, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CONRAD (for himself, Mr. ROBERTS, Mr. HARKIN, and Mr. NELSON of Nebraska):

S. 1108. A bill to amend title XVIII of the Social Security Act to make improvements to payments to ambulance providers in rural areas, and for other purposes; to the Committee on Finance.

Mr. CONRAD. Mr. President, today I am introducing the Rural Access to Emergency Services (RAES) Act, which will improve access to emergency medical services (EMS) in rural communities. This bill will take the critical steps to help sustain rural emergency care in the future.

EMS is a vital component of the health care system, particularly in rural areas. Ambulance personnel are not only the first responders to an emergency, but also play a key role in the provision of life-saving medical care. It is said that time is one of the most important factors relating to patient outcomes in emergency situations. Rural EMS providers often have the enormous strain of responding to emergencies many miles away—sometimes nearly 50 minutes. However, current reimbursement levels are insufficient for the squads to bear the costs of responding to calls over these long distances. As rural EMS squads are forced

to close, rural residents—and others traveling through rural areas—are left without access to emergency services. Due to the inadequacy of Medicare reimbursement, rural ambulance providers are also finding it difficult to maintain the heightened ''readiness requirement,'' exposing communities to the threat of being ill-prepared to respond to a major public health emergency.

My legislation will take steps to improve the EMS system by eliminating the 35-mile rule for ambulance services that provide care in communities served by Critical Access Hospitals. In addition, it will establish an ambulance-specific definition of ''urban'' and ''rural'' for Medicare reimbursement. Moreover, my legislation will provide $15 million in funds to be used for a variety of activities aimed at improving the rural EMS system. Finally, it will expand the Universal Service Fund's definition of ''health care provider'' to include ''ambulance services.''

It is important to assure that rural Americans receive the best emergency medical services possible. This is especially important to me because 54 percent of North Dakotans live in rural communities, served largely by unpaid volunteer emergency personnel. In fact, only 10 percent receive compensation for their services. In recent years, rural ambulance services have found it difficult to recruit and retain EMS personnel. Congress must take steps to ensure that every American has access to quality emergency care. The RAES Act would do just that by improving reimbursement, increasing collaboration among healthcare entities, and allowing EMS providers to collect quality data.

The EMS bill will provide improved healthcare and better access to EMS for the 49 million Americans living in rural areas, and I urge my colleagues to support this essential legislation.

By Mr. HATCH (for himself, Mr. BENNETT, and Mr. ALLARD):

S. 1111. A bill to promote oil shale and tar sand development, and for other purposes; to the Committee on Finance.

Mr. HATCH. Mr. President, I rise today to introduce the Oil Shale and Tar Sands Development Act of 2005. In doing so, I would like to thank Senator ROBERT BENNETT and Senator WAYNE ALLARD for cosponsoring this legislation.

It could not be any more apparent to Americans when we pay to fill up our cars that this country is in need of a strong, comprehensive energy strategy. Our citizens recognize that there is a shortage of petroleum, and that that shortage is driving up prices.

American consumers have increased their demand for oil by 12 percent in the last decade, but oil production has grown by less than one half of one percent. Is it any wonder we rely on foreign countries for more than half our oil needs? We import 56 percent of our oil today, and it's projected to be 68 percent within 20 years.

On a larger scale, global demand for oil is growing at an unprecedented pace—about two and half million barrels per day in 2004 alone. However, while global oil production is increasing, the discovery of new oil reserves is falling dramatically. Moreover, trends indicate that the global thirst for petroleum will continue to grow, especially in Asia.

Last month, Federal Reserve Chairman Alan Greenspan stated, ''Markets for oil and natural gas have been subject to a degree of strain over the past year not experienced for a generation. Increased demand and lagging additions to productive capacity have combined to absorb a significant amount of the slack in energy markets that was essential in containing energy prices between 1985 and 2000.''

We are quickly heading into a global energy crunch, and our lack of sufficient oil supply at home will give us little or no buffer against it. Increasing our domestic oil reserve is imperative both from an economic and a national security perspective.

I am pleased to report to my colleagues today that a solution is available.

