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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

The PRESIDING OFFICER. Today's prayer will be offered by the guest chaplain, Bishop Geralyn Wolf of the Episcopal Diocese of Rhode Island, Providence, RI.

PRAYER

The guest Chaplain offered the following prayer:

Almighty God, to the poor, You have united us to bring uncommon hope; to innocent captives, release; to the blind, vision, stretching boundaries of imagination.

The poor in every land stretch out empty bowls, and we do not fill them; political captives seek justice, and we respond through the captivity of fear; the sick yearn for healing arts, yet the cries of children still prevail.

O gracious God, You gave us a rich heritage of compromise, and we cling unyieldingly to personal truths; You gave us a world abundant in resources, and we squander our inheritance; You gave us wisdom and insight, and our disagreements sound like loud-clanging symbols.

O God, forgive us. Release the fires of integrity that dwell within the hearts of this great Chamber, and make us urgent to mend the torn fabric of peace, to stretch courageously beyond political comfort, and to bring holy blessings to all God's people everywhere. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU 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, June 9, 2005.

To the Senate:

Under the provisions of rule 1, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. SUNUNU thereupon assumed the chair as Acting President pro tempore.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

WELCOMING THE GUEST CHAPLAIN

Mr. REED. Mr. President, may I say how proud I am of Bishop Wolf, not only for her prayer but for her extraordinary service to the people of the Rhode Island diocese. Bishop Wolf is a remarkable person, a remarkable pastor but also a remarkable individual. Unlike many people who would be content with the trappings of their ecclesiastical office, she actually has lived with the homeless in New York, Rhode Island, and Philadelphia. She endured what they endured, she saw their suffering. She bore witness to their suffering not only in her experiences but her work in Rhode Island. She is a remarkable woman who leads by example literally and constantly reminds us of our obligations not just to ourselves but to our neighbors. We are very proud to have her as our Episcopal bishop.

I yield the floor.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Mr. President, this morning we will return to the nomination of William Pryor to be a judge of the Eleventh Circuit. Yesterday, cloture was invoked by a vote of 76 to 32, and we will have the vote on the Pryor nomination at 4 p.m. today. Following that vote, we will turn to the consideration of the two Sixth Circuit nominations that are pending on the Executive Calendar, with the time allotted for the Griffin and McKeague nominations totalling 10 hours. However, it is my hope and expectation that much of that time can be yielded back and that we can have those votes either very late this afternoon or early this evening. On Monday, we will debate the nomination of Tom Griffith to be judge for the D.C. Circuit Court, with that vote occurring Monday evening.

That is an overview of today, pretty much as we have agreed earlier in the week, and the expected votes. We will update Members over the course of the day of changes in the schedule and definitely what the schedule will be on Monday. And then we will follow that with the energy legislation. Following the remarks from the Democratic leader, I have a short statement on energy.

RECOGNITION OF THE MINORITY LEADER

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

EXPRESSING APPRECIATION

Mr. REID. Mr. President, as the Chair and distinguished majority leader know, I am sorry we have spent so

much time on judges, but the fact is I wish to express my appreciation to Democratic Senators for being so cooperative. Since the agreement was made a week or two ago, my Senators have been so cooperative. Senator LEAHY has had to change his whole schedule around this Monday to take care of the Griffith nomination. There has been an agreement made that we are not going to use all the time on Pryor.

I also express my appreciation to Senators LEVIN and STABENOW for allowing us to move forward on the Michigan judges. In spite of the fact that there are some hurt feelings as a result of the way the Michigan Senators were treated, they have agreed to set those aside and move forward on these two individuals. From all I have been able to determine, the two Michigan judges coming before us are well qualified, and there will not be any rancorous debate about either one of them. But I just want the majority leader to know that we have moved forward on these matters as expeditiously as possible, in spite of the relatively difficult time we have had arriving at this point.

I look forward next week to a vigorous debate on the Energy bill. It is great that we are going to be legislating here for a change. This is an extremely important piece of legislation. I am also indicating to all those within the sound of my voice how appreciative—I don't think the word ''proud'' is right but how appreciative—I am of the work of Senators BINGAMAN and DOMENICI to get the bill to this point.

We haven't had such cooperation on this committee in many years. We have a bill now that was reported out by a heavy margin of the committee, and I think as a result of that we will have some vigorous debate. There are some things on this side we believe should be done differently, but that is what legislation is all about. Again, having spent most of my life as a legislator, I look forward to the Senate returning to what it does best.

Mr. FRIST. Mr. President, I think this 4-week period does demonstrate the Senate responding to the American people and what they expect, the fact that this week we are moving forward on judges, which people know has been very contentious over the last several weeks, months, and even the last couple years. We are making great progress working hand in hand on both sides of the aisle and delivering what the American people want and expect. As the Democratic leader said, we will be returning to an issue I know we care extremely about. We have not been able to make progress in several years. Because of the work of the two leaders, Senators DOMENICI and BINGAMAN, they have delivered an energy bill in a bipartisan way that will come to the Senate floor and be fully debated. We will be spending next week, week and a half, 2 weeks on the bill for debate, offering amendments, and we will start that process in the early days of next week.

ENERGY INDEPENDENCE

Mr. FRIST. Mr. President, I do wish to comment just a bit further on energy, really as a prelude to what we will be spending a lot of time on beginning hopefully Monday and then spending the course of that week into the next week, and that is the issue surrounding gasoline prices, natural gas prices, concerns that individuals think about every single day as they turn on the lights in their home, as they go to work, on the way filling up the gas tank of their automobile with gasoline, as they use energy sources over the course of the day in the activity of their small business, and that is the energy challenges that are before us, have been before us. Now is the time to address them, and that we will.

With gasoline now averaging over $2 a gallon, anyone who has gone to the pump lately feels that impact, they feel that squeeze of higher energy prices. It is costing families who have driven to work this morning more and more just to get to work, over the last several years costing them more to go pick up their kids from school in the afternoon, or as many people prepare for summer vacations costing them more because of this increase in energy prices. It is not just the gasoline prices that are climbing. We have rising natural gas prices that have been driving up electric bills in the last 4 months, higher electric bills for everybody, especially families and small businesses.

As energy costs take a bigger and bigger bite in the family budgets, families are able to spend less on other necessities in their lives, whether it is food or shelter or health care. As electric bills consume more and more of the small companies' assets or their bottom lines, they invest less, they invest less in inventory or in capital expenditures, or they invest less in how much they can pay employees working for that small business. In order to keep our economy strong, and it does translate down into jobs, making others' lives more fulfilling every day, we must rely on a reliable and affordable and secure supply of energy, reliable, affordable, and secure. That is the purpose of the Energy bill that will be brought to the floor of the Senate early next week.

Right now, we face enormous challenges, huge challenges. We have not had a comprehensive national energy policy or energy strategy, cohesive strategy in over 10 years. This has contributed to the higher prices. It has threatened our ability to maintain a reliable, affordable, and secure supply of energy for the future. The fact is that—and it is probably the easiest thing to remember when you start talking about energy other than the impact it has on everybody in everyday life—we are too dependent on foreign sources of energy. We have to look to a more diverse energy series of sources. We have to look to new technologies here at home. Yes, absolutely we need to conserve more, and we also need to produce more in order to enhance our energy independence and to enhance our energy security.

One of the primary energy challenges we face is this reliance on foreign oil. In the 1960s and early 1970s, the United States produced almost as much oil as we consumed, and during that period of time imports were very small. In 1972, however, U.S. oil production began to decline, and that production has been declining steadily ever since. The U.S. consumption of oil has been steadily increasing. So we have declining production and increasing consumption.

As a result, our reliance—this I would say irresponsible reliance that we have today on foreign oil, on imported oil—is growing. Ten years ago, in 1995, we were 47 percent dependent on foreign sources of oil. Today, that 47 percent has grown to a 56-percent dependence on foreign sources of oil. If you project that out, by 2025, if we do nothing, we will be 68-percent dependent on foreign oil; much of it, as we all know, coming from countries that do not necessarily have our best interests at heart.

Today we import most of our oil from Canada, Venezuela, Saudi Arabia, and Mexico. However, as we look forward, the Department of Energy's Energy Information Administration did project more and more of the oil we need will come from the OPEC countries in the Middle East.

We must take steps to reduce our dependence on foreign countries and enhance our energy security at home. When we rely on other nations for more than half of our oil supply, we simply put ourselves at greater risk.

While there is no silver bullet that can make us 100-percent energy independent in the near future, there is a lot we can do right now to reduce our dependence and enhance our security. Much of it will be addressed on the floor in the next 2 weeks.

Everything should be on the table, including increasing conservation, enhancing energy efficiency, investing in new technologies that will allow us to both use energy more wisely and tap new sources of energy, and finally, increasing domestic production of energy sources at home. The transportation sector is a prime example. Nearly 70 percent of the oil we use goes to power the cars and trucks we drive every day. If we are serious about reducing our dependence on foreign oil, we must look for new ways to fuel our vehicles. We are already doing this with the hybrid cars—they are becoming more and more popular, as we all know—and with alternative fuels, such as ethanol and biodiesel.

We must continue to move in this direction by continuing to invest in hydrogen fuel cell research. President Bush has stressed this again and again, and he has said his goal is that today's

children will take their driver's test in a zero-emission vehicle. That would go a long way toward helping to reduce our dependence and enhance our security.

Natural gas is another energy source we depend on heavily and is another area in which we are, unfortunately, becoming increasingly reliant on foreign imports. Because natural gas is clean burning and relatively cheap, it has been the fuel of choice for new electric power generation in recent years. Sixty percent of American homes are now heated and cooled with natural gas. But while that demand has been growing, domestic supply has remained essentially flat. In 2003, we imported 15 percent of the gas we used. By 2025, that number will nearly double.

We simply cannot continue on this path, and that is why we are bringing this bill to the floor next week. We need to take bold action in the Senate. It is what the American people expect; it is what they deserve. This is exactly what we will do. We will take that action in the Senate to address these energy challenges head on.

The bill that was reported out of the Energy Committee last month was done so on a bipartisan basis, and it is a step in the right direction. It likely will be amended and improved on the floor of the Senate next week. I, again, thank Chairman DOMENICI and Senator BINGAMAN for their tremendous work and for the cooperative spirit with which they approached these issues. I hope that same bipartisan spirit will prevail on the floor and that we can get this important legislation to the President as quickly as possible.

Several of us had the opportunity to meet with the President yesterday, and this was at the very top of his list of issues that he expects us to address. Our goal is to get that legislation to his desk for his signature as soon as we possibly can.

America needs a policy that keeps our families safe, strong, and secure, a policy that keeps America moving forward.

Mr. President, I yield the floor and suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF WILLIAM H. PRYOR, JR., TO BE UNITED STATES CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of Calendar No. 100, which the clerk will report.

The assistant legislative clerk read the nomination of William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit.

The PRESIDING OFFICER. Under the previous order, the time from now until 10:30 shall be under the control of the majority leader or his designee.

The Senator from Alabama is now recognized.

Mr. SESSIONS. Mr. President, I am delighted to be able to speak on behalf of William Pryor—Judge William Pryor now—for the position of U.S. Circuit Judge for the Eleventh Circuit Court of Appeals. He is an extraordinary individual, a wonderful human being, a brilliant lawyer, a man of the highest integrity, who has won the respect and support and confidence of the people of Alabama to an extraordinary degree. Democrats, Republicans, African Americans—the whole State of Alabama knows and respects him for the courage and integrity and commitment he brings to public service.

He was appointed attorney general to fill my seat after I was elected to the Senate, and he has done a superb job as attorney general. President Bush gave him a recess appointment to the Eleventh Circuit Court of Appeals after his nomination had been blocked here now for over 2 years. So it has been a burden for me to feel the frustration that I know he and his family must endure as a result of the uncertainty of his nomination process. I could not be more pleased that he was one of the nominees who was agreed upon to get a cloture vote, a successful cloture vote and an up-or-down vote here in the Senate. That is a good decision by the 14 Senators who reached a consensus on how they would approach this process of confirmations. I could not be more pleased and proud that Judge Bill Pryor was part of the group that was agreed upon by those Members of the Senate to get an up-or-down vote.

Bill Pryor is the kind of judge America ought to have. He grew up in Mobile, AL, my hometown. He was educated in the Catholic school system. His father was a band director at McGill-Toolen High School, a venerable, large Catholic high school there. His mother taught in African-American schools. He went to law school at Tulane University where he graduated with honors, magna cum laude. He was editor-in-chief of the Tulane Law Review. I know the Presiding Officer, the Senator from Florida, is a lawyer and understands that editor-in-chief of the Law Review is the highest honor a graduating senior can have. To be selected as that in a fine law school such as Tulane is a great achievement.

After he left law school, he clerked for Circuit Judge John Minor Wisdom, a well-known champion of civil rights in the Federal court system—at that time in the old Fifth Circuit. Now it has been divided to become the Eleventh Circuit. Judge John Minor Wisdom was a circuit court judge in the 1950s and 1960s when much of segregation was brought to an end by Federal court action. Bill Pryor was positively impacted by his experiences, working with Judge Wisdom, and is a passionate believer in equal rights and equal justice, and he has a record to demonstrate that commitment.

He practiced law with one of Alabama's fine law firms before becoming assistant attorney general when I was elected attorney general. He handled the constitutional issues in our office. He was smart, hard working, courageous, intelligent, fair and, more than anybody I know in the legal business today, was committed to the rule of law, to doing the right thing. That is his very nature. That is the way he was raised. That is what he believes in and he will stand in there and do the right thing, no matter what others might say, time and time again. His record demonstrates his overriding belief that the law is preeminent and it should be obeyed, even if he might disagree and would like to see it different. I want to show some of the things that demonstrate that.

I say this because it was alleged when his nomination came up that somehow he had strongly held beliefs, or deeply held beliefs, and those deeply held beliefs were so powerful that, yes, he might be smart, he might be a good lawyer, he might be an honest man and all of these things people said he was, but because he had strongly held beliefs and believed something and had some convictions and had some moral principles, that somehow that couldn't be trusted. Maybe he wasn't smooth enough. Maybe his beliefs were so strong this would manipulate or cause him to manipulate the law and not be a fair adjudicator of the law.

I will share some thoughts about that because I think what that overlooks is his fundamental belief and great strength as a judge and a lawyer, which is his belief in the law and the primacy of the law. He understands, fundamentally, the greatness of our country, more than most people realize, is founded upon our commitment to law. We were given a great heritage from England. We have built upon that legal heritage. As I age and see the world, I know this legal system is what makes our country great. A person can go into any court, a company can invest in any State, and expect in this country they will get a fair day in court. You don't have to bribe the judge; you don't have to bribe the jury. You can expect a fair, just result, day in, day out, and it occurs in our courtrooms all over America. It is a heritage of unparalleled

value and we must uphold that heritage. We must adhere to the ideal that law can be ascertained by a good judge and enforced consistently when litigants come before that judge. That is what we pay judges to do.

I want to say the first and foremost legal principle of Judge William Pryor is that a judge should follow the law, and he has a record to demonstrate it, even when it disagrees with his personal views.

First, on the issue of abortion, Judge Pryor has made clear he personally does not believe in abortion. He does not believe it is right. He believes it is wrong. It is not just because he is a Catholic, it is not just that his views are consistent with the Pope's or the Catholic Church of which he is a part, or many other churches and leaders in our country, but he has thought about this issue personally and deeply. He has given it serious consideration. He has made a judgment that, in his view, life and freedom and liberty in our country are diminished if the unborn are not given protection. That is a legitimate position in America, held by tens of millions of people and many leaders in this country. Certainly no one can deny that. Certainly, because someone believes the pro-life way is the best way, they should not be disqualified from being a judge.

He has concluded Roe v. Wade was not a principled constitutional decision. Ruth Bader Ginsburg, the ACLU lawyer who President Clinton nominated to the Supreme Court of the United States, has also raised questions about the constitutional integrity of Roe v. Wade. That is his view about it.

What does that mean, though, when it comes to court? Someone's personal views on those matters obviously cannot be the test of whether a person will go on the bench. Personal views are not the answer here. We cannot look at someone's religious faith or their personal views and say: I disagree with your religious values here, I disagree with your theology there, therefore you cannot be a judge in the United States of America.

Are we going to ask Muslim nominees to reject their faith before we allow them to be confirmed, or some other religious entity with views different than I may have or someone else may have? Of course not. That cannot be. The test for nominees always must be: Do they respect the law and will they follow it?

Judge Pryor's record shows he will. In August of 1997, not long after I had been elected to the Senate and he had become attorney general, Alabama passed a partial-birth abortion ban to ban partial-birth abortion—a particularly heinous act, in my view, there is strong feeling that this is not a good and decent procedure and that it ought to be eliminated.

Judge Pryor certainly opposes partial-birth abortion. But as attorney general he exercised his supervisory power over the district attorneys of the State of Alabama, as given to him as attorney general, and on his own initiative—nobody made him do this—he wrote the district attorneys in Alabama a letter and he instructed them—gave them instructions—to utilize only a restrictive interpretation of that statute, because he concluded that portions of the statute were overbroad and unconstitutional. The pro-life forces in Alabama were angry with this pro-life attorney general because he had followed the law. He had restricted by his opinion the breadth of that statute; one even said he gutted the statute. But he did the right thing in 1997, long before he was ever considered for a Federal judgeship.

Three years later, the Supreme Court, in the Stenberg case, struck down further the partial-birth abortion statutes of many States. Judge Pryor, then-attorney general, wrote the district attorneys another letter and told them the statute banning partial-birth abortions in Alabama was unconstitutional. He did not have to do that. He believed personally that abortion was wrong. He believed that partial-birth abortion was certainly wrong. But he wrote them a letter and told them not to even attempt to enforce the Alabama statute, because it had been held unconstitutional by the Supreme Court of the United States.

I don't know that attorneys general do that often. They do not have to do that. They can let the district attorneys make their own decision. But he felt that was the right thing to do and he did so. In his letter he said: ''You are obligated to obey Stenberg.'' That is a clear directive to them.

When there were threats on abortion clinics, Judge Pryor held a high-profile press conference in the State warning of prosecutions for those who participated in those attacks. He said those attacks on abortion clinics—although he certainly did not favor abortion clinics—were ''despicable crimes'' against our fellow citizens that would not be tolerated and that he would prosecute people who did so.

There are some who said his views on church and state are incorrect. I will dispute that. I will show he has been courageous in following the law of the United States in this area, as well.

Former Gov. Fob James of Alabama, a strict constructionist, conservative, and independent Governor if there ever was one—and he appointed Judge Pryor to be the attorney general—wanted Judge Pryor to defend prayer in schools. He thought that schools had a right to have prayer. He wanted his attorney general, whom he just appointed, to defend it and go to court and to argue in court that the First Amendment says ''Congress shall make no laws respecting the establishment of a religion or prohibiting the free exercise thereof.'' In Governor James's view, that meant Congress could not pass any such laws, but the State of Alabama could and that the Constitution did not apply to the State of Alabama with regard to those rights under the First Amendment. Many have tried to make that argument, but the Supreme Court has held otherwise.

Though Judge Pryor had just been appointed attorney general by Governor James, he had the courage and followed his duty and just said no to the Governor. He told the Governor he could not argue that the Establishment Clause did not apply to the States, because the Supreme Court had already held that it did. The Governor then had to hire his own lawyer to promote his idea of the First Amendment.

In Attorney General Pryor's brief to the Federal court, he wrote, correctly, that as attorney general, he spoke for the State of Alabama and not Governor James who had just appointed him. Judge Pryor followed the rule of law again when Judge Roy Moore asked him to make certain arguments in defense of the Ten Commandments statue that Judge Moore had placed in the Alabama Supreme Court building. Attorney General Pryor considered the request and refused to make those arguments. He did not believe they were consistent with Supreme Court precedent and did not believe that the attorney general for the State of Alabama ought to make arguments that the Supreme Court had already rejected.

When Judge Moore ultimately refused to remove that statue of the Ten Commandments, as ordered by a Federal judge, Attorney General Pryor was responsible for prosecuting Judge Moore before the Judicial Inquiry Commission. It was his duty as attorney general under the law to prosecute and present that case. He did so with fidelity to duty and effectiveness. The Commission made a decision and removed Chief Justice Moore duly elected by the people of the State of Alabama from office as chief justice.

They said he is some sort of religious extremist. It is just not so. He is committed, as you can see, to what the law says. In fact, after this controversy over the prayer in schools with the Governor, Attorney General Pryor felt it was his duty to clarify for school boards and school principals all over the State what the law actually was, so he wrote them a letter defining what could be done with student-led prayers in school and what could not be done and what had been held unconstitutional by the Supreme Court.

The Atlanta Journal-Constitution, a liberal newspaper in Atlanta, praised him for his letter and his definition of the appropriate and inappropriate expressions of religious faith in schools. And, in fact, the Clinton administration not long thereafter issued their own guidelines for schools incorporating much of what Attorney General Pryor had put in his letter.

Some have said, in attacking him, that he does not believe in racial equality; that he does not believe in voting rights; and that he is out of the mainstream with regard to those issues in

the State. Nothing could be further from the truth. For example, on the 40th anniversary of former Gov. George Wallace's infamous speech in which he said, on his inauguration, ''segregation today, segregation tomorrow, segregation forever,'' Bill Pryor was inaugurated as attorney general. He won by 60 percent of the vote. In his inaugural speech he changed those famous words to his own philosophy. This is how he began his inaugural speech: ''Equal justice under the law today, equal justice under the law tomorrow, equal justice under the law forever.'' That is his view. That is his belief. That is who he is. It is absolutely unfair, wrong, and even worse, really, to suggest otherwise.

One of the things that was an issue in the State raised by a State representative, an African American, Alvin Holmes, was that Alabama's Constitution still had language in it that banned interracial marriage, an old segregationist provision. It was unconstitutional, could not be enforced, but the words were still in that constitution. Mr. Holmes believed it ought to be taken out.

Attorney General Bill Pryor agreed with him. He did not think that was right. He thought that was a blot and a stain on Alabama's Constitution and it ought to be removed. He took action to do so. He mentioned it in his inaugural address as one of his priorities, and he led the fight to remove it from Alabama's Constitution. That has resulted in the steadfast support for his confirmation by State representative Alvin Holmes, who said more than any other person—White officeholder in the State—Judge Pryor stood up to remove this stain from our constitution.

He said: ''I'll call anybody you want me to. I'll come to Washington to speak on his behalf. This is a good man.'' Alvin Holmes was arrested during the civil rights marches for standing up for freedom. No one in the State of Alabama will deny that he does not believe in equal justice and civil rights and in progress for African-American citizens.

I have another example of Bill Pryor's fairness in handling issues before the State. Republicans challenged a State redistricting plan which, in fact, is quite favorable to the Democrats. It was a gerrymandered plan that favored the Democrats. For example, five out of the seven Congressmen in Alabama are Republican. The Governor and both Senators are Republicans. But only a third of the legislature are Republicans. Part of that is the way they drew the lines. Republicans were not happy with it. They challenged it on a number of grounds. But Bill Pryor who is the attorney general for the State of Alabama. He is the lawyer for the State of Alabama. He is a Republican. He felt it was his responsibility to defend the duly enacted laws of the State legislature. He represents the State. The State passed the redistricting plan. It was his responsibility to defend it. He did not make some of his friends, and some of my friends, happy. They did not like that.

He defended it on a number of grounds. One was a technical procedural basis of standing. He said the plaintiffs did not have standing. They went to the Eleventh Circuit Court of Appeals, on which he now sits as a result of an interim recess appointment, and they ruled against him. So the Republicans said: Boy, this is over now. We will win this thing. He said: No, the court of appeals made an error. I believe that you do not have standing to bring this suit. I believe your appeal is not, therefore, well taken. I believe I have a duty as attorney general to defend the duly enacted laws of the State of Alabama.

He appealed to the U.S. Supreme Court and won in the U.S. Supreme Court defending a legislative reapportionment plan that clearly favored Democrats and African Americans. They appreciated that. They knew he was a man of principle and integrity and decency. They have appreciated those kind of acts they have seen him carry out.

He has taken a strong lead on rights for women as well as minorities. While he has been attacked in the Senate for an argument he made regarding a technical flaw that was in the Violence Against Women Act passed by this Congress, his true record on women's issues is reflected in his history of fighting to protect women from domestic abuse.

He is a supporter of Alabama's Penelope House and participates in their yearly luncheon where they recognize the importance of partnering with law enforcement to eradicate domestic abuse. He testified before Congress in 2003, stressing the importance of the Violence Against Women Act. He championed a bill in Alabama to increase the penalties for repeat violations of protection from abuse orders by judges for ordering people to cease abusing their spouses. This is the true record of Bill Pryor. He has been a leader in the fight against domestic abuse throughout the State. He has incredibly strong support by all the women's groups who advocate that, including Judge Sue Bell Cobb on the Alabama Court of Criminal Appeals, who is a Democrat and who has fought for these women's issues for years.

What about other people in the State? How do they think of him? Judge Pryor has won the support of people such as Joe Reed, probably the most powerful political person in the State who is an African American. He is on the Democratic National Committee. He chairs the Alabama Democratic Conference. He strongly supports Judge Pryor.

Another Pryor supporter is Congressman ARTUR DAVIS, an African-American Congressman and Harvard Law School graduate. Alvin Holmes, I mentioned earlier, is one of the most outspoken African-American leaders in the legislature. Yesterday, I had him in my office, an African-American State senator who has been in the Senate for many years. I said: ''Senator, do you know an African American—I asked him, did he know of a single elected public official in the State who was opposed to Judge Pryor for this appointment?'' He said: ''No, I don't know of a single one. They know he has given them a fair shake, sometimes even to the point of taking serious criticism for it. He has been courageous and steadfast in standing up for equal justice under the law, which is his guiding principle as a judge and as attorney general.''

There is almost, in fact, universal support for Judge Pryor. Former Democratic Governor Don Siegelman, Jerry Beasley, the State's top trial lawyer, one of the top trial lawyer Democrats in America, and virtually every newspaper in the State supports Judge Pryor. The very liberal Anniston Star newspaper, which supports the filibuster of judges here by Democrats, a fine newspaper, but they have been very much a Democratic newspaper—they have supported the filibustering of judges, which I certainly do not agree with—but they support Judge Pryor. They say he ought to be confirmed. ''He is the kind of person we ought to have on the bench,'' the Anniston Star said. They know his record of independence and courage. They know he is the kind of person we need on the bench.

So in closing, I want to say that I believe Judge Pryor has demonstrated time and again the kind of courage and commitment to principle that are the very values we need judges to possess. We do not want people on the bench who do not have any beliefs. We do not want people who do not have any values.

As LAMAR ALEXANDER, our colleague, once said, ''Judge Pryor has shown courage in a Southern State unlike anyone he has ever seen before.'' He said it has almost looked like political suicide, some of the things he has done. But regardless of the cost, he has always done the right thing. That is what makes him an ideal candidate for the Eleventh Circuit.

He is brilliant. He loves the law. He studies it. He cares about it. He wants to see it be better and better and better. He will give his life to that, and you can take it to the bank. He will treat everybody before him fairly.

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

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

Mr. SESSIONS. Mr. President, I thought it would be important to share

in more detail some of the broad bipartisan support that exists in the State of Alabama by those who know Judge Pryor. These are Democratic leaders, people who are African Americans, who have been involved in the State for many years, who are sensitive to good judgment and good leadership. I want to share some of the comments some of these people have written on behalf of Judge Pryor.

First, Congressman ARTUR DAVIS of the 7th Congressional District wrote this letter. Congressman DAVIS is a Harvard Law graduate and a very fine young Congressman. He said this:

I understand that the President may be considering Attorney General Bill Pryor for a seat on the Eleventh Circuit. I have the utmost respect for my friend Attorney General Pryor and I believe if he is selected, Alabama will be proud of his service.

Alabama House of Representatives member Alvin Holmes wrote this:

As one of the key civil rights leaders in Alabama who has participated in basically every major civil rights demonstration in America, who has been arrested for civil rights causes on many occasions, as one who was a field staff member of Dr. Martin Luther King's SCLC [Southern Christian Leadership Conference], as one who has been brutally beaten by vicious police officers for participating in civil rights marches and demonstrations, as one who has had crosses burned in his front yard by the KKK and other hate groups, as one who has lived under constant threats day in and day out because of his stand fighting for the rights of blacks and other minorities, I request your swift confirmation of Bill Pryor to the 11th Circuit because of his constant efforts to help the causes of blacks in Alabama.

Is that a credible voice? I submit to you it is.

The Honorable Sue Bell Cobb, a judge on the Alabama Court of Criminal Appeals for quite a number of years, who has been involved in the Children's First Program in Alabama, who has been involved in women's issues in Alabama over a number of years, and who has had occasion to work with Attorney General Bill Pryor, wrote this:

I write, not only as the only statewide Democrat to be elected in 2000, not only as a member of the Court which reviews the greatest portion of General Pryor's work, but also as a child advocate who has labored shoulder to shoulder with General Pryor in the political arena on behalf of Alabama's children. . . . Bill Pryor is an outstanding attorney general and is one of the most righteous elected officials in this state. He possesses two of the most important attributes of a judge: unquestionable integrity and a strong internal moral compass. . . .

High praise, I submit. She goes on:

Bill Pryor is exceedingly bright, a lawyer's lawyer. He is as dedicated to the ''Rule of Law'' as anyone I know. I have never known another attorney general'' I guess that includes this one standing before you ''who loved being the 'people's lawyer' more than Bill Pryor. Though we may disagree on an issue, I am always confident that the position is a product of complete intellectual honesty. He loves the mental challenge presented by a complex case, yet he never fails to remember that each case impacts people's lives.

I share with you another statement by Joe Reed, an African American, a leader in the State for 30 or more years, probably the preeminent African-American leader in the State over the last 35 years. He chairs the Alabama Democratic Conference. He is a member of the Democratic National Committee. He is a vice chairman of the Alabama Education Association. Dr. Joe Reed has always understood the importance of Federal courts. He has understood that the civil rights and liberties of African-American citizens were enhanced and provided in large part by actions of Federal courts. There is no mistaking in his mind on this question. This is what he said:

[Attorney General Pryor] is a person, in my opinion, who will uphold the law without fear or favor. I believe all races and colors will get a fair shake when their cases come before him. As Attorney General for Alabama during the past six (6) years, he has been fair to all people. . . .For your information, I am a member of the Democratic National Committee and, of course, Mr. PRYOR is [a] Republican, but these are only party labels. I am persuaded that in Mr. PRYOR's eyes, Justice has only one label—justice!

Mr. President, those are just some of the comments we have received from prominent Alabama leaders of a different party, a different race, who care about justice in America, who have a record of fighting for it, and who believe Judge Pryor shares their values in that regard.

Mr. President, I thank the Presiding Officer and yield the floor. I see my colleague from Georgia has arrived. We appreciate and look forward to hearing from him.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. Mr. President, first, if the Senator from Alabama will remain for a minute, I took the occasion, last week or 2 weeks ago, to spend a rather extensive time on the floor, on 2 days, talking about Janice Rogers Brown of Alabama, whose appointment was confirmed by this Senate. I had the pleasure to meet Justice Brown and meant every word I said.

But I rise today to talk about Judge Pryor because of my tremendous personal admiration for a man whom I have not met but know so much about because of the way he has conducted himself as a human being and as an attorney general.

I know he succeeded the distinguished Senator from Alabama as attorney general; is that not correct?

Mr. SESSIONS. Correct.

Mr. ISAKSON. So he obviously had a good role model to follow. Senator SESSIONS' leadership, obviously, contributed greatly to Judge Pryor's distinguished service.

But the reason I rise on the floor of the Senate for a second and confirm the reason I am so positively going to cast my vote for his confirmation to the Eleventh Circuit is because he has a magna cum laude degree in law from Tulane University, but he has a master's degree in common sense. He has a Ph.D. in courage.

If you study Judge Pryor's record, over and over again, he continues to lead himself to decisions based on the fundamental principle, belief, that in all cases you do what is right.

I listened to nearly all of the speech of the distinguished Senator from Alabama. He recited so many examples of where a statement that Judge Pryor might have made in the past did not guide him to a decision when it differed with the law, that he always followed the law to its fullest extent, not to interpret it as he saw fit but to execute it as he knew it was intended.

I am not a lawyer. I am a real estate guy and a politician. Obviously, we deal a lot in words but not nearly the discipline of the specifics of the law. I am a citizen of the United States, a father, and a businessman. I care deeply about the men and women who will sit on the bench of our highest courts. If we can have a man with common sense and a commitment to right and doing what is right, then we have provided a great service to the people.

I also rise as an extension of a great Georgian who has submitted a letter, on behalf of Judge Pryor, from which I would like to quote.

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

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

DEPARTMENT OF LAW,
Atlanta, GA, March 31, 2003.

Hon. RICHARD SHELBY,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Hon. JEFF SESSIONS,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATORS: I have had the great pleasure of knowing and working with Bill Pryor over the past five years. Through the National Association of Attorneys General, Bill and I have worked together on matters of mutual concern to Georgia and Alabama. During that time, Bill has distinguished himself time and again with the legal acumen that he brings to issues of national or regional concern as well as with his commitment to furthering the prospects of good and responsive government.

During his tenure as Attorney General, Bill has made combating white-collar crime and public corruption one of the centerpieces of his service to the people of Alabama. He joined the efforts of Attorneys General around the country in fighting the rising tide of identify theft, pushing through legislation in the Alabama legislature making identity theft a felony in Alabama. Bill has fought to keep law enforcement in Alabama armed with appropriate laws to protect Alabama's citizens, pushing for tough money laundering provisions and stiff penalties for trafficking in date rape drugs.

Time and again as Attorney General, Bill has taken on public corruption cases in Alabama, regardless of how well-connected the defendant may be, to ensure that the public trust is upheld and the public's confidence in government is well-founded. He has worked with industry groups and the Better Business Bureau to crack down on unscrupulous contractors who victimized many of Alabama's more vulnerable citizens.

From the time that he clerked with the late Judge Wisdom of the 5th Circuit to the

present, though, the most critical asset that Bill Pryor has brought to the practice of law is his zeal to do what he thinks is right. He has always done what he thought was best for the people of Alabama. Recognizing a wrong that had gone on far too long, he took the opportunity of his inaugural address to call on an end to the ban on inter-racial marriages in Alabama law. Concerned about at-risk kids in Alabama schools, he formed Mentor Alabama, a program designed to pair volunteer mentors with students who needed a role model and an attentive ear to the problems facing them on a daily basis.

These are just a few of the qualities that I believe will make Bill Pryor an excellent candidate for a slot on the 11th Circuit Court of Appeals. My only regret is that I will no longer have Bill as a fellow Attorney General fighting for what is right, but I know that his work on the bench will continue to serve as an example of how the public trust should be upheld.

Sincerely,

THURBERT E. BAKER.

Mr. ISAKSON. The attorney general of the State of Georgia is my dear friend, Thurbert Baker. He is a Democrat, an African American, and a close friend with whom I served in the Georgia House of Representatives. On March 31, 2003, Thurbert Baker wrote to Senator RICHARD SHELBY and Senator JEFF SESSIONS his personal feelings about the nomination of Judge Pryor. I want to read a few excerpts from that letter.

During his tenure as Attorney General, Bill has made combating white-collar crime and public corruption one of the centerpieces of his service to the people of Alabama. He joined the efforts of Attorneys General around the country in fighting the rising tide of identity theft, pushing through legislation in the Alabama legislature making identity theft a felony in Alabama. Bill has fought to keep law enforcement in Alabama armed with appropriate laws to protect Alabama's citizens, pushing for tough money laundering provisions and stiff penalties for trafficking and in date rape drugs.

The importance of that quote is how consistent that is with what our attorney general, Thurbert Baker, has done in Georgia; in particular, in his fights on white-collar crime, on trafficking, on drugs, and his confirmation of Judge Pryor's commitment to the same.

I continue to quote:

Time and again as Attorney General, Bill has taken on public corruption cases in Alabama, regardless of how well-connected the defendant may be, to ensure that the public trust is upheld and the public's confidence in government is well-founded. He has worked with industry groups and the Better Business Bureau to crack down on unscrupulous contractors who victimized many of Alabama's more vulnerable citizens.

The operative words in that quote refer to the courage I mentioned earlier; Judge Pryor, as attorney general, courageously and without fear took on anyone, regardless of stature and political standing, in order to see to it the people of Alabama were protected, their rights were protected and right itself was done and any wrong, regardless of the perpetrator, was prosecuted.

I continue to quote:

From the time he clerked with the late Judge Wisdom of the 5th Circuit to the present, though, the most critical asset that Bill Pryor has brought to the practice of law is his zeal to do what [is the right thing to do]. He has always done what he thought was best for the people of Alabama. Recognizing a wrong that has gone too far [and too long], he took the opportunity in his inaugural address to call on an end to the ban on interracial marriage in the State of Alabama. Concerned about at-risk kids in schools, he formed Mentor Alabama, a program designed to pair volunteer mentors with students who needed a role model and an attentive ear to the problems facing them on a daily basis.

As a member of the legislature in Georgia, one who worked on kids' programs, I know so much about the value of mentoring and the programs established such as Mentor Alabama that fundamentally change lives. For a man whose job it is to prosecute the law on behalf of the people of Alabama, to illustrate his desire for the future by, at the same time, developing a mentoring program so that the youth of Alabama would go on the right track in life—not the wrong—shows his absolute commitment to right, his absolute commitment to his fellow man, his absolute commitment to those who have been less fortunate.

I close with one last quote from this letter:

My only regret is that I will no longer have Bill as a fellow Attorney General, fighting for what is right, but I know that his work on the bench will continue to serve as an example of how the public trust should be upheld.

Bill Pryor has been waiting for this day for some time. I am grateful to Senators who allowed the cloture vote to take place and voted in favor of giving a chance for Judge Pryor to receive an up-or-down vote on his confirmation to his nomination to the Eleventh Circuit Court of Appeals. I am confident that later today when we cast our vote—and I will cast mine in favor of Judge Pryor—the majority of this Senate will confirm a man whose record is impeccable, whose commitment is to doing what is right, whose belief is in the people of this country, in the fundamental foundations of the law and its strict interpretation and application. I commend to all Members of the Senate Judge Bill Pryor of Alabama for his confirmation.

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. DOMENICI. 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. DOMENICI. Mr. President, is the Senate in morning business?

The PRESIDING OFFICER. The Senate is on the nomination of William Pryor. The majority controls the time until 11:30 a.m.

Mr. DOMENICI. Mr. President, I yield myself 5 minutes.

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

Mr. DOMENICI. Mr. President, I rise today to address the nomination of William H. Pryor, Jr., to be a U.S. circuit judge for the Eleventh Circuit.

Many of my colleagues know that I am Catholic by religion and belief. As such, I have watched the debate over Judge Pryor, an acknowledged devout Catholic, with much interest.

I start by saying, and I want to be very clear about this point, that I do not believe any of my colleagues are anti-Catholic. However, I am becoming increasingly concerned about the apparent creation of some kind of religious litmus test for nominees. I would like to provide a sample of some of the questions posed to Judge Pryor during his confirmation process that I think justify my concern that a nominee's religion is becoming some kind of a central part of the confirmation process.

It concerns me when, in the Judiciary Committee, statements such as these are made:

Judge Pryor's beliefs are so well known, so deeply held, that it is very hard to believe, very hard to believe, that they are not going to deeply influence the way he comes about saying, ''I will follow the law.''

Another:

I think the very legitimate issue in question with your nomination is whether you have an agenda, that many of the positions which you have taken reflect not just an advocacy but a very deeply held view and a philosophy.

Third:

Virtually in every area you have extraordinarily strong views which continue and come out in a number of different ways. Your comments about Roe make one believe, could he really, suddenly, move away from those comments and be a judge?

It concerns me that these questions continued despite the fact that Judge Pryor's record in Alabama as attorney general shows that he can and has separated his personal beliefs from his professional obligations.

As Alabama's attorney general, Judge Pryor argued that there should be no school-sponsored, government-sponsored religious activity, but genuinely student-initiated religious expression was protected by the First Amendment. I believe he expressly stated the view that the Supreme Court has held in that regard, regardless of his beliefs.

Second, he issued an opinion stating that Alabama's partial-birth abortion law was unconstitutional and could not be enforced. I believe he followed the law.

Third, he personally prosecuted charges against Alabama's Justice Moore for refusing to obey a court order to remove the Ten Commandments from a display in the Alabama State courthouse.

The quotes I have referenced and the fact that some Democrats have persisted with this line of questioning despite clear evidence that Judge Pryor is committed to both religious freedom and separation of church and state concern me not because I am accusing anyone on the other side of being anti-

Catholic or anti-religion; rather, statements such as these make me fear that we are creating some kind of a religious litmus test for nominees. A nominee's religious beliefs have no connection to fitness to serve on the Federal bench.

It seems to me that such questions suggest that anybody who is an Orthodox Jew, deep-seated Christian, Protestant, Muslim, or devout Catholic should be rigorously questioned about their religious beliefs. But I believe their beliefs should not in any way affect them becoming Federal judges. These type of questions effectively say to people in the United States: Perhaps if you have deeply held religious beliefs, you cannot serve on the Supreme Court, you cannot serve in the Federal judiciary.

I believe we should rid the record of any such inferences, and I am just trying to do that today.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DOMENICI. I ask for 1 additional minute.

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

Mr. DOMENICI. Mr. President, this is an alarming prospect. The Senate should consider the nominee on his professional record, not on his personal beliefs. I believe this distinguished nominee should be confirmed.

I yield the floor. I thank the Senate for listening.

The PRESIDING OFFICER. Who yields time?

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

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

Mr. GREGG. Mr. President, what is the regular order?

The PRESIDING OFFICER. The minority controls the time until noon, but the Senator may be recognized.

Mr. GREGG. I ask unanimous consent that I be allowed to speak as in morning business for 10 minutes, and if some member of the minority appears I will be happy to yield to allow them to proceed under their time.

The PRESIDING OFFICER (Mr. ENSIGN). Without objection, it is so ordered. The Senator is recognized.

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

Mr. GREGG. I thank the Senator from Alabama. I obviously enjoy working with him because he is a voice of reason around here.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, what is the order of business?

The PRESIDING OFFICER. The minority controls the time until noon.

Mr. SESSIONS. Mr. President, it is a few minutes to 12. I ask unanimous consent that I be able to speak in morning business. If any of my colleagues from the other side come to the floor, I will be pleased to yield to them.

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

Mr. SESSIONS. Mr. President, we have spent over 2 years on the Bill Pryor nomination for the Eleventh Circuit Court of Appeals. He is an extraordinary man and an extraordinary jurist, now that he is holding that seat as a recess appointment. But a number of allegations have been made against him that I think caused some in this body to form an impression of him early on that was not correct.

One of the most prominent was an allegation that he was insensitive to the disabled. People For the American Way, who issued their attack sheet report—and I hope our colleagues will begin to look far more critically at their work than they have in the past—stated it this way:

> Of particular concern are Pryor's views on the limits on Congress' authority to enact laws protecting individual and other rights, and how he would seek to implement those laws if confirmed. Pryor is one of the architects of this movement and has been a leading activist in these damaging efforts. He personally has been involved in key Supreme Court cases that, by narrow 5 to 4 majorities, have hobbled Congress's ability to protect Americans' rights against discrimination and injury based on disability, race, or age.

That is part of their report and part of their complaint. At the time he was originally nominated, a number of people from the disabled community were told Judge Pryor is against them and that they should come. They came and spoke out against him. But truly I do not think they understood what the complaint was all about.

Let me share with you what happened. One of the State universities in Alabama was involved in a lawsuit about disability rights. The case was University of Alabama at Birmingham v. Garrett. It goes up for litigation. The Attorney General of the State of Alabama was Bill Pryor. It is his duty as a lawyer to defend his client. As an entity of the State, the university is a client of the State of Alabama, so he did so. One of the defenses he raised, and raised brilliantly, dealt with this act, the ADA. Only 3 percent of the people in Alabama work for the State of Alabama. So the defense he raised impacted only State employees, that is 3 percent of the people, although repeatedly announcements were made that he was gutting the ADA. That is the first point.