It is a little known fact that the largest hydrocarbon resource in the world rests within the borders of Utah, Colorado, and Wyoming. I know it may be hard to believe, but energy experts agree that there is more recoverable oil in these three States than there is in all the Middle East. In fact, the U.S. Department of Energy estimates that recoverable oil shale in the western United States exceeds one trillion barrels and is the richest and most geographically concentrated oil shale and tar sands resource in the world.

This gigantic resource of oil shale and tar sands is well known by geologists and energy experts, but it has not been counted among our Nation's oil reserve because it is not yet being developed commercially. Companies have been waiting for the Federal Government to recognize publicly the existence of this resource as a potential reserve and to allow industry access to it.

This bill would give them that chance.

Some might ask why we have not yet developed these resources if doing so could have such a profound economic potential?

I understand why we have been so hesitant to develop this resource in the past. During the 1970s, we saw a very large and expensive effort begin in western Colorado to develop oil shale there. When the price of oil dropped dramatically, though, the market for oil shale went bust and the region suffered an economic disaster.

We should never forget that experience.

Much has changed since the 1970s, and it would be senseless to continue to ignore the huge potential of this resource. I think there has been a mind set within the government and the local communities resulting from the Colorado boom and bust experience that developing this resource would be risky. The fact is, developing this energy resource is no more risky than producing oil offshore or in the Arctic. It is certainly less risky than continuing to rely on oil from the Middle East or from other foreign competitors.

We need to remember that our past failure in this area was not necessarily a failure of technology, but rather an inability to sustain this technology economically because of a very large slump in gas prices. Today's economics and advances in technology combine to provide the right scenario to begin the development of the world's largest untapped oil resource.

Skeptics might ask how we know that the price of oil won't plummet, causing the problems of the 1970s all over again? The world is now reaching peak oil production of conventional oil. With the tremendous growth in India and Asia, and the accompanying need for oil, experts predict there will be little economic incentive for prices to drop. This is a new scenario for the world, and it forces us to shift our focus to unconventional resources.

We have already seen this shift in focus by the government of Alberta, Canada. Alberta recognized the potential of its own tar sands deposits and set forth a policy to promote their development. As a result, Canada has increased its oil reserves by more than a factor of 10, going from a reserve of about 14 billion barrels to its current reserve of 176 billion barrels in only a few years. And just think we are sitting on one trillion barrels, more than five times what Canada has.

I think it's outrageous that Utah imports about one-fourth of its oil from Canadian tar sands, even though we have a very large resource of those very same tar sands in our own State sitting undeveloped. The government of Alberta, which owns the resource, has moved forward in leaps and bounds, while the United States has yet to take even a baby step toward developing our untapped resource.

Our proposed legislation looks to the Alberta model to help the United States move toward greater energy independence. The Oil Shale and Tar Sands Development Act represents a necessary shift by our government from an almost complete reliance on conventional sources of oil to our vast unconventional resources, such as tar sands and oil shale.

In drafting this legislation, we have been mindful of the environment and of States' water rights. We live in a different world than when these resources were first developed. Unlike 30 years ago, we now have the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the

National Environmental Policy Act, and the Mining Reclamation Act. Also, new technologies make the effort much cleaner and require less water than in the past. Industry understands that any water it needs will have to be acquired according to State law and according to existing water rights.

Let me talk, for a moment, about the specific provisions in our bill. S. 1111 would establish an Office of Strategic Fuels tasked with, among other things, the development of a five-year plan to determine the safest and steadiest route to developing oil shale and tar sands. The bill would also establish a mineral leasing program in the Department of the Interior to provide access to this resource.

Recognizing the tremendous national interest in this resource, our legislation provides a number of programs to encourage oil shale and tar sands development, including Federal royalty relief, Federal cost shares for demonstration projects, advanced procurement agreements by the military, and tax relief through the expensing of new equipment and technologies related to oil shale and tar sands development.