Second, what the attorney general of Alabama argued was that, yes, if a person were to be dismissed or otherwise not handled fairly as a result of a disability, they could sue the State under the Americans with Disabilities Act, they could get an injunction, a court order to ensure that they were treated fairly by the State of Alabama, they could get back wages if they had been terminated—but that provision of the act that allowed individuals to sue for money damages against corporations—and 97 percent of the people work for private employers and corporations and not State governments—that provision could not be enforceable because a State has sovereign immunity protection against suits for money damages. States can only be sued on grounds that they agree to be sued on, because the power to sue is the power to destroy. That is constitutional history. And States do not allow themselves to be sued except under certain circumstances, and he argued that the Congress could not abrogate that historic constitutional principle of sovereign immunity by passing a statute—without giving any thought to the issue. Anyway, they passed it focusing mainly on private employers, not States. He appealed that to the U.S. Supreme Court and won the case in the U.S. Supreme Court.

Now they say what he was doing was an indication that he is insensitive to people who are disabled. I raise that issue because it is not fair to him, and it demeans our entire process.

I see the Senator from Tennessee is in the Senate, Senator ALEXANDER. I know he is interested in this nomination. I am pleased to yield to the Senator from Tennessee.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Alabama. I am delighted to have a chance to join him in support of Judge Pryor. I will take a few minutes on that, and when I finish, I will ask unanimous consent to speak for up to 5 minutes as in morning business on another matter.

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

Mr. ALEXANDER. Mr. President, none of us, if we end up in court, want to go before a judge who has already decided the case before we get there. There is an old story from the Tennessee mountains about the lawyers who showed up in court and the judge says: ''Fellas, this shouldn't take long. I had a phone call last night, and I know most of the facts. Just give me a little bit on the law.'' I don't think those litigants felt very good about their appearance before that judge.

We do not want judges who decide the case before they hear the argument, either because they got a phone call the night before or because they bring some personal or political agenda to the case. We want judges who are fair. We want judges who are independent. We want judges who are intelligent, who have good character, who

know the law, and who are willing to apply it in a fearless way.

As Governor of Tennessee, I appointed about 50 judges. I appointed men and women, Democrats and Republicans. I appointed the first African-American Supreme Court justice, the first African-American chancellor in our State who happened to be a Democrat. I never asked how they felt about abortion. I never asked them how they were going to decide cases. I tried to assess their reputation for intelligence and fairness, their demeanor, and whether they would treat those who appeared before them with respect. That turned out to be a pretty good formula.

If we are looking for a member of the U.S. appellate court who has demonstrated before he takes the bench that he can make decisions independent of his personal views, then Judge William Pryor ought to be exhibit A, No. 1. As has been pointed out many times, Judge Pryor has been very honest with the committee and all who question him. He is pro-life. He opposes partial-birth abortion. But as attorney general of Alabama in August of 1997, on his own initiative, he wrote the district attorneys general of Alabama and instructed them to use a restrictive interpretation of the partial-birth abortion bill in Alabama, gutting the statute, some said, in Alabama. Three years later, General Pryor, after further Supreme Court cases, wrote the Alabama district attorneys telling them that the Alabama partial-birth abortion law was unconstitutional. He was pro-life, but the law said it was unconstitutional. He followed the law.

When there were threats of attacks against abortion clinics in Alabama, the attorney general could have waited for something to happen. He did not. He held high-profile press conferences to condemn what he called ''despicable acts.'' He warned there would be prosecutions if those acts actually occurred.

William Pryor told the committee he is a religious man. He, obviously, is a deeply religious person. But he told the Governor, who had just appointed him attorney general of Alabama, to get himself another lawyer when the Governor wanted him to argue a prayer-in-the-schools case that General Pryor thought compelled him to take a position contrary to the U.S. Supreme Court's interpretation of the Constitution.

He prosecuted the chief justice of the Alabama Supreme Court for his refusal to take actions to remove the Ten Commandments, not because he does not believe in the Ten Commandments, which he does, but because he believes in the law, and his job was to enforce the law.

He has proven his sensitivity toward civil rights, which for those who have grown up in the South is even more important. In his inaugural address, he pledged to remove the ban on interracial marriage and led the fight to pass a constitutional amendment to do it. One might say, Of course he should have done that. Well, go down to Alabama and make that your first announcement in a new public position at that time in our Nation's history. It took courage and it took principle to do it. He did it.

He is a Republican, but he appealed the Alabama reapportionment plan to the U.S. Supreme Court, to the dismay of the Republican Party, and he won it for the Democrat Party.

It is fair to say that Judge William Pryor has compiled for himself at a relatively young age a record that would make it virtually impossible for him to win a Republican primary in Alabama but a record that ought to make him a perfect candidate for the U.S. court of appeals.

Of course, there is always the question with these men and women who come before the Senate of whether they are qualified. We can look at the facts. William Pryor is a magna cum laude graduate of Tulane law school, one of the great law schools of our country. He was editor and chief of the Tulane Law Journal.

My favorite example of his competence is that he was a law clerk to the Honorable John Minor Wisdom, perhaps the greatest appellate court judge of the last 50 years, whose 100th birthday would have been May 21. I know about his birthday because I knew the judge very well. I was his law clerk, too. I hasten to add that I didn't quite qualify to be a law clerk in 1965 and 1966. He already had a smart graduate from Harvard. But he said: I need two, and I will hire you as a messenger. If you work for $300 a month, I will treat you like a law clerk.

Judge Wisdom is the one who ordered James Meredith to be admitted to Ole Miss, and he, with Judge Tuttle and Judge Rives, presided other desegregation of the South. He hired as his law clerks some of the most distinguished men and women now in the private practice of law anywhere in the America. I know many of them.

Judge Pryor was in New Orleans on May 21 to celebrate Judge Wisdom's 100th birthday, along with about 40 other law clerks, even though Judge Wisdom himself is not still living. I know the respect Judge Wisdom had for Judge Pryor's competence. He has demonstrated his independence, he has demonstrated his intelligence, and he has demonstrated he will be an extraordinary judge.

I was disappointed at what I heard when the Presiding Officer and I came to the Senate a little over 2½ years ago. I was preparing to make my maiden address on American history and civics, and we found ourselves in this terrible debate about Miguel Estrada. I was astonished by it, to tell the truth. I found myself feeling the same way about discussions of Judge Pickering in Mississippi, a man whose reputation I knew. When I studied that reputation, I found a man out front in the civil rights debate of the 1960s and 1970s, putting his children in public schools in Mississippi in the 1960s when everyone else was sending them to what they called segregation academies, and testifying against the grand wizard of the Ku Klux Klan in the mid-1960s when that was a dangerous thing to do.

I heard some of my colleagues questioning his commitment to civil rights. Where were they in 1965, 1966, and 1967? What was going on?

I was very disappointed when I heard these comments about Judge Pickering. And he withdrew. I heard the comments about Miguel Estrada, a tremendous American success story. And he withdrew. So I pledged, then and there, I would never filibuster any President's judicial nominee, period. I might vote against them, but I will always see they came to a vote.

I am glad to see—and the Presiding Officer had something to do with it—that the logjam has been broken. Maybe we can get back to business as usual in the Senate where the President, after consulting with us, sends us good nominees, we look them over and take as long as we want to talk about them, and then we vote on them. I am glad we have a chance to vote on Judge Pryor.

We do not want judges whose views are decided by a political agenda or by a phone call that comes in the night before. Judge Wisdom had absolute confidence in William Pryor when he appointed him as his law clerk. He was proud of his service as attorney general of Alabama. He is not here today to say what he thinks of him, but I am glad that I am here today to say I will be proud to cast my vote for William Pryor for U.S. circuit judge.

Mr. President, I received permission to speak on another subject as if in morning business, and I would like to proceed to that.

(The remarks of Mr. ALEXANDER pertaining to the introduction of S. 1208 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. ALEXANDER. Mr. President, I thank the Senator from Alabama for his time, and I join him in my enthusiasm for the nominee for the U.S. court of appeals from his home State, William Pryor.

Mr. SESSIONS. Mr. President, I thank the Senator from Tennessee for his very important remarks on the Pryor nomination. He is wise in analyzing the realities of being an attorney general in America and the difficult choices and political pressures that are on attorneys general.

He is absolutely correct that Attorney General Bill Pryor has demonstrated he has the courage to do the right thing regardless of short-term complaints that might arise. That is so fundamentally obvious to people who get a fair look at it and I am amazed it has not been clear to some of our colleagues.

I thank the Senator from Tennessee for sharing his thoughts.

Mr. President, I ask unanimous consent that the distinguished majority whip and I be allowed to engage in a colloquy.

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

Mr. MCCONNELL. Mr. President, I say to my friend from Alabama, I understand that Judge Pryor has been criticized because he has sincerely held beliefs against abortion and has also criticized the ruling in Roe v. Wade?

Mr. SESSIONS. That is correct. He answered questions about that, clearly and directly.

Mr. MCCONNELL. But it is also true, is it not, I say to my friend from Alabama, that Judge Pryor swore under oath—under oath—at his hearing that he would faithfully apply the law, and included in that, of course, is Supreme Court precedent?

Mr. SESSIONS. As a matter of fact, he was asked explicitly about that in the Judiciary hearings. I am a member of that committee, and the phrase he used, I say to you, Senator MCCONNELL, was ''Senator, you can take it to the bank.'' And he is the kind of man who, when he says it, he means it.

Mr. MCCONNELL. Well, he has had an opportunity to demonstrate that, has he not, I say to my friend from Alabama, with respect to the laws regulating abortion? He has been in a position to demonstrate that he is willing to set aside his personally held views and apply the law as it is, has he not?

Mr. SESSIONS. He really has. I think that is so important for us here as we consider a nominee. Surely, we can't vote for or against a nominee on whether they agree with us on any number of a host of moral and religious issues. But these are the facts on it. Although he is a pro-life individual—in 1997, Alabama banned partial-birth abortion by State statute. As attorney general, Judge Pryor was aware that parts of that statute had gone too far under the current state of the law, so he issued a letter, a directive, to the district attorneys throughout the State of Alabama telling them that they could only construe that statute narrowly because it would violate, otherwise, the Constitution as defined by the U.S. Supreme Court.

As a matter of fact, the ACLU praised him at that time in 1997 for his directive. And, as a matter of fact, one of the pro-life leaders said he gutted the statute.

Then, I say to you, Senator MCCONNELL, a few years later, in 2000, when the Supreme Court ruled on the Stenberg case, in which they really overruled many State statutes involving the partial-birth abortion law, Attorney General Pryor recognized and advised the district attorneys that statute was not sound and called on the State legislature to craft a statute consistent with the Supreme Court. And when he wrote the State officials, he said that they ''are obligated to obey [the Stenberg decision].''

Mr. MCCONNELL. The attorney general of Alabama is an elected position; is it not?

Mr. SESSIONS. It is an elected position.

Mr. MCCONNELL. So Judge Pryor did not have the protection of a lifetime appointment or even a lengthy term. Here is an official in Alabama basically telling a bunch of Alabama local officials they ought to comply with a Supreme Court decision that was overwhelmingly unpopular in Alabama; is that correct?

Mr. SESSIONS. That is exactly correct, I say to the Senator, absolutely correct. People in Alabama, I think as most Americans, believe that partial-birth abortion, at any rate, is a particularly gruesome procedure, and he had a lot of pressure on him to declare otherwise. In fact, he was criticized by friends who thought he had not been supportive of their view.

Mr. MCCONNELL. It would have been very politically convenient for him to do that; would it not?

Mr. SESSIONS. Absolutely. I think the point is that he understands the importance of adhering to the rule of law even though it may disagree with positions you feel strongly about.

Mr. MCCONNELL. With regard to his criticism of Roe v. Wade, I ask my friend from Alabama, is it not also the case that some very prominent liberals in this country, who probably no doubt liked the outcome of Roe v. Wade, were, nevertheless, highly critical of the Supreme Court's reasoning and rationale for issuing that particular judgment?

Mr. SESSIONS. That is correct.

Mr. MCCONNELL. So there is nothing particularly unusual or unique about a good lawyer, or certainly a lawyer in a prominent position like attorney general, at the time, Bill Pryor, critiquing the decision, wholly aside from what their personal views were, because a number of prominent liberals, I think, have done the same thing; have they not?

Mr. SESSIONS. That is exactly right. And the attorney general is an elected person in Alabama. He has a right to comment on decisions of the Supreme Court. I think attorneys general and lawyers and laymen all over the country do that on a daily basis. The question is, Will you follow it even if you do not agree?

Mr. MCCONNELL. In fact, Supreme Court Justice Ruth Bader Ginsburg criticized the Supreme Court's approach in the Roe case. I bet many of our colleagues would be surprised to learn that she described Roe as a ''breathtaking'' decision whose ''[h]eavy-handed judicial intervention was difficult to justify.'' That is Ruth Bader Ginsburg, who, no doubt, liked the outcome in Roe, but found the decision, as she put it, ''breathtaking'' and a ''[h]eavy-handed judicial intervention [that] was difficult to justify.''

So here was someone whose personal views were probably opposite of Judge Pryor's, but who reached the same conclusion as Judge Pryor did about the rationale for the decision, the basis of the decision.

Mr. SESSIONS. I think that is a very good point, I say to you, Senator MCCONNELL. I know that, for example, Justice Ginsburg was an ACLU, American Civil Liberties Union, lawyer. Yet she was troubled by the reasoning and rationale in some of the matters in Roe v. Wade. And she did not mince words about it in terms of the public policy result in Roe, nor did she condemn people who criticized Roe. She fully understood it was legitimate to discuss that important Supreme Court case. In fact, she wrote:

> I appreciate the intense divisions of opinion on the moral question and recognize that abortion today cannot fairly be described as nothing more than birth control delayed.

So I think she was expressing real sympathy and respect for those who may disagree with the decision, even as she expressed concern with the decision.

Mr. MCCONNELL. I ask my friend from Alabama if he is aware that liberal constitutional scholar and current Harvard law professor, Laurence Tribe—often quoted by Members on the other side as the authority on many issues of constitutional law—described Roe as a ''verbal smokescreen,'' and noted that ''the substantive judgment on which it rests is nowhere to be found.'' This is Laurence Tribe commenting on Roe v. Wade. Even though, no doubt, he likes the result of Roe v. Wade, he is nevertheless criticizing the rationale for it.

Mr. SESSIONS. Well, the Senator is exactly correct. Conservatives and liberals alike have raised questions about different aspects of Roe v. Wade. It is perfectly natural that they would do so, I think.

Mr. MCCONNELL. I believe liberal law professor Cass Sunstein from the University of Chicago—who was reported to have advised our Democratic colleagues on the need to ''change the ground rules'' on judicial nominations, which led us into the impasse we were in last Congress—noted that there are ''notorious difficulties'' with Roe v. Wade. Is my friend from Alabama familiar with that, as well?

Mr. SESSIONS. Yes, I am.

Mr. MCCONNELL. I could go on with a list of liberal scholars and commentators who criticized Roe very directly, but I think my friend from Alabama and I hope all of our colleagues get the drift.

I do have just one more question for the Senator from Alabama. Does he remember President Bush's nomination of Michael McConnell to the Tenth Circuit?

Mr. SESSIONS. Yes, I do. I believe he was confirmed by unanimous consent.

Mr. MCCONNELL. Unanimous consent. Out here on the Senate floor, passed on a voice vote.

Mr. SESSIONS. Yes.

Mr. MCCONNELL. Although I am not on the Judiciary Committee now, I was

at the time of the McConnell nomination. I recall that Judge McConnell was then a law professor who had criticized Roe frequently and at great length; is that correct?

Mr. SESSIONS. That is correct.

Mr. MCCONNELL. But just like Judge Pryor, he swore to uphold Supreme Court precedent; did he not?

Mr. SESSIONS. He did.

Mr. MCCONNELL. So I want to make sure I have this correct. Both Judge Pryor and Judge McConnell criticized Roe v. Wade, both swore under oath they would follow Supreme Court precedents, including those they may personally disagree with, but unlike Judge McConnell, who was a law professor at the time of his nomination and did not have the opportunity as an academic to enforce the law, Judge Pryor has been a public official who has had the chance, on repeated occasions, to put his money where his mouth was, and he has consistently followed the law?

Our Democratic colleagues confirmed Judge McConnell by unanimous consent but are vigorously objecting to Judge Pryor; is that the case?

Mr. SESSIONS. That is the case.

Mr. MCCONNELL. I am puzzled. On this record, our friends' objections to Judge Pryor seem inconsistent and arbitrary.

I thank the Senator from Alabama for his time and remind our colleagues that we have confirmed Democratic nominees who have had deep personal objections to Supreme Court precedent. I recall we confirmed Janet Reno 98 to 0, even though her personal views on the death penalty were at odds with Supreme Court precedent. We ought not have a double standard. We should applaud Judge Pryor for his forthrightness and his commitment to the rule of law, and we ought to confirm this distinguished nominee.

I also want to say to my friend from Alabama, I know he probably knows Judge Pryor better than anybody else in the Senate and has had a greater opportunity to evaluate his integrity, his intellect, and has really seen him in action. I think our colleagues ought to listen to the junior Senator from Alabama because he really knows Bill Pryor and can attest to the fact that Bill Pryor took actions much like Judge Pickering did in the 1960s, to which Senator ALEXANDER was referring, that took extraordinary courage given the climate of public opinion in the State of Alabama.

Mr. SESSIONS. I thank the Senator.

The PRESIDING OFFICER. The 30-minute segment has expired.

The Senator from Illinois.

Mr. DURBIN. Mr. President, today the Senate is considering the nomination of William Pryor for the U.S. Court of Appeals for the Eleventh Circuit. This is a nomination which I have considered many times in the Senate Judiciary Committee and outside the regular business of Congress. Senator JEFF SESSIONS and I occasionally get up early in the morning and go to the Senate gym. And on several occasions he has raised with me his heartfelt support for William Pryor. I have expressed to him my reservations and concerns about Mr. Pryor, and he has tried to assure me, in different ways, that the public image of this man is much different than who he really is. I struggle with this because I do count Senator SESSIONS as a friend despite our many political differences. I would like to give him the benefit of the doubt on this nominee who is so important to him personally.

Unfortunately, the debate that leads up to today's consideration on the floor has raised a myriad of questions that need to be resolved, questions which go to the heart of this nomination.

Mr. Pryor was recess-appointed by President Bush when both he and Judge Pickering of Mississippi were not approved by the Senate. It was historic. It was a decision by the President to use his recess appointment power to put Mr. Pryor on the bench, despite the Senate's decision on his nomination. I agree with Senator KENNEDY that Mr. Pryor's recess appointment, which occurred during a brief recess of Congress, could easily be unconstitutional. It was certainly confrontational. Recess appointments lack the permanence and independence contemplated by the Framers of the Constitution. To confirm Mr. Pryor now would validate the President's regrettable decision to defy the Senate.

I am afraid that many aspects of the debate, relative to the Pryor nomination, mark a low point in Congress. Many of Mr. Pryor's supporters allege that those of us who questioned his nomination or opposed him did so because of his religious beliefs. The same ugly allegation was raised more broadly at the recent Justice Sunday event which took place in a church in Kentucky and featured remarks by Majority Leader WILLIAM FRIST. The allegation that any Member of the Senate is opposing this nomination because of the nominee's religious beliefs is just wrong. In fact, it is not only wrong, it is outrageous.

Article 6 of the Constitution, which we keep at hand here on the floor, makes it clear that it is unconstitutional to use any form of religious test for a person who is seeking an office of public trust. To suggest that those of us who oppose Mr. Pryor—or any of the President's judicial nominees—are violating this article of the Constitution is out of line.

I am troubled, too, by the logic of this position. It appears that Mr. Pryor's supporters believe that if he can answer any of our questions about public policy, if the position he takes is based on his religious belief, then at that point we can't pursue the question, that it is a matter of his personal conscience. But think about that for a moment. I am a member of the Catholic Church. Some Catholics do not support the death penalty. The late Pope John Paul II himself strongly opposed capital punishment. Some Christian Scientists do not support many aspects of medical treatment. Some Quakers do not support war. Some people because of their religious beliefs have strong views on the role of women in society, strong views on divorce, on sexual orientation. I can't believe it is the position of Mr. Pryor's advocates that Senators could not raise legitimate concerns about positions on public issues if there is any nexus to a nominee's religious belief.

Think of all of the areas where we would, frankly, be unable to even ask a question because the person could say: I am sorry. That is my religious belief, and you can't ask about that.

The reality is that certain important issues at the center of legal and legislative activity are public issues and religious issues. To suggest the Senate cannot ask a nominee questions about these public issues would prohibit us from fulfilling our constitutional obligation. It is not Mr. Pryor's religious affiliation that is troubling. It is his history of putting his own personal beliefs ahead of the Constitution. He is a staunch judicial activist. Maybe he doesn't reach the level of Janice Rogers Brown, who was approved yesterday—the most radical nominee sent to us by the Bush White House—but, sadly, some of his public comments are close.

William Pryor believes it is the job of a Federal judge to carry out the political agenda of the President. How else could you interpret his comment about the Bush v. Gore case in 2000, when he said:

> I'm probably the only one who wanted it 5–4. I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.

These are the words of William Pryor. Does that suggest to you that he is looking for a nonpartisan judiciary? Sadly, it suggests the opposite. He is looking for a bench filled with partisans of his stripe, and he used that case as a lesson to the White House: Be careful, if you pick someone who is independent, they may just rule against you on a political issue. Those are hardly the kind of words you want coming from the mouth of a man who wants to ascend to the second highest court in America.

On another occasion, Mr. Pryor stated:

> [O]ur real last hope for federalism is the election of Gov. George W. Bush as president of the United States, who has said his favorite justices are Antonin Scalia and Clarence Thomas.
>
> Although the ACLU would argue that it is unconstitutional for me, as a public official, to do this in a government building, let alone at a football game, I will end my prayer for the next administration: Please God, no more Souters.

He was referring again to Justice Souter on the Supreme Court. I asked

Mr. Pryor, a Federalist Society member, whether he agrees with the mission statement of the Federalist Society, where he pays his dues and attends meetings. It reads:

Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society.

I have asked this question of almost every Federalist Society member nominated by President Bush, and there have been quite a few. Mr. Pryor is the only person who gave me a one-word answer: ''Yes.''

I appreciate his honesty, but I am troubled by his beliefs. Mr. Pryor is just over 40 years old. If confirmed, he will have the chance to put this philosophy into practice well into the 21st century with a lifetime appointment.

It is not just law and politics that Mr. Pryor has problems keeping separate. He has problems with the separation of church and State. I am concerned about his blurring of a very important line when it comes to the conduct of government vis-a-vis religion. He is so ideological about this issue that he has confessed:

I became a lawyer because I wanted to fight the ACLU.

The ACLU is one of the main defenders of the separation of church and State. I asked Mr. Pryor if he would be willing to recuse himself in cases involving the ACLU because he has made his views very clear that he cannot be objective. He said no. But he pledged:

As a judge, I would fairly evaluate any case brought before me in which the ACLU was involved.

It is hard to believe that he could follow that pledge. This is a man who, by his own admission, became a lawyer so that he could ''fight the ACLU.'' Now he tells us he will be objective on their cases.

Many of you remember Alabama Chief Justice Roy Moore and his midnight installation a few years ago of a 6,000-pound granite Ten Commandments monument in the middle of the Alabama State courthouse. Mr. Pryor and his supporters like to point out that Mr. Pryor criticized Chief Justice Moore for defying a Federal court order to remove the monument. What they don't like to talk about nearly as much or nearly as openly is the fact that Mr. Pryor was an early supporter of Chief Justice Roy Moore. He represented Moore vigorously in the litigation of this issue.

The Eleventh Circuit ruled that the display was patently unconstitutional, and a district court subsequently issued an injunction to have the monument removed. Had Mr. Pryor continued to side with Moore and refused to comply with this injunction, he would have exposed the State of Alabama to substantial monetary sanctions and possible criminal liability. This is what Mr. Pryor and his supporters offer as proof that he understands and respects the venerated, historic, and traditional wall between church and State.

Mr. Pryor's advocates call him a ''profile in courage'' for enforcing the Eleventh Circuit decision that the monument must be removed from the Alabama State courthouse. I call it doing your job.

Let me provide another example of his insensitivity. At Mr. Pryor's confirmation hearing, Senator FEINSTEIN asked him to explain his statement that ''[t]he challenge of the next millennium will be to preserve the American experiment by restoring its Christian perspective.'' He ducked the question.

If you are going to serve this Nation and its Constitution, you have to have some sensitivity to the diversity of religious belief in America. Many of us are Christians. But to impose a so-called Christian perspective on everything is to, frankly, take a position which many of different religious faiths would find offensive and intrusive by their Government.

Our Founders may have been mostly Christian, but America today is a nation of religious diversity and this diversity is protected by the Constitution. Judge Pryor has difficulty in grasping this concept.

On the issue of federalism, Mr. Pryor has been a predictable, reliable voice for those who seek to limit the people's rights in the name of States' rights. It is an old ploy in America. As the Alabama Attorney General, he filed brief after brief with the U.S. Supreme Court arguing that Congress has virtually no power to protect State employees who are victims of discrimination. Under his leadership, Alabama was the only State in the Nation to challenge the constitutionality of parts of the Violence Against Women Act. Thirty-six States filed briefs urging this important law be upheld in its entirety, while William Pryor, attorney general of Alabama, was the only one who used his position to try to tear down the Violence Against Women Act.

Mr. Pryor also filed a brief in the Supreme Court case Nevada v. Hibbs. In it, he argued that Congress has no power to ensure that State employees have the right to take unpaid leave from work under the Family Medical Leave Act. Think about it. Mr. Pryor, as Alabama attorney general, said Congress had no power to enforce a Federal law.

The Supreme Court rejected his argument and said: Mr. Pryor, this time you have gone too far.

On the issue of women's rights, he clearly opposes a woman's right to choose. He once called Roe v. Wade ''the worst abomination of constitutional law in our history.'' At Mr. Pryor's hearing, Senator SPECTER asked him if he stood by his statement. He said he did. He went on to say that Roe v. Wade is ''unsupported by the test and structure of the Constitution'' and ''has led to the slaughter of millions of innocent unborn children.''

We are not talking about a nominee who made an overheated statement 30 years ago as a college student. Mr. Pryor said this at his own confirmation hearing.

Understand the constitutional principle that underlies Roe v. Wade. I know abortion is an issue that is very divisive. People feel very strongly one way or the other. But most people concede that underlying that Roe v. Wade decision is the right to privacy, a right which was enshrined in the Supreme Court case of Griswold v. Connecticut 40 years ago this week.

The State of Connecticut, urged by religious groups, had banned the sale of contraceptives and family planning to anyone in the State of Connecticut. If you purchased any family planning—a birth control pill, for example—it was a violation of the law, and the pharmacist who filled that prescription could be arrested and prosecuted.

Think about it. Only 40 years ago that was the case. There was a group who believed that their religious beliefs were so compelling about birth control that they installed it as a State law.

The law was challenged. It came before the Supreme Court. The Supreme Court came down with what has now become a time-honored decision that said, no, built into this Constitution there may not be the word ''privacy,'' but the concept of privacy. There are certain things that we, as individuals, should be protected to make decisions about—the intimacy of marriage, the privacy of our personal life.

What I hear in the language of Mr. Pryor, and many others of his point of view, is really questioning this fundamental concept of protecting individual, personal privacy. It is their belief, many of them, that the Government should rule on these decisions.

On the issue of voting rights, Mr. Pryor has urged Congress to take steps that would undermine the right of African Americans to vote. While testifying before the Judiciary Committee in 1997, he urged Congress to ''consider seriously . . . the repeal or amendment of section 5 of the Voting Rights Act.'' This is a key provision that guarantees the right of African Americans and other racial minorities to achieve equal opportunity in voting.

Section 5 requires certain States to obtain preapproval before changing their voting rights standards, such as redistricting or the location of polling places. It is clearly a vestige of America in transition from racial division and discrimination to a more open, equal policy.

Mr. Pryor, as attorney general of Alabama, raised questions as to whether or not the Federal Government should continue to try to meet that standard. I strongly disagree with that sentiment. He called section 5 ''an affront to federalism and an expensive burden that has far outlived its usefulness.''

I say to Mr. Pryor and others who are white Americans that we cannot possibly understand how much this means,

what it means to an individual to have the right to vote, particularly a person of color, a minority in America, and section 5 is there to guarantee it.

As attorney general of Alabama, Mr. Pryor testified that it had outlived its usefulness. I disagree with his sentiment. Thankfully, so did the Supreme Court and most Members of Congress.

There are so many other issues. Tobacco is another one. When it comes to tobacco, Mr. Pryor has been one of the Nation's foremost opponents of a critical public health issue—compensation for the harms caused by tobacco companies. He has ridiculed lawsuits against tobacco companies saying:

This form of litigation is madness. It is a threat to human liberty, and it needs to stop.

Remember, those are the lawsuits against tobacco companies that had openly deceived Americans into believing their product was safe, leading to addictions, disease, and death. And when lawsuits were brought by attorneys general across America against the tobacco companies, they settled, knowing they would lose in court, and paid billions of dollars, confessing, in the process, their own wrongdoing.

Despite that, Attorney General Pryor, in Alabama, said this was a threat to human liberty to bring these lawsuits against tobacco companies. What was he thinking?

His fellow State attorneys general have been highly critical of him for his comments on these tobacco lawsuits. Former Mississippi Attorney General Michael Moore said:

Bill Pryor was probably the biggest defender of tobacco companies of anyone I know. He did a better job of defending the tobacco companies than their own defense attorneys.

Former Arizona Attorney General Grant Woods, a Republican, said this of Mr. Pryor:

He's been attorney general for about 5 minutes, and already he's acted more poorly than any other attorney general.

These are his colleagues commenting on his view of the law and his personal philosophy.

Gun control is another issue where Mr. Pryor has demonstrated disregard, if not downright hostility, to even reasonable firearm restrictions.

In United States v. Emerson, he filed an amicus brief with the Supreme Court, arguing the man who was the subject of a domestic violence restraining order should be allowed to possess a firearm.

I can tell you, from my life experience and legal experience, that is a very bad position to take. We know that if someone has a restraining order against them because they are going to commit domestic violence, the last thing we want to give them is a gun. That is what the case is about. Mr. Pryor in that case said, no, they have a right to have a firearm, even if they have a domestic abuse restraining order against them.

He called the Government's position a ''sweeping and arbitrary infringement on the second amendment right to keep and bear arms.''

I will stand here and defend to the end the right of an individual to own a firearm legally in America, to use it for legitimate purposes—for self-defense, for hunting, for sport—but to think Mr. Pryor believes the second amendment right is so absolute that we should give guns to men who batter their wives, I just do not understand it. It does not show common sense, let alone an understanding of the law.

Incidentally, he was the only attorney general in the United States of America who took that position.

Mr. Pryor once called those who exercised their legal rights against gun dealers and manufacturers ''leftist bounty hunters.'' The list goes on and on.

On environmental protection, Mr. Pryor was the only State attorney general in the country to file a brief with the U.S. Supreme Court arguing that the Constitution does not give Congress the authority to protect waters that provide a habitat for migratory birds.

In another case, he was the only State attorney general to file a brief urging the Supreme Court to declare unconstitutional Federal efforts to protect wildlife on private lands under the Endangered Species Act.

He has written that his ''favorite victory of the 2000 term'' was the Supreme Court ruling in Alexander v. Sandoval, an infamous decision that made it more difficult to bring environmental justice cases under title VI of the Civil Rights Act.

Judge Pryor has served as a recess appointment on the Eleventh Circuit for about a year now. Senator SPECTER, chairman of the Judiciary Committee, whom I respect very much, has now tried to make the case that he would be a moderate, fairminded judge based on 1 year of service, under the glare of spotlights, as people watched every decision handed down. He suggests he is going to change, he is not going to be the old William Pryor, if we give him an appointment to the Eleventh Circuit. He will be less political. Chairman SPECTER said he will be less of an activist.

I am not persuaded. He has not really had an opportunity to rule on the full spectrum of issues he will face in a lifetime on the bench.

There have been only so many cases which he has considered. Some you can consider liberal in his decisionmaking, some conservative, but to take this 1 year of a probationary period, with this close scrutiny, and say that is what he is all about, I think is to overstate the case.

Mr. Pryor and his supporters have a simple strategy to try to convince the Senate to grant him a lifetime position as a Federal judge. Rather than talk about his troubling record or radical views, they focus on his religious affiliation and accuse anyone who questions him of religious discrimination. I think that is wrong.

We should take care and understand what the Constitution says very directly about religion. There are three references, and the three references have really done a good job for America in over 200 years. The first is each person is entitled to his or her religious beliefs. Believe what you want to believe in the name of religion or do not believe anything. That is your right, your freedom of conscience to make that decision.

Secondly, this Government will not establish a church. We are not going to say this is a Christian nation and everything we do will be handled by the standards of Christ's teachings. We cannot do that under our Constitution. We should not do that because of diversity of religious belief.

Finally, that there be no religious test under the Constitution for anyone seeking office, as I mentioned earlier.

I think we have to be careful here about the use of religion in the debate about William Pryor and careful about it as we speak on the floor. It is not Mr. Pryor's ideas about religion that trouble me. It is his views and record on women's right, voting rights, inmates' rights, consumers rights, the constitutional principle of separation of church and State. Time and again, as Alabama attorney general, Mr. Pryor has taken extreme positions, made extreme statements on such a wide range of issues that the 25 to 30 minutes I have spoken here cannot possibly cover it.

He and his supporters say he will be a changed person. He will go through the so-called confirmation conversion. This will be the new William Pryor. Sadly, I believe, given a lifetime appointment, he will revert to form. He will follow the pattern of his life, the pattern of his statements, and the pattern of his beliefs.

Based on review of his record, it is a risk I cannot, in good conscience, take, and I will vote against Mr. Pryor's nomination.

BIG TOBACCO

Mr. DURBIN. Mr. President, on a separate subject, there was a decision reached this week by the Department of Justice which was very troubling. A lawyer sold out his client. It happens all the time. It is wrong, but it happens. What makes this case unique is the lawyer is the Attorney General and the client is the people of America. In a lawsuit that had been brought against the tobacco companies, there was expert testimony to the fact these tobacco companies should pay up to $130 billion over 25 years for lying to the American people and for all the medical expenses their deadly product created. A similar lawsuit was brought by the States not that long ago. So the Department of Justice, slow to begin this process, was taking the tobacco companies to court.

Then, out of the blue, came the following, and this was reported in the press:

After 8 months of courtroom argument, Justice Department lawyers abruptly upset a

landmark civil racketeering case against the tobacco industry yesterday by asking for less than 8 percent of the expected penalty.

Suing for $130 billion, the lawyer for the people of the United States walked into the courtroom this week and said: Oh, we just want $10 billion. The story goes that this Justice Department lawyer, Stephen Brody, even shocked the tobacco company representatives by announcing that he only needed $10 billion over 5 years. The Government's own expert said $130 billion over 25 years. What a discount. Here is the lead from the story:

Government lawyers asked two of their own witnesses to soften recommendations about sanctions that should be imposed on the tobacco industry if it lost a landmark civil racketeering case, one of the witnesses and sources familiar with the case said yesterday.

Matt Myers, a person I know and worked with in the past, said he was asked to basically change his testimony to lighten up on the tobacco companies. He confirmed in this article. The second witness declined comment, but four separate sources familiar with the case said the Justice Department asked the same of him.

By the time the Government opened its racketeering case against tobacco companies last September, it had already spent $135 million to develop its case. Why, at the 11th hour, would the Government's own lawyers, the people's own lawyers, fold under the pressure of the tobacco companies and give away so much potential recovery for the taxpayers of America?

Why would they ignore the advice of their own expert witness to seek a penalty of $130 billion and reduce their demand to $10 billion over 5 years?

Even the lawyer for Philip Morris tobacco company coordinating the case said as follows:

They've gone down—

Meaning the Government, your lawyer, the attorney—

from $130 billion to $10 billion with absolutely no explanation. It's clear the Government hasn't thought through what it's doing.

End of quote from Dan Webb, the lawyer from the tobacco company, who could not believe what he had heard when the Department of Justice walked into the courtroom and said: We are going to deeply discount the amount we are trying to recover.

Why is this money important? There are 45 million smokers in America. Many of them want to quit. The money was going to be used for cessation programs, reducing disease and death in America, and the Bush administration walked away from it, walked away from the vast amount already established in court as the amount necessary to move these programs forward.

In court yesterday, a Philip Morris lawyer tried to explain away the reduced fine by claiming that the Government's case was in disarray. The judge in the case interrupted the tobacco lawyer who was trying to put some credibility into the new position of the Bush administration by saying that was not true.

So what is the reason? Sadly, it is because there is too much political impact by the tobacco lobby on this administration, particularly on Associate Attorney General Robert McCallum, Jr.

Who is he? This is what the L.A. Times said about him:

Before his appointment in the Justice Department . . . he had been a partner at Alston & Bird, an Atlanta-based firm that had done trademark and patent work for R. J. Reynolds Tobacco. In 2002, McCallum signed a friend-of-the-court brief by the administration urging the Supreme Court not to consider an appeal by the Government of Canada to reinstate a cigarette smuggling case against R. J. Reynolds that had been dismissed. The Department's ethics office had cleared McCallum to take part in the case.

Let me point out, in fairness to Mr. McCallum, that he is not the only friend of the tobacco industry in the Bush administration. There are many.

Does this have something to do with the surprise announcement yesterday that the Justice Department was selling out its client, the American people, those addicted to tobacco? That is why Senators LAUTENBERG, KENNEDY, WYDEN, and I have sent a letter to the inspector general of the Justice Department, asking him to investigate this reversal of position by the Attorney General.

Just why in the world has the Attorney General of the United States thrown in the towel, given up, when he was supposed to be fighting for people across America who need this public health assistance?

I think that is a critical and unanswered question, which I hope the inspector general will address.

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

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

Mr. SHELBY. Mr. President, I rise today to express my strong support for the nomination of Bill Pryor, to serve on the United States Court of Appeals for the Eleventh Circuit.

I have known Bill for many years and have the highest regard for his intellect and integrity. He is an extraordinarily skilled attorney with a prestigious record of trying civil and criminal cases in both the Federal and State courts. He has also argued several cases before both the Supreme Court of the United States and the supreme court of the State of Alabama.

As the Attorney General of the State of Alabama, Judge Pryor established a reputation as a principled and effective legal advocate for the State and distinguished himself as a leader on many important State issues. During his tenure as Attorney General, it was his duty and obligation to represent and defend the laws and interests of the State of Alabama. And while he may not have always agreed with those laws, he consistently fulfilled his responsibility dutifully and responsibly.

Long before being nominated to the Eleventh Circuit, Judge Pryor made it a priority to be open and honest about his personal beliefs, which is what voters expect from the persons whom they elect to represent them. Yet he has shown again and again that when the law conflicts with his personal and political beliefs, he follows the law as articulated by the Constitution and the Supreme Court.

Despite his detractors, I believe it is important to note that actions speak louder than words, and certainly, Judge Pryor's actions since joining the Eleventh Circuit speak volumes about his fairness and impartiality. During his brief tenure on the Court, Judge Pryor has authored several opinions that effectively demonstrate his willingness to protect the rights of those often overlooked in the legal system.

In light of all of the information that has been presented here today, I believe that we must confirm Judge Pryor. Bill Pryor is a man of the law and that is what we need in our Federal judiciary. Whether as a prosecutor, a defense attorney, the Attorney General of the State of Alabama, or a Federal judge, he understands and respects the constitutional role of the judiciary and specifically, the role of the Federal courts in our legal system. Indeed, I have no doubt that he will make an exceptional Federal judge because of the humility and gravity that he brings to the bench. I am also confident that he will serve honorably and apply the law with impartiality and fairness—just as he has done during his brief tenure on the Eleventh Circuit.

I again encourage my colleagues to support Judge Pryor's nomination because I believe it is what is right for our people, and it is what is right for our country.

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

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

Mr. CHAMBLISS. Mr. President, I rise today in support of the nomination of Judge William Pryor to the Eleventh Circuit Court of Appeals.

I would like to respond to the accusations by some of my colleagues concerning Bill Pryor's comments related to Section 5 of the Voting Rights Act. Judge Pryor has an outstanding record on civil rights and a demonstrated commitment to seeking equal justice for persons of all races.

Nevertheless, some of my colleagues on the other side have tried to characterize Bill Pryor as ''out of the mainstream'' because, as you have heard, he has called for the amendment of Section 5 of the Voting Rights Act.

Judge Pryor is not out of the mainstream on this issue, and I'll explain why.

After you hear who agrees with Judge Pryor on his reasoning here, I think you will agree with me that if Bill Pryor is ''out of the mainstream'' on his critiques of Section 5 of the Voting Rights Act, he's ''out there'' with some great Americans.

First, let me explain what Section 5 of the Voting Rights Act is about. Section 5 requires any ''covered States''—States that are subject to the Voting Rights Act—to pre-clear any decision to change ''any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting.''

The Supreme Court in Allen v. State Board of Elections has made it clear that the:

legislative history on the whole supports the view that Congress intended to reach any State enactment which altered the election law of a covered State in even a minor way.

In practice, this means that Section 5 requires Federal officials at the Department of Justice to approve even very minor practices related to voting.

For example, if a State moved a polling place from one side of a street to another, this action would have to be pre-cleared by the Justice Department pursuant to Section 5.

Bill Pryor has called the Voting Rights Act ''one of the greatest and most necessary laws in American history,'' but he has taken to task Federal courts that have ''turned the Act on its head and wielded . . . power to deprive all voters of the right to select . . . public officers,'' even though the Act ''was passed to empower minority voters in the exercise of the franchise.''

As Alabama Attorney General, Bill Pryor was by no means alone in his criticisms of the Section 5 of the Voting Rights Act.

In a brief before the Supreme Court in the case of Georgia v. Ashcroft, Thurbert Baker, our State Attorney General in Georgia, who himself is a Democrat and African-American, called Section 5 an ''extraordinary transgression of the normal prerogatives of the states'' and ''a grave intrusion into the authority of the states.''

General Baker also stated that:

Section 5 was initially enacted as a ''temporary'' measure to last five years precisely because it was so intrusive.

Mr. President, I ask unanimous consent to have a copy of a letter that General Baker wrote back in 2003 to Senators SHELBY and SESSIONS of Alabama, in which General Baker describes Bill Pryor as ''an excellent candidate for a slot on the 11th Circuit Court of Appeals,'' printed in the RECORD.

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

DEPARTMENT OF LAW,
Atlanta, GA, March 31, 2003.

Hon. RICHARD SHELBY,
U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. JEFF SESSIONS,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATORS: I have had the great pleasure of knowing and working with Bill Pryor over the past five years. Through the National Association of Attorneys General, Bill and I have worked together on matters of mutual concern to Georgia and Alabama. During that time, Bill has distinguished himself time and again with the legal acumen that he brings to issues of national or regional concern as well as with his commitment to furthering the prospects of good and responsive government.

During his tenure as Attorney General, Bill has made combating white-collar crime and public corruption one of the centerpieces of his service to the people of Alabama. He joined the efforts of Attorneys General around the country in fighting the rising tide of identity theft, pushing through legislation in the Alabama legislature making identity theft a felony in Alabama. Bill has fought to keep law enforcement in Alabama armed with appropriate laws to protect Alabama's citizens, pushing for tough money laundering provisions and stiff penalties for trafficking in date rape drugs.

Time and again as Attorney General, Bill has taken on public corruption cases in Alabama, regardless of how well-connected the defendant may be, to ensure that the public trust is upheld and the public's confidence in government is well-founded. He has worked with industry groups and the Better Business Bureau to crack down on unscrupulous contractors who victimized many of Alabama's more vulnerable citizens.

From the time that he clerked with the late Judge Wisdom of the 5th Circuit to the present, though, the most critical asset that Bill Pryor has brought to the practice of law is his zeal to do what he thinks is right. He has always done what he thought was best for the people of Alabama. Recognizing a wrong that had gone on far too long, he took the opportunity of his inaugural address to call on an end to the ban on inter-racial marriages in Alabama law. Concerned about at-risk kids in Alabama schools, he formed Mentor Alabama, a program designed to pair volunteer mentors with students who needed a role model and an attentive ear to the problems facing them on a daily basis.