The size of our nation's energy challenge is enormous, but in Utah, Colorado, and Wyoming we have an answer that more than meets the challenge. This bill moves us down that path. I urge my colleagues to join us in our effort to help the United States open the door new frontier for domestic energy.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. SMITH, Mr. WYDEN, Mr. MCCONNELL, Mr. JEFFORDS, Mr. LOTT, Mr. SCHUMER, Mr. KERRY, Mr. BINGAMAN, Mr. ROCKEFELLER, Mrs. LINCOLN, Ms. LANDRIEU, Mr. CORZINE, Mr. TALENT, and Mr. HAGEL):

S. 1112. A bill to make permanent the enhanced educational savings provisions for qualified tuition programs enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I am pleased to join Senator GRASSLEY, and our other colleagues, in introducing legislation to make the Section 529 enhancements enacted in 2001 permanent.

In 2001, it was the Senate, especially my good friend Chairman GRASSLEY, that insisted on including education savings in the tax bill. I am proud of that fact. And I am proud that the Senate is again taking the lead to make these important provisions permanent.

Higher education is critical to our children's future and our Nation's economy. As a parent, or grandparent, you know that providing your children with a college education means they are likely to earn substantially more than if they only have a high school degree. One study estimated a million dollars more in today's dollars.

College is a good investment, but a very expensive one. The cost of tuition is rising every year. Over the past ten years, expenses at public universities have increased nearly 40 percent. The U.S. Department of Education says the average cost of a four-year education is currently $34,000 and almost $90,000 for private colleges.

In 1996, Congress created 529 plans to help families plan for this expense. Since their inception, 529 plans have helped families' college savings grow faster by not taxing investment income while it is accumulating in the account. In 2001, we saw a need to do more to help families deal with skyrocketing costs, so we allowed tax-free distributions from the account, as long as the money goes for its intended purpose—post-secondary education expenses. This income exclusion will expire after 2010 if we don't do something about it.

There are a lot of provisions that will expire in 2010—so why focus on this one provision today? Because saving for college doesn't happen in five or six years. We want families to save today for college expenses fifteen to twenty years from now. Without this legislation, we are asking families to make critical investment decisions without the promise of today's tax benefits. This is not a good way to encourage savings. Making this tax benefit permanent will allow families to plan and finance their children's education beyond 2010.

Thousands of young people back home have 529 plan accounts. By the end of 2004, Montana families had over $128 million set aside through the Montana Family Education Savings Program. Across the country there is about $68 billion invested in over 7 million accounts. The average account balance is just over $9,000. Not enough to finance a college education, but an important start.

One of the great things about 529 plans is that grandparents can save for the future of their grandchildren. That is what Arlene Hannawalt did—she saved through a 529 plan for her granddaughter Nicole's education. Nicole dropped out of high school, but she is getting her GED. Later this year, with help from her 529 account, Nicole will be going to the University of Montana—Helena College of Technology to study accounting.

Nicole's father is in the Army National Guard, serving in Iraq. Our prayers are with him. I'm sure Nicole's family is very pleased that she will soon be a college student.

Tax-favored treatment for college savings is good policy, but it is not free. I assure my colleagues that we will be looking for appropriate offsets to cover the cost of this bill.

Education is one of my top priorities. And saving for education should be one of a family's top priorities. I encourage my colleagues to join in making the tax status of 529 benefits permanent to help millions of American families plan for their children's future.

By Mr. GRASSLEY (for himself, Mr. LOTT, Mr. SANTORUM, and Mr. ENSIGN):

S. 1113. A bill to provide that no Federal funds may be expended for the payment or reimbursement of a drug that is prescribed for the treatment of sexual or erectile dysfunction; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, over the past three decades, prescription medicines have assumed a central and critical role in treating health care conditions. Every year, researchers make new discoveries that help patients cope with illnesses and improve their quality of life. Ensuring access to prescription drugs—to treatments that can help people maintain their health and avoid costly hospitalizations, for example—is a fundamental responsibility of our Federal health programs. We would not have worked as hard as we did to establish the first-ever Medicare prescription drug benefit if we did not believe this to be true. At the same time, we have a tremendous responsibility to be good stewards of taxpayers' dollars. I, for one, take that responsibility very seriously.

In 2004, our nation spent $1.8 trillion on health care. Medicare spending accounted for 17 percent of that amount. In 2005, Medicaid spending is expected to reach $321 billion. The Federal government offers me and other Federal employees health coverage through the Federal Employees Health Benefits Program (FEHBP). The Department of Defense has TRICARE for military personnel, and the Veterans' Administration provides an important source of health care access to those who proudly served our country. Year after year, the costs of these and other Federal health care programs continue to rise. Year after year, we are forced to make difficult decisions to find ways to save money under these programs with the goal of sustaining them well into the future.

In contrast to those decisions, the bill that I am introducing today was not difficult for me at all. By eliminating all Federal payments for certain ''lifestyle'' drugs, the legislation restores the fundamental concept of stewardship to prescription drug coverage under Federal programs. It is a pretty simple piece of legislation—no payment for drugs prescribed for sexual or erectile dysfunction under any Federal program, period. The Congressional Budget Office (CBO) estimated that Medicare and Medicaid alone will spend $2 billion on these drugs between 2006 and 2015. In my opinion, those dollars could be spent more wisely.

When we crafted the Medicare Modernization Act of 2003, our bipartisan agreement sought to strike the most reasonable balance for Medicare beneficiaries and hard working taxpayers. We wanted to make sure that beneficiaries had access to life-saving and life-improving medicines. Now some certainly may argue that these ''lifestyle'' drugs can improve your life. I

appreciate that view. However, we live in a world of limited resources, and in that world of limited resources coverage of these ''lifestyle'' drugs under Medicare—or any other Federal program, in my opinion—is inconsistent with that goal of balance. I am pleased to join with Senators LOTT, SANTORUM, and ENSIGN in working to rectify that situation today and urge my colleagues to join us in cosponsoring this important legislation.

By Mr. MCCAIN (for himself and Mr. STEVENS):

S. 1114. A bill to establish minimum drug testing standards for major professional sports leagues; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, I am joined today by Senator STEVENS in introducing the Clean Sports Act of 2005. The chairman of the House Government Reform Committee, Congressman DAVIS, and the ranking member of that committee, Congressman WAXMAN, are introducing a companion bill today in the House.

The purpose of this bill is to protect the integrity of professional sports and, more importantly, the health and safety of our Nation's youth, who, for better or for worse, see professional athletes as role models. The legislation would achieve that goal by establishing minimum standards for the testing of steroids and other performance-enhancing substances by major professional sports leagues. By adhering to—and hopefully exceeding—these minimum standards, the Nation's major professional sports leagues would send a strong signal to the public that performance-enhancing drugs have no legitimate role in American sports.

This bill would prohibit our country's major professional sports leagues—the National Football League, Major League Baseball, the National Basketball Association, and the National Hockey League—from operating if they do not meet the minimum testing requirements set forth therein. Those standards would be comprised of five key components: the independence of the entity or entities that perform the leagues' drug tests; testing for a comprehensive list of doping substances and methods; a strong system of unannounced testing; significant penalties that discourage the use of performance-enhancing drugs; and a fair and effective adjudication process for athletes accused of doping. These elements are crucial components of any credible performance-enhancing drug testing policy.

More specifically, the bill would require all major professional sports leagues to have an independent third party administer their performance-enhancing drug tests. The legislation would further require that samples provided by athletes be tested by laboratories approved by the United States Anti-Doping Agency—USADA—and for substances banned by USADA. In addition, the bill would require not fewer than three unannounced tests during a league's season of play, and at least two unannounced tests during the off season. Under this legislation, if a player were to test positive for a banned performance-enhancing substance, that player would be suspended for 2 years for the first violation and banned for life for a second violation. Finally, if any player were to test positive, the professional sports league would be obligated to ensure that the player would have substantial due process rights including the opportunity for a hearing and right to counsel.

To ensure that the major professional sports leagues meet the highest standards of performance-enhancing drug testing, the bill would require each professional sports league to consult with USADA in developing its drug testing standards and procedures, its protocols for tests in the off season, and its athlete adjudication program. For 5 years, USADA has served as the official antidoping agency for Olympic sports in the United States. In that role, USADA has shown a tremendous dedication to eliminating doping in sports through research, education, testing, and adjudication efforts. The expertise that it has developed over the past half-decade would serve this country's professional sports leagues well.