These are just a few of the qualities that I believe will make Bill Pryor an excellent candidate for a slot on the 11th Circuit Court of Appeals. My only regret is that I will no longer have Bill as a fellow Attorney General fighting for what is right, but I know that his work on the bench will continue to serve as an example of how the public trust should be upheld.

Sincerely,

THURBERT E. BAKER.

Mr. CHAMBLISS. General Baker goes on in his letter to my colleagues from Alabama to say:

My only regret is that I will no longer have Bill as a fellow Attorney General fighting for what is right, but I know that his work on the bench will continue to serve as an example of how the public trust should be upheld.

Judge Pryor's concerns about Section 5 have been borne out in Georgia, where the State appealed to the Supreme Court in Georgia v. Ashcroft to have a recent redistricting plan approved following the 2000 decennial census, and after a Federal district court found that Georgia's plan violated Section 5.

During the litigation in the district court, Congressman JOHN LEWIS, a hero of the civil rights movement, testified on behalf of the State of Georgia in support of the plan, noting that Georgia:

is not the same state it was. It's not the same state that it was in 1965 or in 1975, or even in 1980 or 1990. We have changed. We've come a great distance.

JOHN LEWIS knows that thoughtful review of Section 5 could be of some benefit.

According to the New York Times, Georgia's plan, pushed by both ''white and black Democrats,'' represented an attempt:

to reverse [a] trend in Georgia and elsewhere by redistributing some of the black voters and re-integrating suburban districts to gain a better chance of electing Democrats.

That is a quote from a New York Times article of January 18, 2003 at A12.

The New York Times further notes that Georgia currently has:

some safe Democratic districts with large black majorities, along with a sharply increased number of Republicans elected from suburban districts that had become increasingly white.

In his brief in Georgia v. Ashcroft, Georgia Attorney General Thurbert Baker cited his own election as an example of how African-American candidates can take ''the overwhelming majority of the total vote against their white opponents'' without the benefit of supermajority districts.

The Federal Government opposed Georgia's plan on the ground that Section 5 does not give Georgia the power to eliminate supermajority minority legislative districts, even in the name of increasing overall minority voting power.

Section 5 has not only placed a burden on covered States, but also on the Justice Department, which has wasted time by being forced to pre-clear a huge number of changes in voting practices that have nothing to do with minority voting rights.

Section 5 requires covered states to pre-clear any decision to change:

any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting.

Again, the Supreme Court has made it clear that the:

legislative history on the whole supports the view that Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way.''

That statement is included in *Allen* v. *State Board of Elections*, 393 U.S. 544, 566.

For example, if a State moved a polling place from one side of a street to another, this action would have to be pre-cleared by the Justice Department pursuant to section 5, which indicates that ''any change in the boundaries of voting precincts or in the location of polling places'' requires pre-clearance.

Another great American, the late U.S. Supreme Court Justice Lewis

Powell also criticized section 5 of the Act.

President Clinton has called Justice Powell ''one of our most thoughtful and conscientious judges'' and a Justice who reviewed cases ''without an ideological agenda.''

In 1973, in another case styled as Georgia v. United States, Justice Powell wrote in a dissenting opinion that:

It is indeed a serious intrusion, incompatible with the basic structure of our system, for federal authorities to compel a state to submit its [reapportionment] legislation for advance review [under section 5].

The most important point I would like to stress is that despite Mr. Pryor's well-documented concerns about Section 5 of the Voting Rights Act, he has vigorously enforced all provisions of the Act.

Let me give you two examples. First, when Alabama state legislator J.E. Turner died and the new candidate wanted to use stickers to place his name on the ballot, Attorney General Pryor issued an opinion stating that the use of stickers required pre-clearance under Section 5 of the Act. Certainly this illustrates that Bill Pryor was able to separate his personal disagreement with the requirements of Section 5 from his duty as Alabama's Attorney General to enforce the provision despite his personal views.

A second example involved Mr. Pryor's successful defense of several majority-minority voting districts, approved under Section 5, from a challenge by a group of white Alabama voters in the Sinkfield v. Kelley case. The voters, who were residents of various majority-white voting districts, sued the State of Alabama in Federal court, claiming that Alabama's voting districts were the product of unconstitutional racial gerrymandering.

The districts were created under a state plan whose acknowledged purpose was the maximization of the number of majority-minority districts in Alabama. Attorney General Pryor personally defended the majority-minority districts all the way to the U.S. Supreme Court, which held that the white voters could not sue because they did not reside in the majority-minority district and had not personally been denied equal treatment.

When some of these provisions of the Voting Rights Act are up for renewal, we should review and consider them in a very deliberative, bipartisan manner to make sure that the law today reflects the realities of our society here in the 21st Century.

Thurbert Baker and Bill Pryor, as attorneys general of two neighboring states in the South, know this to be the case one is African-American and one is white; one is a Democrat and the other is a Republican, but together they share a vision of making the voting rights laws of our country effective and enforceable in today's times.

To sum up, Bill Pryor has established an impressive record as a fair, diligent, and competent public servant. Two of my fellow Georgians, John Lewis and Thurbert Baker, have expressed concerns with Section 5 of the Voting Rights Act, just as Bill Pryor did and just as the late Justice Lewis Powell did.

This is not out-of-the-mainstream thinking; it's thoughtful and sincere analysis.

Even the liberal New York Times had to concede as much in its comments regarding Georgia's redistricting plan.

Bill Pryor's nomination to the Eleventh Circuit enjoys strong bipartisan support in his home State of Alabama, and in my home State, which is also part of the Eleventh Circuit.

A month ago, I visited with a number of my district court judges, all of whom said that in their contact with the Eleventh Circuit Court of Appeals, they had nothing but great things to say about the job Bill Pryor is doing as an interim appointee to the Eleventh Circuit. I urge my colleagues to vote in favor of his confirmation today.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I am here to speak on the nomination of William Pryor to the Eleventh Circuit. Bill Pryor's nomination is the last of the three covered by the deal worked out by 14 of our colleagues to avoid meltdown in the Senate.

Yesterday was the vote on Janice Rogers Brown. It was a sad vote. Not a single Republican Senator broke with his or her party to vote against a nominee whom even the National Review, George Will, and others singled out for her judicial activism and radicalism. It showed again that the other side is willing to march in almost total lockstep with the President. If they had their way, the Senate would be a complete rubberstamp for any nominee the President proposes—totally against what the Founding Fathers intended this Senate to be.

The count is 2,921 to 2. Out of almost 3,000 votes on appellate court nominees, 44 in all, only twice have Republican Senators dared to deviate from the party line. Is that the kind of independent thinking that an up-or-down vote entails? It is a sad day, indeed. For sure, Janice Rogers Brown's views do not mirror those of most of my colleagues or even come close.

In a moment, I will go through all the reasons I am opposed to Judge Pryor's nomination and all the things he said with which I strongly disagree. Here is one I agree with. In his testimony before the Senate in 1997, Judge Pryor told Senators, ''Your role of advice and consent in judicial nominees cannot be overstated.'' On this point, Judge Pryor and I see eye to eye.

As we await a slew of new nominations from the President, as we await the possible retirement of a Supreme Court Justice, and as we vote on the current nominees in the wake of an agreement that specifically urged President Bush to consult the Senate in advance of nominations, I again plead with the President and my colleagues to look to the future. Look to a future where harmony can replace acrimony in the Senate, where bipartisanship can replace one-upmanship, and where discourse can replace demagoguery. How can that be done? It is very simple. The President can, as he said he would in a recent press conference, consult meaningfully with Senators before trying to jam extreme nominees down our throats.

The renomination of Bill Pryor was the most breathtaking example of the President's ignoring checks and balances and bypassing the Senate's role in the nomination and confirmation process. The President stuck a thumb in the eye of bipartisanship when he renominated people like Janice Rogers Brown, Priscilla Owen, and Richard Myers after they were rejected by the Senate.

But the President did not get his way with William Pryor, and then he took the truly extraordinary step of making a recess appointment. While the renomination of rejected judges was a thumb in the eye to bipartisanship, the recent appointment of Bill Pryor was a punch in the face. This was particularly outrageous because not only is Bill Pryor one of the most ideologically driven nominees we have ever seen but also because there were questions about his credibility with the committee, and there was an unfinished investigation regarding the Republican Attorney General Association that he founded.

It is not enough for him or any other nominee to simply say: I will follow the law. His views are too well known. His record is clear about how he will vote as a judge. We all know that judging is not a rote process. We all know our own individual values and thoughts influence how we interpret the law. If it were just by rote, we would have computers on the bench instead of men and women in black robes. There is a degree of subjectivity, especially in close cases and controversies on hot-button issues. It is hard to believe that the incredibly strong ideological bent of this nominee will not have an impact on how he rules.

As my colleagues know, I have no litmus test when it comes to nominees. I am sure most of this President's judicial nominees have been pro-life, but I voted for so many of them because I have been persuaded they are committed to upholding the rule of law. I, for one, believe a judge can be pro-life and yet be fair and balanced and uphold the woman's right to choose. But for a judge to set aside his or her own personal views, the commitment to the rule of law must clearly supersede his or her personal agenda. That is a trick some can pull off. Not everybody can.

Let's take a moment to review some of the more radical remarks William Pryor has made and some of the more polemical positions he has taken. On criminal justice issues, I tend to be conservative. I tend to agree with most

of my Republican colleagues. But there are lines which should not be crossed.

William Pryor defended his State's practice of handcuffing prisoners to hitching posts in the hot Alabama Sun for 7 hours without even giving them a drop of water to drink, and then he criticized the Supreme Court—hardly a liberal court—when it held this practice violated the eighth amendment ban on cruel and unusual punishment. We do have standards. We are not a medieval society, even for those of us who believe in tough punishment. What Pryor did, he goes far, too far, to say the least. In criticizing the Supreme Court's decision, he accused the Justices of applying their own subjective views on appropriate methods of prison discipline. The Supreme Court, which I believe was unanimous—or maybe 8 to 1—in rejecting William Pryor's view, was far more appropriate than he was.

He also called the Supreme Court's decision in Miranda—something that is part of judicially accepted law—one of the worst examples of judicial activism.

He has vigorously opposed the exemption of retarded defendants from being executed. He submitted an amicus brief to the Supreme Court in Atkins v. Virginia, and he argued that mentally retarded individuals should be subjected to the death penalty like anyone else.

When issues have been raised about the fair and just administration of punishment, particularly in some of these cases, Mr. Pryor's reaction has been to scoff.

When asked what steps Alabama would take to ensure that the death penalty was fairly applied—and I have supported the death penalty—regardless of the defendant's race, he said:

> I would hate for us to judge the criminal justice system in a way where we excuse people from committing crimes because, well, we have imposed enough punishment on that group this year, and that's precisely what you are being asked to think of with that kind of analysis.

It is ridiculous. The analysis simply said, don't take race into account. This is a judge who will be fair and impartial and open to advocates' positions on both sides of an issue?

How about States rights? Mr. Pryor has been one of the staunchest advocates of efforts to roll back the clock, not just to the 1930s but to the 1890s. He is an ardent supporter of an activist Supreme Court agenda cutting back Congress's power to protect women, workers, consumers, the environment, and civil rights.

As Alabama's attorney general, Mr. Pryor filed the only amicus brief from among the 50 States. Only 1 attorney general out of all 50 filed a brief urging the Supreme Court to undo significant portions of the Violence Against Women Act. I am a proud author of that act. I carried the bill in the House when I was a Congressman. And to be so opposed to preventing women from being beaten by their husbands and taking remedies to deal with women who are so beaten makes no sense to me.

In commenting on that law, Pryor said:

> One wonders why [VAWA] enjoys such political support, especially in the Congress.

One wonders why it enjoys such support when, for the first time, we in Washington, hailed by Republicans and Democrats, started trying to help women who were beaten by their husbands? When they used to go to certain police stations, they were told—not out of malice but out of ignorance—go home, it is a family matter; whose children had watched them be hit? And he cannot understand why it enjoys such political support? He is not the kind of man I want on the court of appeals.

How about child welfare? Bill Pryor's ardent support of States rights extends even to the realm of child welfare. At the same time he was conceding that Alabama had failed to fulfill the requirements of a Federal consent decree regarding the operation of a child's welfare system, he was demanding his State be let out of the deal.

On environment, we have more of the same concerns. Pryor was the lone attorney general to file an amicus brief arguing the Constitution does not give the Federal Government power to regulate interstate waters as a habitat for migratory concerns.

When it comes to disabilities, contrast Mr. Pryor's approach with the approach he took in Bush v. Gore. Bill Pryor was the lone State attorney general to file an amicus brief supporting the Supreme Court's intervention in Florida's election dispute. Every other attorney general, Democrat and Republican, had the sense to stay out of this dispute. Not Mr. Pryor.

Yet when it came to the ADA, the disabilities act, Mr. Pryor was the driving force behind the case in which a nurse contracted breast cancer, took time off to deal with her illness, and when she returned—in violation of the ADA—she found that she was demoted.

In conclusion, Mr. Pryor is extreme. Again, why is he, over and over again, 1 of the 50 attorneys general—there are a lot of conservative attorneys general—to file these briefs? Why is he, on things that are part of the mainstream of American feelings and jurisprudence—environment, Americans With Disabilities Act—way over?

Why did he say:

> I will end with my prayer for the next administration. Please, God, no more Souters?

That is what he said before the Federalist Society, a Republican appointee to the bench. The man is clearly an ideologue. The man does not respect the rule of law in too many instances.

As I have said before, Bill Pryor is a proud and distinguished ideological warrior. But ideological warriors, whether from the left or from the right, are bad news for the bench. They tend to make law, not interpret law. That is not what any of us should want from our judges. Ideological warriors, whether from the left or the right, do not belong on courts of appeals.

I will suggest that you do not need to take my word for it. Here is what Grant Woods, the former attorney general of Arizona, and a conservative Republican, said of Mr. Pryor: While I would have great question of whether Mr. Pryor has an ability to be nonpartisan, I would say he was probably the most doctrinaire and partisan attorney general I have dealt with in 8 years. So I think people would be wise to question whether or not he is the right person to be nonpartisan on the bench.

I could not have said it better myself.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Iowa.

Mr. HARKIN. Mr. President, I am here to speak again, as so many before me, on the nomination of William Pryor to the Eleventh Circuit Court of Appeals.

Now, we have heard many concerns and complaints about Mr. Pryor. We have heard that Mr. Pryor cost his State millions of dollars when he refused to join litigation seeking to hold tobacco companies accountable for the cost of smoking because he believes that ''smokers, as a group, do not impose the cost of their habit on the government'' and, listen to this, that the premature deaths of smokers actually save the Government the cost of ''Social Security, pensions, and nursing home payments.''

We have heard about Mr. Pryor's vigorous defense of Alabama's use of the hitching post as a punishment, a practice the Supreme Court held to be cruel and unusual punishment.

So there has been a lot of talk about different things about Mr. Pryor and what he has stood for, but I am here specifically to talk about Mr. Pryor's persistent, repeated efforts to eliminate the ability of people with disabilities to receive equal treatment in our society. I am here to talk about this nominee's hostility toward the Americans with Disabilities Act.

Most of my colleagues know that I had a brother who was deaf. Through his eyes, my family and I saw firsthand what discrimination against persons with disabilities looks like. It was, and still is, very real.

When we in Congress sought to remedy this history of discrimination, we spent years laying out, piece by piece, a legislative record fully documenting the overwhelming evidence that discrimination against people with disabilities in America was rampant. At the time we passed this bill, we took care to make sure that this important civil rights law had the findings and the constitutional basis to pass muster with the Supreme Court. The signing of the ADA was the culmination of a monumental bipartisan effort that sought to right decades worth of wrongs.

So what did William Pryor have to say about this bill that was signed by

President Bush in 1990, supported overwhelmingly by the American people, supported overwhelmingly by both Republicans and Democrats in the Senate and the House? What did he have to say about it? In the case of Board of Trustees of the University of Alabama v. Garrett, he argued that Congress did not identify ''even a single instance of unconstitutional conduct'' to support the Americans with Disabilities Act.

This is complete and utter nonsense. We documented it, hundreds and hundreds and hundreds of cases of unconstitutional discrimination against people with disabilities—cases of the forced sterilization of people with disabilities, the denial of educational opportunities, unnecessary institutionalizations, among others.

Mr. Pryor has made no secret of the fact that he does not believe we in Congress have the power to pass laws to protect people from discrimination. He has worked hard to find cases with which to challenge the power of Congress to protect victims of domestic violence, victims of age discrimination, and women seeking to take maternity leave under the Family and Medical Leave Act. He has also repeatedly filed cases challenging Congress's authority to allow Americans with disabilities to live full and productive lives under the Americans with Disabilities Act.

Now, some of my colleagues may remember that 2 years ago I stood on this floor and asked Senators to oppose the nomination of Jeffrey Sutton because Mr. Sutton had devoted a significant portion of his legal career to trying to have the Americans with Disabilities Act and other laws designed to protect Americans from discrimination declared unconstitutional. At that time, many of my colleagues on the other side of the aisle argued that Jeffrey Sutton should be confirmed because he was simply doing the work on behalf of his client. Well, guess who his client was. The client was William Pryor, then-attorney general of Alabama.

It is hard to imagine any other nominee with such a record of aggressive negative activism. Given the record of William Pryor, it is impossible to imagine that someone with a disability rights or civil rights claim will get a fair decision by him.

So I cannot support putting someone on a Federal circuit court who has gone out of his way and worked hard affirmatively to undermine the Americans with Disabilities Act. And that is what he has done.

Mr. President, I have a list of 68 groups, disability-related groups. They represent the interests of individuals with disabilities, both nationally and some in States. I ask unanimous consent that the list of these 68 organizations, along with a few letters from a number of the groups, be printed in the RECORD.

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

DISABILITY COMMUNITY OPPOSITION TO PRYOR

NATIONAL

AAPD
ACCESS FOR AMERICA
ADA WATCH
Bazelon Center for Mental Health Law
National Association of the Deaf (NAD)
National Coalition on Self Determination, Inc.
National Disabled Students Union (NDSU)
National Council on Independent Living (NCIL)
United Spinal (formerly Eastern Paralyzed Veterans)
World Association of Persons with Disabilities

ALABAMA

Independent Living Center of Birmingham, Alabama
Center for Independent Living of Jasper, Alabama

ALASKA

Southeast Alaska Independent Living

ARIZONA

Arizona Bridge to Independent Living (ABIL) of Phoenix, AZ
Services Maximizing Independent Living and Empowerment (SMILE) of Yuma, AZ
New Horizons Independent Living Center, (Prescott Valley, AZ)

CALIFORNIA

California Council of the Blind
California Democratic Party Disabilities Caucus
Disability Resource Agency for Independent Living, (Stockton, CA)
Independent Living of Southern California
Independent Living Center, Claremont, CA (Claremont, CA)
Independent Living Resource Center of San Francisco, CA
Independent Living Resource Center, Ventura, CA (Ventura, CA)
Placer Independent Resource Services
Southern California Rehabilitation Services
California Foundation for Independent Living Centers (CFILC)

COLORADO

Center for Independence Grand Junction (Grand Junction, CO)

FLORIDA

Access Now
Center for Independent Living of South Florida (Miami, FL)
Self Reliance, Inc. (Tampa, FL)

IDAHO

Disability Action Center NW, Inc. (Coeur D'Alene, ID)

ILLINOIS

Center for Independent Living of Illinois/Iowa
Lake County Center for Independent Living
Illinois Network of Centers for Independent Living

IOWA

Center for Independent Living of Illinois/Iowa

KANSAS

Southeast Kansas Independent Living Resource Center (SKIL)
Prairie Independent Living Resource Center (PILR), Hutchinson KS
Cherokee County Advocacy Group

KENTUCKY

Kentucky Disabilities Coalition

MAINE

Maine Developmental Disabilities Council

MARYLAND

Eastern Shore Center for Independent Living, (Cambridge, MD)
The Freedom Center (Frederick, MD)

MASSACHUSETTS

Stavros Center for Independent Living (Amherst, MA)

MISSISSIPPI

Mississippi Statewide Independent Living Council
Mississippi Coalition for Citizens with Disabilities

MONTANA

Summit Independent Living Center, Inc., (Missoula, MT)
Living Independently for Today and Tomorrow, (Billings, MT)

NEW JERSEY

Center for Independent Living of South Jersey (Westville)
Heightened Independence and Progress (Hackensack)

NEW YORK

ARISE (Syracuse)
Southern Tier Independence Center (Binghamton)
The Genesee Region Independent Living Center (Batavia, NY)
Northern Regional Center for Independent Living (Watertown)

OHIO

The Ability Center of Defiance, OH
The Ability Center of Greater Toledo (Sylvania)
Tri-County Independent Living, (Akron, OH)

OREGON

Disability Advocacy for Social and Independent Living (DASIL), (Jackson County, OR)

PENNSYLVANIA

Pennsylvania Statewide Independent Living Council
Pennsylvania Council for the Blind

SOUTH CAROLINA

Disability Resource Center, (North Charleston, SC)

TENNESSEE

Tennessee Disability Coalition

TEXAS

Houston Area Rehabilitation Association
ABLE Center for Independent Living, (Odessa, TX)

VIRGINIA

Disabled Action Committee, Dale City, VA

WEST VIRGINIA

Fair Shake Network (Institute, WV)
Mountain State Centers for Independent Living (Huntington)

WISCONSIN

Options for Independent Living (Green Bay, WI)

Unknown: Options Center for Independent Living—Illinois or MN/ND?

ADA WATCH, NATIONAL COALITION FOR DISABILITY RIGHTS,
Washington, DC, June 10, 2004.

Hon. PATRICK LEAHY.

DEAR SENATOR LEAHY: ADA Watch is an alliance of hundreds of disability and civil rights organizations united to protect the Americans with Disabilities Act (ADA) and the civil rights of people with disabilities. The disability community is opposed to the confirmation of Alabama Attorney General William Pryor because we do not believe a person with a disability would receive a fair hearing from a ''Judge Pryor.''

Pryor has demonstrated a commitment to extremism rather than to justice. Pryor's right-wing ideology is far outside the mainstream of American legal thought. Pryor has led the battle to undo the work of a democratically-elected Congress to legislate federal protections for American citizens. Despite widespread bipartisan support for the

Americans with Disabilities Act (ADA), Pryor said he was ''proud'' of his role in weakening the ADA and ''protecting the hard-earned dollars of Alabama taxpayers when Congress imposes illegal mandates on our state.

William Pryor, nominated to the U.S. Court of Appeals for the Eleventh Circuit, has been a leader in the effort to limit congressional power to enact laws protector civil rights. Pryor has prevailed in a series of 5–4 cases before the Supreme Court that have curtailed civil rights, including the *Board of Trustees of Alabama* v. *Garrett*, which successfully challenged the constitutionality of applying the Americans with Disabilities Act of 1990 to states as employers.

Pryor argued that the protections of the ADA were ''not needed'' to remedy discrimination by states against people with disabilities. This decision prevents persons with disabilities from collecting monetary damages from state employers. Most significantly, it has resulted in fewer attorney being willing to represent individual in ADA cases against state employers. Despite the massive record of egregious conduct toward individuals with disabilities by states that Congress has compiled—including instances of forced sterilization of individuals with disabilities, unnecessary institutionalization, denial of education, and systemic prejudices and stereotyping perpetrated by state actors—Pryor argued that states were actually in the forefront of efforts to protect the rights of individuals with disabilities.

Pryor is a leading architect of the recent ''states' rights'' or ''federalism'' movement to limit the authority of Congress to enact laws protecting individual and other rights. He is among those fighting to eliminate federal protections and leave us with a patchwork of uneven civil rights protections dependent on an individual's zip code.

Sincerely,

JIM WARD.

OPPOSITION TO CONFIRMATION OF NOMINEE WILLIAM H. PRYOR, JR. TO U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The National Association of the Deaf (NAD) is opposed to the confirmation of nominee William H. Pryor, Jr., to the U.S. Court of Appeals for the Eleventh Circuit.

Currently the Attorney General for the State of Alabama, Pryor is a ''states' rights'' and ''federalism'' ideologue, a leader in the movement to limit the authority of Congress to enact laws protecting individual civil rights. Pryor has fought aggressively against the Americans with Disabilities Act (ADA) and other laws that protect Americans with disabilities and other minorities.

The NAD is opposing Pryor because of his outspoken activism against federal civil rights protections for people with disabilities and other minorities. His commitment is to ideology, not to justice.

Established in 1880, the NAD is the nation's oldest and largest nonprofit organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans across a broad range of areas including education, employment, health care, and telecommunications.

The NAD is a dynamic federation of 51 state association affiliates including the District of Columbia, organizational affiliates, and national members. Primary areas of focus include grassroots advocacy and empowerment, policy development and research, legal assistance, captioned media, information and publications, and youth leadership.

KELBY N. BRICK,
Associate Executive Director, National Association of the Deaf Law and Advocacy Center.

ILLINOIS/IOWA CENTER FOR INDEPENDENT LIVING,
Rock Island, IL, July 21, 2003.

Please note that the Illinois/Iowa Center for Independent Living opposes the nomination for William Pryor. We strongly feel that Mr. Pryor and his record as the Attorney General in Alabama does NOT support nor represent the millions of people with disabilities or their basic civil rights. Please know that we will do all we can to see that his nomination is stopped! Thank you for your cooperation and help!

SUSAN A. SACCO.

THE ABILITY CENTER OF GREATER TOLEDO,
Sylvania, OH, July 14, 2003.

TO THE SENATE JUDICIARY COMMITTEE: The Ability Center of Greater Toledo expresses its adamant opposition to the nomination of William Pryor to the U.S. Court of Appeals for the Eleventh Circuit. Our opposition is based on his record as an attorney, as an Attorney General and on his comments made publicly which represent his personal views.

Mr. Pryor's professional position in cases such Garrett v. Alabama, and Alexander v. Sandoval, to name a few, indicate a distinct inclination toward the protection of states from individual's attempt to protect themselves under federal civil rights laws. The results of cases like these seriously weaken the enforcement of laws like the Americans with Disabilities Act and therefore seriously affect the independence and quality of life of American citizens with disabilities.

Mr. Pryor's publicly declared notion that the ADA was not needed, that there was no pattern of discrimination by the states, that Congress therefore had no authority to enact its protections, flies in the face of the thousands of cases of discrimination identified by Congress. His attitudes are a slap in the face of American citizens who were forced to be sterilized, institutionalized and otherwise denied access to places and things that able-bodied people take for granted. The passage of the ADA opened doors, literally and figuratively, to thousands of individuals to live, work and play when and where they chose. Unfortunately there continues to be defiance and ignorance of employers, businesses and government entities regarding the right to access and opportunity granted to all citizens. The ADA, and other civil rights legislation, is the only defense people with disabilities can call on to realize their independence and potential. There is no other protection or defense.

The Ability Center asks that you oppose this nomination as a statement that the civil rights of all U.S. citizens are a priority above all else. Oppose the nomination to send a message that any judicial candidate who demonstrates, in word and deed, extreme ideology is not an appropriate choice for the judicial bench. Oppose the nomination because it is a lifetime appointment and that such an appointment represents a serious and real threat to millions of citizens with disabilities. Appoint individuals to the federal court system who have demonstrated an ability to interpret the law without bias and extreme ideologies. This is not William Pryor.

Sincerely,

SUSAN HETRICK,
Advocacy Director.

HEIGHTENED INDEPENDENCE AND PROGRESS,
Hackensack, NJ, July 14, 2003.

Heightened Independence and Progress (hip) Center for Independent Living strongly opposes the confirmation of William Pryor to the U.S. Court of AppeaIs for the Eleventh Circuit.

People with disabilities have worked long and hard to bring about the Americans with Disabilities Act (ADA) and rely on the Act's protections to ensure that employers, schools, governmental entities and business both large and small do not discriminate against anyone because of a disability.

William Pryor has taken positions about ADA related cases that cause disability advocates to have serious concerns about his ability to be objective in such cases. We strongly urge that William Pryor not be confirmed to a position on the Eleventh Circuit Court of AppeaIs.

NANCY HODGINS,
Advocacy Coordinator.
EILEEN GOFF,
Executive Director.

JUNE 10, 2003.

DEAR SENATOR LEAHY: The disability community is opposed to the confirmation of Alabama Attorney General William Pryor because we do not believe a person with a disability would receive a fair hearing from a ''Judge Pryor.''

Why?

Pryor has demonstrated a commitment to extremism rather than to justice. Pryors right-wing ideology is far outside the mainstream of American legal thought.

William Pryor, nominated to the U.S. Court of Appeals for the Eleventh Circuit, has been a leader in the effort to limit congressional power to enact laws protecting civil rights. Pryor has prevailed in a series of 5–4 cases before the Supreme Court that have curtailed civil rights, including the Board of Trustees of Alabama v. Garrett, which successfully challenged the constitutionality of applying the Americans with Disabilities Act of 1990 to states as employers.

Pryor argued that the protections of the ADA were ''not needed'' to remedy discrimination by states against people with disabilities. This decision prevents persons with disabilities from collecting monetary damages from state employers. Most significantly, it has resulted in fewer attorneys being willing to represent individuals in ADA cases against state employers. Despite the massive record of egregious conduct toward individuals with disabilities by states that Congress had compiled—including instances of forced sterilization of individuals with disabilities, unnecessary institutionalization, denial of education, and systemic prejudices and stereotyping perpetrated by state actors—Pryor argued that states were actually in the forefront of efforts to protect the rights of individuals with disabilities.

Pryor has led the battle to undo the work of a democratically-elected Congress to legislate federal protections for American citizens. Despite widespread bipartisan support for the Americans wilh Disabilities Act, (ADA). Pryor said he was ''proud'' of his role in ''protecting the hard-earned dollars of Alabama taxpayers when Congress imposes illegal mandates on our state.''

Pryor is a leading architect of the recent ''states' rights'' or ''federalism'' movement to limit the authority of Congress to enact laws protecting individual and other rights. He is fighting to reverse the results of our nation's civil war and leave us with a patchwork of uneven civil rights protections dependent on an individual's zip code.

He personally has been involved in key Supreme Court cases that, by narrow 5–4 majorities, have restricted the ability of Congress to protect Americans' rights against discrimination and injury based on disability, race, and age. Worse, he has urged

the Court to go even further than it has in the direction of restricting congressional authority. Just last month, for example, the Court, in an opinion by Chief Justice Rehnquist, rejected Pryor's argument that the states should be immune from lawsuits for damages brought by state employees for violation of the federal Family and Medical Leave, Act.

VICTORIA WOLF,
Assistive Technology Specialist, Disability Resource Agency for Independent Living.

EASTERN PARALYZED VETERANS ASSOCIATION,
Jackson Heights, NY, July 14, 2003.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR ORRIN G. HATCH: The Eastern Paralyzed Veterans Association strongly opposes the confirmation of William Pryor to the Eleventh U.S. Circuit Court of Appeals. In the past, Mr. Pryor's attempts to limit Congressional authority in the area of disability rights have directly undermined the protections given to people with disabilities through the Americans with Disabilities Act (ADA) and other disability rights laws.

In *Board of Trustees of University of Alabama* v. *Garrett,* Mr. Pryor formulated the argument that Congress did not have the authority under the Constitution to apply the ADA to States in employment discrimination suits for damages. Additionally, Pryor successfully persuaded in 5–4 majority of the Supreme Court in *Alexander* v. *Sandoval* that individuals cannot sue to enforce regulations under Title VI of the Civil Rights Act of 1964. Since the decision was issued states have begun to use its reasoning in efforts to persuade the courts that people with disabilities should not be allowed to enforce regulations under the ADA and Section 504 of the Rehabilitation Act requiring reasonable accommodations, integration of individuals with disabilities, and accessible public housing.

Mr. Pryor's positions in these and other cases (i.e., *Pennsylvania Department of Corrections* v. *Yeskey* and *California Board of Medical Examiners* v. *Hason*) clearly represent an interpretation of the Equal Protection Clause, Spending Clause, and Commerce Clause that would dramatically restrict Congress's authority and hinder its ability to pass laws protecting the rights of Americans with disabilities, older workers, and others under the Constitution. For this reason, Eastern Paralyzed Veterans Association strongly urges you not to confirm Mr. Pryor to the court.

People with disabilities have fought long and hard to achieve the protections afforded by the ADA and like-minded laws. We must continue the fight to ensure that an activist court does not abridge these rights and protections. Please vote against William Pryor's confirmation.

Thank you.

Sincerely.

JEREMY CHWAT,
Director of Legislation.

INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, INC.,
July 14, 2003.

TO WHOM IT MAY CONCERN: This letter is written on behalf of the Independent Living Center Of Southern California, to oppose the nomination of Mr. William Pryor, to the U.S. Court of Appeals for the Eleventh Circuit.

Please note that this nomination would gravely affect the civil rights of persons with disabilities.

Sincerely,

PETER HUARD,
Client Assistance Program.

THE FREEDOM CENTER, INC.
Frederick, MD, July 21, 2003.

JIM WARD,
Executive Director, ADA Watch Coalition, Washington, DC.

DEAR JIM: I am the Executive Director for the Freedom Center, a center for independent living in Frederick, MD. We empower persons with disabilities to lead self-directed, independent, and productive lives in a barrier-free community. We work to ensure the removal of physical and attitudinal barriers that are faced by Americans with disabilities.

We, on behalf of the disability community, are strongly opposed to the nomination of Alabama Attorney General William G. Pryor. We are strongly opposed to the confirmation of his appointment to the U.S. Court of Appeals for the Eleventh Circuit. This is a lifetime appointment which could eventually lead to an appointment to the Supreme Court. Attorney General Pryor's right-wing ideology is far outside the mainstream of American legal thought. He is responsible for the weakening of the ADA in recent Supreme Court battles. He took a position against Patricia Garrett in her case against the State of Alabama when she was wrongly discriminated against because of her disability. He followed her to the Supreme Court and was responsible for influencing the Supreme Court by hiring an extreme Federalistic, right wing, and a State's Rights activist lawyer to represent the State of Alabama. Because the Supreme Court ruled in favor of the State of Alabama against Ms. Garrett, the ADA has been weakened. One can no longer sue a state government or entity under the Federal ADA. It is Attorney General Pryor's belief that the ADA is unconstitutional. In this respect, he has undermined Congress's effort to protect all Americans regardless of what state they live in. He has attacked Section 504 of the Rehabilitation Act, the Individuals with Disabilities Educational Act, and all basic civil rights against people with disabilities. gender and race. He not only has held a position in the University of *Alabama* v. *Ganett* case but has filed Amicus Briefs in Pennsylvania *Dept. of Corrections* v. *Yeskey* and *Medical Board of California* v. *Hason*. He also took opposition to the *Alexander* v. *Sandoval* case. All of his oppositions also include running amok in his own state using the state laws to his own belief. It is because of his ideology that we have laws such as the Federal ADA, IDEA, Civil Rights, etc. The laws were implemented to protect Americans from individuals like him. Because of his track record, he cannot be a Federal Judge. A Federal Judge must be unbiased and have full understanding of the total law. A Federal Judge cannot interpret Federal laws to fulfill his own beliefs as a State's Rights activist. A Federal Judge cannot use his position to further his own cause. It is imperative that we do all that we can do to help our legislators to understand the importance of approving a nomination that is nonpartisan of any individual who would take his position seriously and for the good of the American people and not for his own beliefs or reasons.

You may sign our name to any petition or letter that opposes the confirmation of Alabama Attorney General William G. Pryor. You have permission to use our letter to give to members of Congress to help them to be our voices and understand why we are so opposed to his confirmation to the U.S. Court of Appeals to the Eleventh Circuit. Thank you very much for your attention to this very urgent matter. Let's all work together to prevent deteriorization to the ADA and other disability civil rights.

Sincerely,

JAMEY GEORGE,
Executive Director.

INDEPENDENT LIVING RESOURCE CENTER—SAN FRANCISCO,
San Franciso, CA, July 3, 2003.

Hon. DIANNE FEINSTEIN,
San Francisco, CA.

DEAR SENATOR FEINSTEIN: I am contacting you with great concern about the possible appointment of an anti-ADA judicial activist to the 11th Circuit Federal Court of Appeals, Alabama Attorney General Bill Pryor. I am asking you, on behalf of the over 150,000 people with disabilities in San Francisco that our agency represents to firmly oppose Mr. Pryor's appointment.

Attorney General Pryor has proved on many occasions that he is an opponent not only of the ADA, but of other civil rights legislation as well. Mr. Pryor did not support the passage of an Alabama State disability rights law; has opposed enforcement of ADA Title II to state prisons (arguments that were rejected by the U.S. Supreme Court); has supported denial of patients' rights for Medicaid recipients; among other affronts to civil rights. This is hardly a neutral judicial appointment.

We are concerned, Senator, that you hear the voices of your constituents with disabilities. We find it ironic on the eve of our country's 'independence day' that such an opponent of independence for people with disabilities should be a nominee to such a key judicial post. Please oppose this nomination.

Sincerely,

PAMELA S. FADEM,
Information Manager, ILRCSF.

Mr. HARKIN. Here are 68 different disability groups from all over the United States.

This is from the National Association of the Deaf:

The National Association of the Deaf is opposing [Mr.] Pryor because of his outspoken activism against federal civil rights protections for people with disabilities and other minorities. His commitment is to ideology, not to justice.

Here is the Illinois/Iowa Center for Independent Living:

We strongly feel that Mr. Pryor and his record as the Attorney General in Alabama do NOT support nor represent the millions of people with disabilities or their basic civil rights.

The National Disabled Students Association stated the nomination of Judge Pryor would be ''devastating to the rights of over 54 million Americans with disabilities protected by the Americans with Disabilities act. . . .''

So, Mr. President, there may be a lot of reasons that people have for opposing this nominee to go on the circuit court. I want to make it crystal clear that my major objection to this person going on the circuit court is his open, consistent, and persistent opposition to the Americans with Disabilities Act. He has made no secret of it. He does not think we had the power to pass it.

He said, in his own opinion, that we did not even document one single instance of unconstitutional conduct against people with disabilities. Well, I am sorry, courts have held differently: forced sterilizations of people with disabilities, forced institutionalizations of people who did not need to be institutionalized, denying people with disabilities educational opportunities. Maybe he never heard of the case of PARC v.

Pennsylvania. Perhaps he did not know that courts had held there was a record, a strong record, of discrimination in public education against kids with disabilities, not letting them go to school, denying them educational opportunities.

The courts held that as long as a State provides a free public education, just as they could not discriminate on the basis of race, or sex, or national origin, they cannot discriminate on the basis of disability either. So the courts held that there is a constitutional right for kids in our country to get a free, appropriate public education, as long as the State is providing that. The kids with disabilities have to be allowed in the public schools, also.

But for Mr. Pryor, no. He says, no, not even one instance do we have of an unconstitutional discrimination. I do not know where Mr. Pryor went to law school. I did not even look it up. It does not make any difference to me. But whatever he learned there he must have forgotten. It seems to me, here is an individual with an ideological perception that he is right and everyone else is wrong, that only he knows what is constitutional and not—not the Congress, not the Senate, not even the Supreme Court. He alone has a right to decide that. He alone has a right to decide whether people with disabilities are protected under the Americans with Disabilities Act.

We have come too far in our country. We spent years developing the Americans with Disabilities Act. When President Bush signed it in 1990, we had accumulated a voluminous record of discrimination, from the earliest childhood to the latter stages of life, with people with disabilities being discriminated against. We sought to remedy that with the Americans with Disabilities Act.

When it passed the Senate, I said it was the proudest day of my legislative career, and it still is—when the ADA passed the Congress and was signed into law. And we have not looked back. We look around our country now and we see people with disabilities in education, traveling, going out to eat, holding down good jobs, getting the civil rights that all the rest of us enjoy.

But for Mr. Pryor, people with disabilities do not have those rights. They only have the right—these are my own words—it seems to me Mr. Pryor has said, in his decisions and in his writings and in his perceptions of the Americans with Disabilities Act, that people with disabilities only have the right to be pitied, they only have the right to get whatever it is that those of us who are not disabled choose to give to them.

Well, I am sorry, that is not enough. People with disabilities have every right, Mr. President, that you and I have. So it is for that reason, that he has gone out of his way—I could see if a judge made one mistake and maybe made a decision but came back and rectified it, looked at the law, looked at the history, but Mr. Pryor did not do that. He did not go back and look at the history of the ADA. He did not go back and find out all these examples that we had come up with that is in the record. He just simply said: I know what is best. I know what is best for people with disabilities.

Well, people with disabilities have been hearing that for far too long in our country: We know what is best for you—that paternalizing attitude. People with disabilities said: No, we are going to be on our own. We are going to have our own civil rights. We are going to decide our own future. We are going to decide how we want to live, not how you, the Government, or you, society, want us to live.

Well, we have come a long way in 15 years since the ADA was signed. This is one circuit court judge who would turn the clock back. And he will get these cases. He will get them. And people with disabilities will be on the short end of the stick.

So for that reason, and perhaps a lot of other reasons but for that reason alone—for that reason alone—Mr. Pryor should not be confirmed for this circuit court position.

With that, Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I rise in strong support of the nomination of William Pryor to the U.S. Court of Appeals for the Eleventh Circuit or, to put it more precisely, I rise to support the permanent appointment of Judge William Pryor to the Eleventh Circuit.

Judge Pryor's credentials, his character, and commitment to judicial restraint already make a compelling case for his appointment. His continuing service on the Eleventh Circuit only adds to that compelling case.

I urge my colleagues to vote for confirmation so Judge William Pryor can continue to be a valuable member of the U.S. Court of Appeals.

Debate about this nomination did not just begin. President Bush nominated William Pryor more than 2 years ago. During a lengthy hearing before the Judiciary Committee in June 2003, he answered more than 185 questions. It has now become common practice for Senators to deluge a nominee with post-hearing written questions. Judge Pryor answered nearly 300 of those as well. The Judiciary Committee debated this nomination during three different business meetings and favorably reported it twice here to the Senate floor where we have already debated it in the context of two previous attempts to invoke cloture.

Here we are debating the Pryor nomination again. I am one of many Senators who believes we should have confirmed this nomination a long time ago. Yesterday more than one of our Democratic colleagues complained that we are debating judicial nominations when, they said, ''we should be doing legislative business.'' That is exactly what we would be doing were it not for the confirmation obstruction campaign led by those very same Democratic Senators. They are the ones who met in 2001 to change the confirmation ground rules. They are the ones who demand dozens and dozens of unnecessary rollcall votes that have eaten up literally days of floor time. They are the ones who launched this campaign of outrageous and unprecedented judicial filibusters.

Our Democratic colleagues have changed the way we do judicial confirmation business in the Senate, and that has changed the way we do legislative business. They have no one to blame but themselves. To come in here and complain that we are not doing the business of the people when one-third of the separated powers in this country involves judges is pretty much out of line.

Under the standards the Senate traditionally applied to judicial nominations, we would already have confirmed the nomination before us. Although some across the aisle have attempted to change the ground rules, I am pleased we have now invoked cloture and are in the final stretch of debate on this very important nomination. There is light at the end of the confirmation tunnel.

We have become accustomed to the pattern of attack by those who oppose President Bush's judicial nominees. They equate a nominee's personal views with that nominee's judicial views. They create the most wretched and distorted caricature of a nominee, turning him into some creature one might see on ''Law and Order'' or ''America's Most Wanted.''

What it boils down to is the wrongheaded notion that no one who thinks for himself, who does not toe the leftwing line, whose perspective or values did not turn the liberal litmus paper the right—or left—color, or who as a judge may fail consistently to deliver politically correct results is acceptable. These advocates of an activist judiciary are not foolish enough to attack every nominee. They will remind us of how many of this President's judicial nominees they have supported. But the circumstances that have brought us here today demonstrate the confirmation ground has shifted.

I urge my colleagues not to be persuaded by the caricatures created by Washington-based lobbyists and leftwing groups which need to send out the next fundraising appeal. Instead I urge my colleagues to listen to those who actually know William Pryor, who have worked with William Pryor, because they are among his strongest supporters.

Dr. Joe Reed, chairman of the Alabama Democratic Conference—yes, that is right, the Alabama Democratic Conference, the State Democratic Party's African-American caucus—knows William Pryor. He has worked with William Pryor, and he strongly supports William Pryor. Note what Dr. Joe Reed has to say about this nominee.