A violation of this legislation would be treated as a violation of the Federal Trade Commission Act. The Federal Trade Commission would have the ability to either obtain an injunction against the league that is in violation of the bill or seek penalties of up to $1 million per violation. Any enforcement mechanism that is not as strong as this would simply not be effective to ensure that these multi-billion-dollar businesses adhere to the minimum standards set forth in the legislation.

Finally, the bill would give the Office of National Drug Control Policy—ONDCP—the ability to add other professional sports leagues as well as certain college sports if the ONDCP were to determine that such additions would prevent the use of performance-enhancing substances by high school, college, or professional athletes. The bill would also require the United States Boxing Commission, upon its establishment, to promulgate steroids testing standards consistent with those contained in the bill.

The need for reforming the drug testing policies of professional sports is clear. However, I introduce this legislation reluctantly. Over a year ago, I stated publicly that the failure of professional sports—and in particular Major League Baseball—to commit to addressing the issue of doping straight on and immediately would motivate Congress to search for legislative remedies. Despite my clear warning and the significant attention that Congress has given to this stain on professional sports, baseball, and other professional leagues have refused to do the right thing.

By introducing this bill, I am once again asking the leagues to shore up the integrity of professional sports. I am asking the leagues to realize that what is at stake here is not the sanctity of collective bargaining agreements, but rather the health and safety of America's children. Like it or not, our Nation's kids look to professional athletes as role models and take cues from their actions, both good and bad.

I remain hopeful that professional sports will reform their drug testing policies on their own—a modest proposal in the eyes of reasonable people. However, the introduction of this bill demonstrates the continued seriousness with which Congress views this issue. It should be seen as a renewed incentive for the leagues to clean up their sports on their own without Government interference.

By Ms. MURKOWSKI (for herself and Mr. JOHNSON):

S. 1115. A bill to amend the Internal Revenue Code of 1986 to allow Indian tribes to receive charitable contributions of inventory; to the Committee on Finance.

Ms. MURKOWSKI. Mr. President, I rise to introduce a bill that will help increase the amount of food donations going to American Indians and Alaska Natives nationwide. I am pleased to have Mr. JOHNSON join me in introducing this important legislation.

Despite reports from the Census Bureau that show stable income levels for many Americans, the poverty rate for the 4.4 million American Indians and Alaska Natives living throughout the United States remains nearly three times that of non-Hispanic whites. Not only do Natives face greater challenges in securing basic household necessities, but in securing food as well.

According to a U.S. Department of Agriculture report released in late 2004, nearly 36 million Americans face challenges in getting enough food to eat. This includes nearly 13 million children. Of these statistics, Natives constitute a disproportionate number due to the higher poverty rate among this group.

And yet, charitable organizations that provide hunger relief are unable to meet the basic needs of Natives due to an oversight in the Federal tax code. Section 170(e)(3) of the Internal Revenue Code allows corporations to take an enhanced tax deduction for donations of food inventory; however, the food must be distributed to 501(c)(3) nonprofit organizations, such as food banks. Nonprofit organizations cannot then transfer such donations to tribes. Although many donations to tribes are tax deductible under section 7871 of the Internal Revenue Code, tribes are not among the organizations listed under section 501(c)(3) of the Internal Revenue Code. To clarify, section 170(e)(3) does not allow tribes to be eligible recipients of corporate food donations to nonprofit organizations since they are not listed under section 501(c)(3) as an eligible entity.

With this legislation, we intend to make a simple correction to the tax code that clearly indicates that tribes are eligible recipients of food donated under section 170(e)(3) of the Internal Revenue Code. This correction is long overdue and would remedy an egregious inequity in the Federal tax code that affects Natives nationwide.