He says that William Pryor:

> will uphold the law without fear or favor. I believe all races and colors will get a fair shake when their cases come before him. I am a member of the Democratic National Committee and, of course, General Pryor is a Republican, but these are only party labels. I am persuaded that in General Pryor's eyes, Justice has only one label—Justice!

Any of us would certainly be hard pressed to come up with a better endorsement or a more substantive compliment for any judge on any court anywhere in America.

Listen to Alvin Holmes, an African American who has served in the Alabama House of Representatives for nearly three decades. He introduced a bill to remove the State Constitution's ban on interracial marriage. Representative Holmes says that while white political leaders in the State, Democrats and Republicans, either opposed the bill or kept quiet, then-Attorney General William Pryor spoke out. William Pryor urged Alabamans to vote for removing the ban on interracial marriage and then, when it passed, he defended the measure in court against legal challenge.

Representative Holmes knows William Pryor. He has worked with William Pryor, and he strongly supports William Pryor. Listen to what Representative Holmes says about this nominee, this African-American leader of the Alabama House of Representatives:

> I request your swift confirmation of Bill Pryor to the 11th Circuit because of his constant efforts to help the causes of blacks in Alabama.

Or consider the opinion of Judge Sue Bell Cobb who sits on the Alabama Court of Criminal Appeals. This is what she says:

> I write, not only as the only statewide Democrat to be elected in 2000, not only as a member of the Court which reviews the greatest portion of General Pryor's work, but also as a child advocate who has labored shoulder to shoulder with General Pryor in the political arena on behalf of Alabama's children. It is for these reasons and more that I am indeed honored to recommend General Pryor for nomination to the 11th Circuit Court of Appeals.

That is the Honorable Sue Bell Cobb, judge of the Alabama Court of Criminal Appeals.

Think about that. These are people who know William Pryor. These testimonies—and there are many more like them—describe a man who cares deeply about what is right and who has the character to do what is right, no matter what the political cost. People such as these are in the best position to know the real William Pryor. If this were a court of law, their testimony would be deemed especially credible. Theirs is not hearsay testimony such as we are hearing from some with the other side. They are not repeating someone's talking points. They are not offering generalities or clichés.

Talking points, generalities, and clichés, however, are all that Judge Pryor's opponents have to offer. The far left-wing Washington-based lobbyists who appear to make their living opposing President Bush's judicial nominations repeat the same rhetoric about nominee after nominee. Sometimes I wonder whether they put together their press releases and action alerts simply by cutting and pasting in the name of a new nominee.

They use the same mantra now, saying Judge Pryor is hostile to civil rights, hostile to virtually every right under the sun. Perhaps he is also the cause of childhood asthma, global warming, and rising interest rates.

I would listen to the people I have just quoted who know the man. They are all Democrats, by the way.

If there is any reason to believe such a thing as these awful comments that have been made by our colleagues on the other side, then these left-wing Washington lobbyists should be able to convince Dr. Joe Reed, Alvin Holmes, and Judge Sue Bell Cobb that Judge William Pryor is hostile to civil rights. I wish them luck because I know they can't do that. And they know they can't do it. That is what is reprehensible.

Perhaps the most important element of judicial duty is the commitment to follow the law regardless of personal views. Throughout his career William Pryor has not just stated such a commitment to judicial restraint, he has demonstrated it. We all know, for example, that William Pryor is pro-life. His belief in the sanctity of human life no doubt helps explain his advocacy for children. Like millions of Americans, most Alabamians apparently share such pro-life values. In 1997, the State legislature enacted a ban on partial-birth abortion. If William Pryor were what his critics claim, that would surely have been his chance to take a stand, stake a claim, defy the Supreme Court, and to seek to impose his personal moral code. He did no such thing, proving once again that his critics are flat wrong.

(Mr. ALEXANDER assumed the chair.)

Mr. HATCH. After the U.S. Supreme Court ruled in Stenberg v. Carhart that a State legislative ban on partial-birth abortion is unconstitutional, Attorney General William Pryor instructed State law enforcement officials to abide by that decision, even though he personally disagreed. The Senator from Tennessee, Mr. ALEXANDER, presiding in the Chair right now, reminded us earlier today that this was at General Pryor's own initiative. The law, not his personal views, formed how he carried out his official duties.

Attorney General Pryor filed an amicus brief in the Lawrence v. Texas case defending a State's right to prohibit certain sexual conduct. Alabama had a statute similar to the Texas statute being challenged in that case. When the Supreme Court ruled against his position, he immediately released an official statement that the Supreme Court decision rendered Alabama's law unenforceable.

Similarly, the entire country knows that as Alabama Attorney General, William Pryor took an unpopular stand regarding the Ten Commandments display in the Alabama judicial building. One respected religious magazine placed a picture of Judge Pryor on its cover with a headline asking whether his legal stance amounted to political suicide. It is clear that Judge Pryor places the law above personal priorities and political expediency. This stuff about following the law rather than personal opinions is not rhetoric, talking points, or window dressing. This is not just William Pryor's stated commitment, this is his demonstrated commitment.

It is a record that makes former Alabama Attorney General Bill Baxley, another Democrat, strongly support Judge Pryor's nomination. Here is what General Baxley, a leading Democrat in Alabama, said about William Pryor:

> In every difficult decision he has made, his actions were supported by his interpretation of the law, without race, gender, age, political power, wealth, community standing, or any other competing interest affecting judgment. I often disagree, politically, with Bill Pryor. This does not prevent me from making this recommendation because we need fairminded, intelligent, industrious men and women, possessed of impeccable integrity, on the Eleventh Circuit. Bill Pryor has these qualities in abundance. . . . There is no better choice for this vacancy.

That is Bill Baxley, former Alabama Attorney General, leading Democrat in the State.

Just think about that. These Democratic leaders from Alabama paint a very consistent picture of William Pryor. He will uphold the law without fear or favor. He makes decisions without regard to political or irrelevant factors. He is fairminded, intelligent, and industrious. I certainly agree with this assessment, though it does not come first from the Senator from Utah. Democrats such as Dr. Joe Reed, Representative Alvin Holmes, Judge Sue Bell Cobb, and Attorney General Bill Baxley know the difference between private views and public duty. They know the difference between personal opinion and judicial opinion. And they strongly support William Pryor's nomination to the Eleventh Circuit.

I wish some of my Democratic colleagues and their left-wing enablers knew the difference. Instead they focus only on results. All that matters, it appears, is that a judge rules right or left, as the case may be.

On Tuesday a Democratic Member of this body summed up their results-oriented litmus test approach when he said:

with respect to a whole series of issues, this nominee is profoundly wrong.

No doubt each of us in this body has heard something like that in a campaign commercial. We might hear it here when the Senate is in legislative session. But this is a judicial nomination we are debating. What does it mean to say that the judicial nominee is wrong on the issues? Never mind being judicially correct, just be politically correct. Results are all that matters.

Yesterday during the debate on the Brown nomination, the Senator from California, Mrs. BOXER, took a similar tack. She put up one poster after another, each stating in the most simplistic terms the results of a case, and then claimed that Justice Brown personally favored the result for which she voted.

This insidious tactic claims, for example, that if a judge votes that the law does not prohibit racial slurs, then the judge must favor racial slurs. If a judge votes that the law does not prohibit an employer's hiring decision, then the judge must favor that hiring decision. In March of 2000, 29 current Senators, including my friend from California, Senator BOXER, voted against a constitutional amendment to allow protection of the American flag. How would any of them respond—how would the Senator from California respond—to the accusation that by that vote, they were siding with the flag desecraters?

That would be an outrageous charge, and we all know that.

Yet opponents of these judicial nominees, including the Senator from California, are using exactly the same tactic, exactly the same logic. They continue doing so in this debate over William Pryor's nomination. But this tactic misleads the American people about what judges do, and it twists and distorts these debates about whether to confirm judicial nominees.

I am reminded of a 1998 article written by the distinguished Judge Harry Edwards, appointed to the U.S. Court of Appeals for the DC Circuit by President Jimmy Carter, in which he warned that giving the public a distorted view of judges' work is bad for the judiciary and the rule of law. The tactics being used against nominees such as William Pryor are, indeed, giving the public a distorted view of judges' work.

Thankfully, Judge Pryor knows the difference between personal views and the law. He knows the difference between means and ends. And I am proud to say that Judge Pryor refuses to go down the politicized road of judicial activism. He has demonstrated where his commitment lies. He has shown, in each phase of his career, that he will follow the law.

Our colleague and my fellow Judiciary Committee member, Senator SESSIONS, has worked very hard to educate this body about this fine nominee. He has a special perspective on Judge Pryor's commitment to follow the law. He hired William Pryor in the Alabama attorney general's office and Judge Pryor replaced him when then-Attorney General SESSIONS joined us here in the Senate. I thank our colleague for his tireless and principled efforts. I know this Senator's understanding of this nominee is better as a result.

William Pryor is demonstrating that same commitment on the U.S. Court of Appeals for the Eleventh Circuit. That is exactly what America needs in her judges, and I urge my colleagues to support a permanent appointment for Judge William Pryor.

Mr. President, I have taken a minute or two over my allotted time. I apologize to my colleague.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I support the confirmation of William Pryor to the Eleventh Circuit. I think he is a truly outstanding individual and, most importantly, after all these years of waiting, I am pleased he is finally going to get an up-or-down vote on his nomination. I am pleased, in just a few hours, Bill Pryor will be confirmed as a Federal appellate judge. He more than deserves to be confirmed by the Senate. Bill Pryor is doing a great job now, and he will continue doing a great job in the future.

The problem is how we have gotten to where we are with the hangup and these judges not being voted on. I continue to be troubled by the road we have been going down in this judicial nomination process. Unfortunately for Bill Pryor, he has been one of the prime targets of the slash-and-burn program of the left-wing liberal interest groups. He and several other good candidates nominated by President Bush have been subject to off-base, trumped-up charges which just smear an individual's record without regard to the reality of that record.

We need to look at the merits of a candidate, and, on the merits, Bill Pryor is one of the more impressive nominees coming before the Senate.

William Pryor graduated magna cum laude from Tulane Law School, where he was editor in chief of the law review. He served as a law clerk to civil rights legend and champion Judge John Wisdom. He practiced law for several years before joining the attorney general's office in the State of Alabama. He also taught law as an adjunct professor at Cumberland Law School. So without a doubt, and going even beyond the good attributes I pointed out, Bill Pryor has the legal experience to serve on this Federal bench. But that is not all. William Pryor has the unwavering support of the people who knew him best—the citizens of his very own State of Alabama. His support among Alabama Republicans is near unanimous. But furthermore, and maybe more importantly, some of the most important members of the Alabama Democratic leadership are just as supportive of this Pryor nomination.

For example, the chairman of the Alabama Democratic Conference, which is the State Democratic Party's African-American caucus, said that Bill Pryor is a first-class public official who will be a credit to the judiciary and a guardian of justice.

Former Democratic Gov. Don Siegelman described Bill Pryor as an incredibly talented, intellectually honest attorney general who calls the issues like they ought to be called.

These are just some of the comments made by Democrats, of which I am aware, who support this good man.

But that does not seem to stop some groups or people inside the beltway from upping that ante and spreading lies. The usual suspects are back in the saddle again, however, with a vengeance to mischaracterize this man's record and drag his good name through the mud.

But if one really takes a close look at Bill Pryor's record, one can only find that he is a man who embodies the characteristics that any Federal judge ought to have. The fact is that William Pryor is a man who puts law before politics. The role of a Federal judge, as all my colleagues know and as best stated by Chief Justice John Marshall, is to ''say what the law is.''

That is exactly upon which Bill Pryor has built a distinguished law career. The truth is, in the face of opposition from both Democrats and Republicans, Bill Pryor has steadfastly based his legal decisions on court rulings and not on his own political beliefs. Bill Pryor's actions are the only record that we need to look at to see that this is an individual who truly believes in the rule of law. He is the right man for the job, and we should keep this man on the Eleventh Circuit Court.

I have looked at Bill Pryor's record and some of the allegations made against him. Bill Pryor wins hands down, no contest.

I would like to refer to an article in the ''Mobile Press Register,'' ''Civil Rights Guardian, Outstanding Nominee.'' In this article, Willie Huntley took the opportunity to distinguish the views of Alabamians and most Americans from those shared by some inside-the-beltway, left-wing interest groups. Mr. Huntley is an African-American attorney. He is from Bill Pryor's hometown. He expressed why the people of Alabama should continue to trust in this man, Bill Pryor, rather than in the liberal special interest groups, such as People for the American Way, organizations that are so powerful here with some Members of Congress.

I would like to read some of what this article has to say about Bill Pryor, again, emphasizing Willie Huntley, an African-American attorney from Bill Pryor's hometown:

> People for the American Way asserts that Pryor's appointment would devastate civil rights. What its people don't say is that after about 100 years of inaction by other leaders, Bill Pryor led a coalition that included the NAACP to rid the Alabama Constitution of its racist ban on interracial marriage.

Bill Pryor then defended the repeal against a court challenge by a so-called Confederate organization. Our Attorney General also took the side of the NAACP in successfully defending majority-minority voting districts—all the way to the U.S. Supreme Court—against challenges by white Alabama Republicans.

Bill Pryor further opposed a white Republican redistricting proposal that would have hurt African-American voters. He did not back down to criticism from his own party—not one inch.

He then played a key role in the successful prosecution of former Ku Klux Klansmen Bobby Frank Cherry and Thomas Blanton, Jr., for the 1963 bombings of the 16th Street Baptist Church in Birmingham.

Pryor started a mentoring program for at-risk kids and regularly goes to Montgomery public schools to teach African-American kids to read.

Because Bill Pryor has a civil rights record that very few can equal, it is no wonder that African-American leaders who know and who have worked with him—like Artur Davis, Joe Reed, Cleo Thomas, and Alvin Holmes—support his nomination to the Eleventh Circuit Court of Appeals.

Ignoring Pryor's defense of voting rights for African-Americans, People for the American Way charges that he opposes the landmark Voting Rights Act. The truth is, he has dutifully enforced all of the Voting Rights Act every time a case has come up.

The article goes on to conclude:

The truth and the record show that Bill Pryor has fought for the civil rights and voting rights of African-Americans in Alabama when People for the American Way were nowhere to be found. Now that President Bush has nominated Pryor to a Federal judgeship, People for the American Way assumes that it can come here and attack him. . . .We who actually know Bill Pryor support him 100 percent.

Mr. President, I ask unanimous consent to print in the RECORD the article from which I quoted so people can read it in its entirety.

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

[From CFIF.ORG]

CIVIL RIGHTS GUARDIAN, OUTSTANDING NOMINEE

(By Willie J. Huntley Jr.)

The Washington-headquartered, liberal witch-hunt against President Bush's federal judicial nominees has targeted its next victim, and it is one of our own: Bill Pryor, the attorney general of Alabama.

Among those leading the charge against Pryor is the mis-named group People For the American Way. This should be no surprise; PFAW has led vicious attacks against Attorney General John Ashcroft, Justice Clarence Thomas, Priscilla Owen, Miguel Estrada and numerous other Republican nominees.

PFAW is a radical leftist group that has supported broad court protection for child pornography; burning the American flag, and publicly funded art portraying the Virgin Mary splattered with elephant dung. Most recently, PFAW helped coordinate protests against the war in Iraq—the war in which some Alabamians gave their lives for their country.

PFAW is funded by the pornography industry and Hollywood radicals, including Playboy magazine, the Screen Actors Guild, and the Center for Alternative Media & Culture. (And they call Bill Pryor an extremist.)

PFAW asserts that Pryor's appointment would devastate civil rights. What its people don't say is that after about 100 years of inaction by other leaders, Bill Pryor led a coalition that included the NAACP to rid the Alabama Constitution of its racist ban on interracial marriage.

Pryor then defended the repeal against a court challenge by a so-called Confederate heritage organization.

Our attorney general also took the side of the NAACP in successfully defending majority-minority voting districts—all the way to the U.S. Supreme Court—against a challenge by white Alabama Republicans.

Bill Pryor further opposed a white Republican redistricting proposal that would have hurt African-American voters. He did not back down to criticism from his own party—not one inch.

He then played a key role in the successful prosecution of former Ku Klux Klansmen Bobby Frank Cherry and Thomas Blanton Jr. for the 1963 bombing of the Sixteenth Street Baptist Church in Birmingham. In fact, he will personally argue to uphold Blanton's murder conviction before the Alabama Court of Criminal Appeals later this month.

Pryor started a mentoring program for at-risk kids, and regularly goes to Montgomery public schools to teach African-American kids to read.

Because Bill Pryor has a civil rights record that very few can equal, it is no wonder that African-American leaders who know and have worked with him—like Artur Davis, Joe Reed, Cleo Thomas and Alvin Holmes—support his nomination to the 11th Circuit Court of Appeals.

Ignoring Pryor's defense of voting rights for African-Americans, PFAW charges that he opposes the landmark Voting Rights Act. The truth is, he has dutifully enforced all of the Voting Rights Act every time a case has come up.

Pryor has simply stated that a procedural part of the Voting Rights Act—Section 5—has problems that Congress should fix. Section 5 requires federal officials in Washington to approve even minor changes in voting practices that have nothing to do with discrimination.

For example, last year, Pryor issued an opinion that required a white replacement candidate for a deceased white state legislator to get Washington approval under Section 5 to use stickers to put his name on the ballot over the name of the deceased candidate.

Thurbert Baker, the African-American Democratic attorney general of Georgia, has voiced similar concerns about Section 5 before the U.S. Supreme Court.

Undeterred, PFAW and its allies also charge that Pryor believes in ''states' rights''—their code words for racism. The truth is that he believes in the Constitution. He has fought to protect the state's treasury from lawsuits that would have taken our tax dollars away from the state—away from salaries for teachers and medical care for poor people.

It is the job of an attorney general to defend his client—the state. In fact, the key Supreme Court case on defending a state from lawsuits was won not by Pryor, but by Democratic Attorney General Bob Butterworth of Florida.

Democratic attorneys general like Eliot Spitzer of New York, Jim Doyle of Wisconsin and others have all made the same arguments to defend their state budgets. I guess they are all ''right-wing extremists,'' too.

PFAW and its allies have also attacked Pryor for being extremist on abortion rights. As a dedicated Roman Catholic, Bill Pryor loves kids and is against abortion, no doubt about it.

But even though he disagrees with abortion, he instructed Alabama's district attorneys to apply Alabama's partial-birth abortion law in a moderate way that was consistent with U.S. Supreme Court precedent.

Again, he was criticized by Republicans; pro-life activists accused him of gutting the statute. Again, he didn't back down.

Not surprisingly, PFAW and its allies have attacked Pryor for supporting the display of the Ten Commandments in courthouses. But Pryor simply took the position that if a representation of the Ten Commandments can be carved into the wall of the U.S. Supreme Court's courtroom, it can be placed in an Alabama courtroom.

PFAW also has attacked Pryor for the position he took in the Alexander vs. Sandoval case, in which a person who didn't speak English sued to force Alabama to spend its money on printing driver's license tests in foreign languages.

As broke as our state is, there are better things to spend our money on—like teaching kids to read English so they can take the test and read road signs, and also paving the roads for them to drive on. Pryor fought this attempt to drain our state budget, and the U.S. Supreme Court agreed with him.

The truth and the record show that Bill Pryor has fought for the civil rights and voting rights of African-Americans in Alabama when PFAW was nowhere to be found. Now that President Bush has nominated Pryor to a federal judgeship, PFAW assumes that it can come here and attack him.

I, for one, suggest that PFAW pack up its pro-pornography, flag-burning, anti-religious, attack-dog tactics and go back to Hollywood and Washington.

We who actually know Bill Pryor support him 100 percent.

Mr. GRASSLEY. Mr. President, I hope my colleagues will see through all the smoke and mirrors that have been kicked up by groups such as the People for the American Way. I hope my colleagues will take a very close look at the facts and reject those allegations that are not true, just as many Alabamians have so rejected because the people who know this man best ought to be the ones to whom we listen.

I hope that Bill Pryor's true record will shine through and that my colleagues will join me in supporting his nomination.

I close by, once again, telling my Senate colleagues that if the role of a Federal judge is to say, as Chief Justice John Marshall said, ''to say what the law is,'' then there are very few candidates as qualified as William Pryor.

Being a good judge is not about doing what is popular, and it is not for sure about giving in to liberal special interest groups, and it certainly is not about legislating the left-wing's agenda from the bench. Being a good judge is about fairly applying the law, fairly applying the law no matter who the person is, no matter how unpopular the cause or the argument being advocated is. It is not the role of a judge, nor should it ever be the role of a judge, to serve as a puppet to the popular position. That is what William Pryor has built his career on—the rule of law, enforcing the law, carrying out the law.

I know that is what William Pryor will continue to do when he is finally confirmed by this Senate for the Eleventh Circuit Court of Appeals.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand we are under a time consideration. I believe I have half an hour. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Will the Chair remind me when I have 5 minutes remaining?

The PRESIDING OFFICER. The Chair will do that.

Mr. KENNEDY. Mr. President, I urge my colleagues to oppose Mr. Pryor's nomination. Contrary to the widespread impression of a partisan breakdown in the judicial nominations process, Democrats in this closely divided Senate have sought to cooperate with the President on the issues. And we have largely succeeded. We have confirmed 210 of President Bush's nominees in the past 4 years; 96 percent of the nominees have been confirmed.

Only 10 nominees did not receive the broad bipartisan support needed for confirmation, because their records showed that they would roll back basic rights and protections.

Mr. Pryor's nomination illustrates the problems. His views are at the extreme right wing of legal thinking. It is clear from his record that he does not deserve confirmation to a lifetime seat on an appellate court that often has the last word on vital issues for millions of people who live in Alabama, Georgia, and Florida, the States that comprise the Eleventh Circuit.

Mr. Pryor is no true conservative. He has sought to advance a radical agenda contrary to much of the Supreme Court's jurisprudence over the last 40 years, and at odds with important precedents that have made our country more inclusive and fair.

Mr. Pryor has fought aggressively to undermine the power of Congress to protect civil and individual rights. He has tried to cut back on the Family and Medical Leave Act, the Americans with Disabilities Act, and the Clean Water Act. He has been contemptuously dismissive of claims of racial bias in the application of the death penalty, and has relentlessly advocated the use of the death penalty, even for persons with mental retardation. Mr. Pryor has even ridiculed the current Supreme Court Justices, calling them ''nine octogenarian lawyers who happen to sit on the Supreme Court.'' He even has his facts wrong. Only two of the nine Justices are 80 years old or older.