Please allow me to provide a few examples of how this legislation could foster positive change. In Alaska, approximately half of the food donated to the Food Bank of Alaska from corporations could go to tribes throughout Alaska. Much of this food would go to villages that are only accessible by air or water. In South Dakota, roughly 30 percent of the food the Community Food Banks of South Dakota distributes would go to reservations. In North Dakota, the amount of food donated to the Great Plains Food Bank could double if this legislation were enacted. The Montana Food Bank Network projects that food donations could increase by 16 percent. A food bank based in Albuquerque, NM estimates that their food donations could triple in the first year alone.

It is imperative that we address this important issue expeditiously. The health and well-being of low income American Indians and Alaska Natives across the Nation is at stake.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1115

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CHARITABLE CONTRIBUTIONS OF INVENTORY TO INDIAN TRIBES .

(a) IN GENERAL.—Section 170(e)(3) of the Internal Revenue Code of 1986 (relating to special rule for contributions of inventory and other property) is amended by adding at the end the following new subparagraph:

''(D) SPECIAL RULE FOR INDIAN TRIBES.—

''(i) IN GENERAL.—For purposes of this paragraph, an Indian tribe (as defined in section 7871(c)(3)(E)(ii)) shall be treated as an organization eligible to be a donee under subparagraph (A).

''(ii) USE OF PROPERTY.—For purposes of subparagraph (A)(i), if the use of the property donated is related to the exercise of an essential governmental function of the Indian tribal government (within the meaning of section 7871), such use shall be treated as related to the purpose or function constituting the basis for the organization's exemption.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

AMENDMENTS SUBMITTED AND PROPOSED

SA 764. Mr. MARTINEZ (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 764. Mr. MARTINEZ (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title XXII, add the following:

SEC. 2207. WHARF UPGRADES, NAVAL STATION MAYPORT, FLORIDA.

Of the amount authorized to be appropriated by section 2204(a)(4) for the Navy for architectural and engineering services and construction design, $500,000 shall be available for the design of wharf upgrades at Naval Station Mayport, Florida.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on May 24, 2005, at 3 p.m., to conduct a hearing on ''Money Laundering and Terror Financing Issues in the Middle East.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, May 24, 2005, at 10 a.m. on S. 529, a bill to authorize funding for the U.S. Anti-Doping Agency (USADA) and to designate it as the official doping agency of the U.S. Olympic Committee.

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

COMMITTEE ON FINANCE

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Tuesday, May 24, 2005, at 10 a.m., in 628 Dirksen Senate Office Building, to consider the nominations of Alex Azar, II, to be Deputy Secretary of Health and Human Services, Department of Health and Human Services, Washington, DC; Timothy D. Adams, to be Under Secretary for International Affairs, U.S. Department of Treasury; Shara L. Aranoff, to be Member of the International Trade Commission; Suzanne C. DeFrancis to be Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services; and Charles E. Johnson, to be Assistant Secretary for Budget, Technology and Finance, U.S. Department of Health and Human Services.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 24, 2005 at 9:30 a.m. to hold a hearing on nominations.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. CORNYN. Mr. President, I ask unanimous consent, pursuant to Rule 26.5(a) of the Standing Rules of the Senate, that the Select Committee on Intelligence be authorized to meet after conclusion of the first two hours after the meeting of the Senate commences on May 24, 2005.

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

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY

Mr. CORNYN. Mr. President, I ask unanimous consent that the Subcommittee on Federal Financial Management, Government Information, and International Security be authorized to meet on Tuesday, May 24, 2005, at 2 p.m. for a hearing regarding ''Overview of the Competitive Effects of Speciality Hospitals.''

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. CORNYN. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia be authorized to meet on Tuesday, May 24, 2005, at 10 a.m. for a hearing entitled, ''Safeguarding the Merit System: A Review of the U.S. Office of Special Counsel.''

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

PRIVILEGE OF THE FLOOR

Mr. REED. Mr. President, I ask unanimous consent that Claire Steele, a fellow in my office, be granted the privilege of the floor for the remainder of today's session.

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

Mr. FEINGOLD. Mr. President, I ask unanimous consent that Avery Wentzel, a legal intern on my Senate Judiciary Committee staff, be granted the privilege of the floor during the debate on Justice Owen.

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

ORDER FOR STAR PRINT

Mr. FRIST. I ask unanimous consent Senate report 109–69 be star printed with the changes at the desk.

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

MEASURE PLACED ON THE CALENDAR—S. 1098

Mr. FRIST. Mr. President, I understand there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for a second time.

The assistant legislative clerk read as follows:

A bill (S. 1098) to prevent abuse of the special allowance subsidies under the Federal Family Education Loan Program.

Mr. FRIST. In order to place the bill on the calendar under the provisions of rule XIV, I object to further proceeding.

The PRESIDING OFFICER. Objection is heard.

The bill will be placed on the calendar.

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 100–696, appoints the Senator from Colorado, Mr. ALLARD, as a member of the United States Capitol Preservation Commission.

UNANIMOUS CONSENT AGREEMENT—JUDICIAL NOMINATIONS

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that at a time determined by the majority leader, after consultation with the Democratic leader, it be in order to move to proceed en bloc to the following nominations, if reported by the Judiciary Committee; provided further that they be considered under a total time limitation of 10 hours equally divided between the chairman and ranking member or their designees; provided further that following the use or yielding back of time, the Senate proceed to votes on the confirmation of the nominations, with no further intervening action or debate. The nominations are as follows: David McKeague, to be U.S. circuit judge for the Sixth Circuit; Richard Griffin, to be U.S. circuit judge for the Sixth Circuit. Finally, I ask consent that following the votes, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

The Democratic leader.

Mr. REID. Mr. President, reserving the right to object, we are also hopeful and confident we can add Neilson to this group. The two Senators from Michigan are taking a look at her. She became very ill and, therefore, she was not able to move forward as these other two men have done. We feel confident, after speaking to the two Michigan Senators, that we will be able to add her to this list. She has now recovered her health and is back in good health, good stead.

The PRESIDING OFFICER. Is there objection?

Mr. REID. No.

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

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to the consideration of Executive Calendar No. 66, the nomination of Thomas Griffith to be U.S. circuit judge for the District of Columbia Circuit; provided further that there be 4 hours equally divided for debate on the nomination between the chair and the ranking member or their designees; provided further that following the use or yielding back of time, the Senate proceed to a vote on the confirmation of the nomination with no further intervening action or debate; finally, that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

JOINT REFERRAL

Mr. FRIST. As in executive session, I ask unanimous consent that the nomination of Charles S. Ciccolella, of Virginia, to be Assistant Secretary of Labor for Veterans Employment and Training, be jointly referred to the Committees on HELP and Veterans' Affairs.

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

ORDERS FOR WEDNESDAY, MAY 25, 2005

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, May 25. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business for up to 60 minutes, with 30 minutes under the control of the majority leader or his designee, and the final 30 minutes under the control of the Democratic leader or his designee.

Following morning business, the Senate will return to executive session and resume the consideration of the nomination of Priscilla Owen to the Fifth Circuit Court of Appeals, as provided under the previous order.

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

PROGRAM

Mr. FRIST. Tomorrow, following morning business, the Senate will resume consideration of Priscilla Owen to be U.S. circuit judge for the Fifth Circuit. Under a previous agreement, at 12 noon tomorrow, we will proceed to the vote on the confirmation.

Following the vote on the Owen nomination, it is my expectation that we will move forward with the nomination of John Bolton to be ambassador to the United Nations. Our colleagues on the other side of the aisle have indicated they would need a good deal of time to debate the nomination. We plan to complete action on the Bolton nomination this week, and I will work with the Democratic leader to lock in a time agreement on the nomination.

Mr. REID. Mr. President, if the distinguished majority leader will yield, I think it is appropriate that we have this vote at noon. We would have been willing to have it earlier. This way the committees can go about their business. I know I have a ranking members meeting at 12. So this will work out perfect. Even though we are waiting for the vote, I think this will work out well for the schedule.

Mr. FRIST. Mr. President, we have a good plan for the remainder of the week with that vote and proceeding with the nomination of John Bolton.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:57 p.m., adjourned until Wednesday, May 25, 2005, at 9:30 a.m.