In addition to these serious substantive concerns, his nomination was rushed through the Judiciary Committee in violation of the committee's rules, before the committee could complete its investigation of major ethical questions raised by the nominee's own testimony at his hearing and by his answers and non-answers to the committee's follow-up questions. When these serious problems in Mr. Pryor's record prevented him from receiving the Senate support needed for confirmation, President Bush made an end-run around the constitutional system of checks and balances by giving him a recess appointment during a brief Senate recess that was, in all likelihood, an unconstitutional use of the recess appointment power.

In the last Congress, some Members of the majority presented a version of the history of the nomination and the committee's investigation which did not comport with the facts. The history is important, because it shows that Democrats have in fact acted expeditiously and responsibly, and that the rush to judgment in the committee in the last Congress was clearly an effort to cut off a needed further investigation.

As the extraordinary rollcall vote in the Judiciary Committee on July 23, 2003 shows, every member of the minority voted, ''no, under protest for the violation of Rule IV.''

Democrats did not invent the issue that provoked such an unprecedented protest. Years before Mr. Pryor's nomination, lengthy articles in Texas and D.C. newspapers raised the question of the propriety of the activities of the Republican Attorneys General Association.

It was reported that the organization sought campaign contributions to support the election of Republican attorneys general, by arguing they would be less aggressive than Democratic attorneys general in challenging business interests for violations of the law. Some descriptions of this effort characterized it as a ''shakedown'' scheme.

The leaders of the association denied the allegations, but refused to disclose its contributors. They were able to maintain their secrecy by funneling the contributions through an account at the Republican National Committee that aggregated various kinds of State campaign contributions, and avoided separate public reporting of the contributions or the amount of their gifts.

The issue received significant press coverage during the 2002 Senate campaign in Texas, especially after several Republican attorneys general denounced the association as fraught with ethical problems.

Because Mr. Pryor had been identified publicly as a leader of the association's efforts, and the ethical issues raised by it were obviously relevant to his qualifications, he was asked about the issue at his nomination hearing and in written follow-up questions. His responses avoided the issue and raised more questions than they answered.

In July 2003, the Judiciary Committee began a bipartisan investigation of the matter, in accordance with an investigative plan provided to the majority. No witnesses were ever questioned under oath as part of the investigation, and in fact, the investigation was cut short by the committee majority almost as soon as it began. The Republican investigator actually instructed interviewees that they did not have to answer questions from the minority investigator, or comply with document requests from the minority.

As a result, all of the committee Democrats, having considered the information available up to that point, wrote to the chairman and informed him that the investigation was producing serious and disturbing information, that it would require substantial additional time, that his investigators were interfering with it, and that after it was complete, the minority members would want to question the nominee under oath.

The Republican staff had offered informal staff interviews with the nominee before that time, but the Democratic investigators had, as any serious investigator would, declined that offer until the basic investigative work had been done. In any event, the Democratic members wanted to question the nominee in person under oath at the appropriate time.

At the committee meeting to consider the issue, the chairman rejected the minority's unanimous request out of hand. He insisted on a vote on the nomination without completion of the investigation and without further questioning of the nominee under oath. That was the situation when Senator LEAHY invoked the committee's rule IV to prevent a premature vote on the nomination. The party line vote was 10–9.

The fact that no minority member was among the 10 should have prevented an immediate vote on the nomination and allowed the investigation to continue. But the chairman refused to follow rule IV and insisted on an immediate vote.

The 9 Democrats on the committee all voted against reporting the nomination, each noting an objection to the violation of rule IV.

The 10 Republicans voted to report it, with one Republican stating that his vote to report it did not mean he would necessarily vote for the nominee on the floor. He also stated that he would want to review the results of the investigation with the nominee before any Senate vote.

Despite the lack of cooperation from the majority staff, the minority staff attempted to obtain further information, and did develop new information which expanded both the scope and the gravity of our original concerns. However, in the face of the majority's refusal to cooperate, a further investigation involving the witnesses was impossible.

I mention this to make clear that the matters raised by this investigation are very serious, and we should not sweep these questions under the rug. We are not doing our job in reviewing this nomination if we look the other way in the face of these serious ethical questions. The Judiciary Committee should have completed the investigation in 2003, reviewed its findings, heard from the nominee under oath,

and then decided whether he should be listed for debate and consideration.

This year, when the committee again considered Judge Pryor's nomination, the majority offered to permit a few phone calls to witnesses whose telephone interviews were not completed or who could not be found in 2003. That offer was appreciated, but, as was obvious from the first call, it was too little and too late.

The well of evidence had been poisoned by the majority investigator's negative statements to witnesses in 2003, and now it would take an even more concerted inquiry to elicit the full story from witnesses who were adverse to begin with. Nevertheless, because some day that story will probably come out, this aspect of the nomination remains a ticking-ethical time bomb.

The rush to judgment on this nomination is particularly troubling, given the serious substantive problems in Mr. Pryor's record. His supporters say that his views have gained acceptance by the courts, and that his legal positions are well within the legal mainstream, but many disagree. Mr. Pryor has consistently advocated to narrow individual rights and freedoms far beyond what any court in this land has been willing to hold.

The Supreme Court rejected his argument that States could not be sued for money damages for violating the Family and Medical Leave Act. Had Mr. Pryor prevailed, it would have been far more difficult to protect workers who need time off because of their own health problems or to care for a loved one.

The Supreme Court also rejected Mr. Pryor's sweeping argument that Congress lacked authority to pass the Clean Water Act's protections for wetlands that are home to migratory birds.

The Court rejected his argument that States should be able to criminalize private sexual conduct between consenting adults. It rejected his far-reaching argument that counties should have the same immunity from lawsuits that Sates have. It rejected his argument that the right to counsel does not apply to defendants with suspended sentences of imprisonment. It rejected his argument that it was constitutional for Alabama prison guards to handcuff prisoners to hitching posts for hours in the summer heat.

Mr. Pryors opposition to the rights of the disabled is particularly disturbing. In one case, in an opinion Justice Scalia, the Supreme Court unanimously rejected his argument that the Americans with Disabilities Act does not apply to State prisons.

In another case, the Supreme Court rejected his view that provisions of the act ensuring that those with disabilities have access to public services are unconstitutional. In that case, a plaintiff who uses a wheelchair had challenged the denial of access to a public courthouse. He had refused to crawl up the courthouse stairs to reach the public courtroom. In his brief in the case, Mr. Pryor argued that Congress has no power to require States to make public facilities accessible to the disabled. He argued that denying access to courthouses does not violate the principle of equal protection, because the disabled have no absolute right to attend legal proceedings affecting their rights.

In arguing that the legislative history did not show a need for them to act, Mr. Pryor dismissed congressional findings of discrimination against the disabled, and evidence that the University of Georgia had located its office of handicapped services in an inaccessible second-floor room. According to Mr. Pryor, such ''anecdotes provide no indication of the extent of the inaccessibility, or whether the inaccessibility lacked a rational basis and was therefore unconstitutional.'' That is nonsense. It is obvious that the wording of this legislative history clearly describes the extent of the inaccessibility. And there is no rational justification for a State university to put an office serving disabled students in an inaccessible second-floor location.

The Supreme Court also rejected Mr. Pryor's radical view of what constitutes cruel and unusual punishment in the use of the death penalty. It rejected his argument that executing retarded persons does not offend the eighth amendment. The Eleventh Circuit, a court dominated by conservative, Republican appointees, later unanimously rejected Mr. Pryor's attempt to evade the Supreme Court's decision. He had tried to prevent a prisoner with an IQ of 65, who even the prosecution agreed was mentally retarded, from raising a claim that he should not be executed.

The Supreme Court also rejected his attempt to limit the right to counsel for the poor. Mr. Pryor argued that the poor have no right to counsel in misdemeanor cases, even if they risk imprisonment if found guilty. He told the Court during oral argument that it is reasonable for the State to preserve its own resources, just as a more affluent defendant would preserve its resources and not incur the cost of counsel in this kind of circumstance. The Supreme Court held that the right to counsel when the accused faces possible imprisonment is more important than Mr. Pryor's financial concern.

Again and again, his far-reaching arguments like these have been rejected by the courts. Mr. Pryor is not a nominee within the legal mainstream.

He and his supporters pretend that he is only ''following the law,'' but in fact Mr. Pryor repeatedly tried to make different law, using the Alabama Attorney General's office as a political platform for his own radical agenda.

We are expected to believe that despite the intensity with which he has advocated for these radical legal positions and the many years he has devoted to dismantling basic rights, he will start to ''follow the law'' if he receives a lifetime appointment to the Eleventh Circuit. Repeating that mantra again and again and again in the face of his extreme record does not make it credible that he will do so.

His many inflammatory statements show that he lacks the temperament to serve on the Federal court. He ridiculed the Supreme Court of the United States for granting a temporary stay of execution in a capital punishment case. Alabama was one of only two States in the Nation that uses the electric chair as its sole method of execution. The Supreme Court granted review to determine whether the use of the electric chair was cruel and unusual punishment.

For Mr. Pryor, however, the Court should not even have paused to consider the Eighth Amendment. He said the issue: should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court. This does not reflect the thoughtfulness we seek in our Federal judges.

He is dismissive of concerns about fairness in capital punishment and the possible execution of persons who are innocent. He has stated: make no mistake about it, the death penalty moratorium movement is headed by an activist minority with little concern for what is really going on in our criminal justice system.

On the issue of women's rights, Mr. Pryor has criticized constitutional protections against gender discrimination. He dismissed as ''political correctness'' the Supreme Court's decision that a State-run military academy could not deny admission to women because of stereotypes about how women learn.

In a 1997 statement to Congress, Mr. Pryor opposed section 5 of the Voting Rights Act, which has been indispensable in ensuring that all Americans have the right to vote, regardless of race or ethnic background. He called this important law an affront to federalism and an expensive burden that has far outlived its usefulness.

In March, we commemorated the 40th anniversary of Bloody Sunday, in which Martin Luther King, Congressman JOHN LEWIS, and others were brutally attacked on a peaceful march in Mr. Pryor's home State of Alabama while supporting the right to vote for all Americans, regardless of race. Yet we are now being asked by the administration to confirm a nominee who opposes the Voting Rights Act.

The Supreme Court has repeatedly upheld the constitutionality of section 5, but Mr. Pryor's derisive statements—criticizing both the act and the Supreme Court itself—give no confidence that he will enforce the law's provisions. There is too much at stake to risk confirming a judge who would turn back progress on protecting the right to vote.

It is no surprise that this nomination is opposed by leaders of the civil rights movement, including the Reverend Fred Shuttlesworth, a leader of the Alabama movement for civil rights,

the Reverend C.T. Vivian, and many of Dr. Martin Luther King's other close advisors and associates.

It is clear that Mr. Pryor sees the Federal courts as a place to advance his political agenda. When President Bush was elected in 2000, Mr. Pryor gave a speech praising his election as the ''last best hope for federalism.'' He ended his speech with these words—a ''prayer for the next administration: Please God, no more Souters.'' He was referring to Justice Souter, a Republican nominee to the court, whose opinions Mr. Pryor apparently disagreed with.

In another speech, he said he was thankful for the Bush v. Gore decision. I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.

Some have argued that Mr. Pryor's record in his year as a recess appointee on the Eleventh Circuit somehow erases his long career of opposition to fundamental rights. The fact that Mr. Pryor has voted with other judges during the period when he was temporarily appointed to the court says nothing about what he would do if given a lifetime appointment and the freedom from Senate oversight. It is no wonder that he might be cautious when he only has a temporary appointment to the court. We should not be swayed by ''confirmation conversions,'' and especially not by ''recess appointment conversions.''

My colleagues on the other side have brought up every argument they could find to save him. His record is full of examples of extreme views, and they try to rebut each one. They call Senate Democrats and citizens who question Mr. Pryor's fitness—including more than 204 local and national groups—a variety of names. They even accuse us of religious bias.

They claim that those who oppose Mr. Pryor's nomination do so because of his faith. That's ridiculous given the record. Such a claim is unworthy of the Senate. Most of us would have had no idea what religious views are held by Pryor, or any other nominee, if Republicans had not raised the issue.

The real question is why, when there are so many qualified Republican attorneys in Alabama, the President would choose such a divisive nominee? Why pick one whose record raises so much doubt as to whether he will be fair? Why pick one who can muster only a rating of partially unqualified from the American Bar Association?

At stake is the independence of our Federal courts. We count on Federal judges to be intelligent, to have the highest integrity, to be open-minded. Most of all, we count on them to treat everyone fairly and not to prejudge a case based on ideology. Mr, Pryor is free to pursue his agenda as a lawyer or as an advocate, but he does not have the open-mindedness and fairness needed to be a Federal judge, and I urge my colleagues to defeat this nomination.

Mr. President, I have, I believe, just a few minutes left. How much time do I have?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. KENNEDY. Mr. President, I have pointed out at other times in recent days that we have been tied up with these Federal judges—the handful of Federal judges who will have enormous impact in terms of our court systems—we have been tied up with this issue for weeks and weeks when this President could have appointed, as I mentioned in the final moments of my speech, outstanding, distinguished jurists who could have gone through here like 95 or 96 percent of the other nominees.

While we have been taking weeks and weeks, let me just mention a few of the things that have been happening that are affecting real American families. Let's just take the last week, for example. Let's take the New York Times last Sunday:

Tax Laws Help to Widen the Gap at the Very Top. The share of the Nation's income earned by those in the uppermost category has more than doubled since 1980.

There is a long article about what is happening in our country between the working families, middle-income families, and the super-wealthy, and the reasons for it. Are we debating or considering or thinking about doing anything about that? No, not the Senate.

Here is Monday, New York Times:

College Aid Rules Change and Families Pay More.

Are we doing anything about that this week? Are we having a debate on that issue, about what we can do to make college tuition more available to families here in the United States? No, no. That is not on the agenda.

Then look at Tuesday:

Pension Law Loopholes Help United Hide Its Troubles.

Loopholes in the federal pension . . . allow United Airlines to treatment its pension fund . . . solid for years when in fact it was dangerously weakened.

And it basically collapsed.

Pensions, retirement for working families, a matter of principal concern for millions of our workers—are we doing very much about that on the floor of the Senate? No.

Wednesday:

G. M. Will Reduce Hourly Workers by 25,000. General Motors said Tuesday it will cut 25,000 from its blue collar workforce.

We don't have a silver bullet to answer that, but don't we think we should be thinking about, if we lost 25,000 workers, what we ought to do and what we might do in terms of helping working families and looking at an industry? That was Wednesday.

Here we have Thursday, front-page story:

Limit for Award in Tobacco Case Set Off Protests.

The Justice Department's decision to seek $10 billion instead of what the professional attorneys in the Justice Department said that they should, $130 billion.

They were going to use that $130 billion to educate primarily teenagers, primarily teenage girls. Four thousand teenagers start smoking every day, and 2,000 become addicted. Try to educate them with $130 billion? What happened to the Justice Department? They threw in the towel. You would think we would talk about that.

That is in this last week. These issues affect middle-income working families, and what do we spend our time on here in the Senate for the last 6, 7, 8, 9 weeks? Debating these judges, when we know if we had a President who would offer nominees in the mainstream of judicial thinking, those individuals would be confirmed, like 96 percent of them were. Then perhaps we would have a chance to do something that has been talked about on every front page of every newspaper just this last week and that affects in a very real and important way the quality of life of children in this country, working families, and retirees.

Finally, I think I join with Senator LEVIN and Harry Reid, wondering why in the world next week we are not going to be considering the Defense Authorization bill instead of going to the Energy bill. We need an energy bill but, as has been pointed out by the supporters of the Energy bill, passage of that bill will not reduce the gas price by 1 cent. The Defense Authorization bill will send a very clear message about our commitment on death benefits, on uparmoring humvees, on looking after families in terms of health insurance—all of these issues that are out there. We would send a very clear message that the Senate of the United States is behind that reauthorization. We may have our questions about Iraq policy, but everyone in this body supports our troops. Why aren't we considering the Defense Authorization bill?

These are some of the concerns many of us have who think this Senate is not meeting its responsibilities to the American people or to our national security and defense.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, I have sought recognition to support the nomination of Judge William H. Pryor, Jr., to be a judge for the Eleventh Circuit. It has been divided.

Judge Pryor comes to this position with a very distinguished record. He graduated from Northeast Louisiana University in 1984, magna cum laude; from the Tulane University School of Law in 1987, again magna cum laude; was editor-chief of the Law Review of the Tulane University School of Law, which is no minor achievement. There

are not too many editors-in-chief around. That is quite an accomplishment. So the academic career is really extraordinary.

Following graduation from law school, he was law clerk to Judge John Minor Wisdom for the Court of Appeals for the Fifth Circuit, a very distinguished jurist. A I speak on this subject, the Presiding Officer is Senator LAMAR ALEXANDER, who, as I recollect, was also a law clerk to Judge John Minor Wisdom and, on the recommendation of Senator ALEXANDER, he spoke very highly of William Pryor, the people who knew him in a very distinguished clerkship, one of America's great, historical jurists. Bill Pryor was his law clerk.

He then had a distinguished record in the practice of law, working for the firm of Cabaniss, Johnston, Gardner, Dumas & O'Neal; was an adjunct professor at the Samford University, Cumberland School of Law; and came back into the practice of law for 4 more years with Walston, Stabler, Wells, Anderson & Bains. Then, from 1995 to 2004, he was Deputy Attorney General and also Attorney General of the State of Alabama and has been on the U.S. Circuit Court for the Eleventh Circuit now for a year, having obtained an interim appointment from President Bush.

Judge Pryor has been criticized for his views, expressed very forcefully, in opposition to the decision of the Supreme Court of the United States in Roe v. Wade. The quotation attributed to him was that it was the ''worst abomination of constitutional law in our history,'' which is pretty strong language. That is about as strong as you can get.

The issue is not what is his personal view of Roe v. Wade. The issue is what would he do as a circuit court of appeals judge when faced with the responsibility to uphold the law of the land, of the Supreme Court.

This subject came up during the confirmation hearing of Judge Pryor before the Judiciary Committee on June 11, 2003. I propounded the following question to Judge Pryor:

The Chairman [Senator HATCH at the time] has asked about whether you have made some comments which you consider intemperate, and I regret I could not be here earlier today, but as you know, we have many conflicting schedules. But I note the comment you made after Planned Parenthood v. Casey, where you were quoted as saying—first I would ask you if this is accurate. I have seen a quote or two not accurate. ''In the 1992 case of Planned Parenthood v. Casey the Court preserved the worst abomination of constitutional law in our history,'' . . . is that an accurate quotation of yours?

Mr. PRYOR. Yes.

It is pretty hard to get a simple answer of a witness anywhere and I appreciated that kind of brevity.

I continued:

Senator SPECTER. Is that one which would fall into the category that Senator Hatch has commented on, you wish you had not made?

Mr. PRYOR: No, I stand by the comment.

Then I asked:

Why do you consider it an abomination, Attorney General Pryor?

And he responded:

Well, I believe that not only is the case unsupported by the text and structure of the Constitution. But it has led to a morally wrong result.

And he goes on to give his reasons for his conclusion.

He was very candid, very steadfast, and stood up to what he had said and was not running from it.

Later, he made it plain he would abide by the law of the land, that his personal views of Roe v. Wade were not determinative. The record shows my own view has been to uphold the Supreme Court decision in Roe v. Wade, a subject I will not discuss as to my own views, but I respect a difference of opinion.

In looking for the confirmation of a Federal judge, the issue is, will he follow the law of the land. He said he would and said so very emphatically on the record.

On March 3 of this year, I wrote to Senator REID because this question had come up. I cited the applicable page of the RECORD June 11, page 45 of the transcript where the following exchange occurred:

Chairman HATCH. So even when you disagree with Roe v. Wade you would act in accordance with Roe v. Wade on the Eleventh Circuit Court of Appeals?

Mr. PRYOR. Even though I strongly disagree with Roe v. Wade I have acted in accordance with it as Attorney General and would continue to do so as a Court of Appeals judge.

Chairman HATCH. Can we rely on that?

Mr. PRYOR. You can take it to the bank, Mr. Chairman.

Again, that is about as emphatic as you can be on that subject.

During the course of Judge Pryor's tenure on the Court of Appeals, he has handed down quite a number of opinions which show maturity, which show growth, and which undercut many of the objections of his critics.

I ask unanimous consent the relevant portions of the transcript I have just referred to from the Judiciary Committee hearing and the letter which I sent to Senator REID dated March 3, 2005, be printed in the RECORD at the conclusion of my statement.

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

(See exhibit 1.)

Mr. SPECTER. Shortly after becoming chairman of the Judiciary Committee, within a week, by memorandum dated January 12 of this year, I sent to all members of the Judiciary Committee a memorandum including summaries of some of Judge Pryor's statements which I thought merited analysis and reconsideration by those who had opposed him in the past. Those opinions included the decision in DIRECTV v. Treworgy, where Judge Pryor ruled against a major satellite transmission corporation, instead siding with a private citizen to shield him from liability. Also, a case on Judge Pryor's decision protecting religious liberty, Benning v. Georgia, also decided in the year 2004. A case illustrating Judge Pryor's protection of civil rights in the case of Wilson v. B/E Aerospace, Incorporated. A case which involved a district court's dismissal of a female employee's gender discrimination claims. Judge Pryor reinstated her claim of bias as to promotion and remanded back to the district court.

By way of amplification of the case I referred to on Benning v. Georgia, that involved a situation when the Georgia prison system refused an inmate's request to practice his Jewish faith. Judge Pryor enabled the prisoner to continue to worship in his preferred manner.

The case involving Sarmiento-Cisneros, where Judge Pryor ruled protecting immigrants' rights, involved a Mexican immigrant who desired to remain in the United States with his family. Judge Pryor vacated the deportation order, enabling the family to remain together, and brought a commonsense interpretation to a harsh ruling by the Bureau of Immigration and Customs Enforcement.

The case of Brown v. Johnson is an illustration of Judge Pryor's judgment and decision in protecting prisoners' rights. Judge Pryor recognized the need for improvement in the treatment of an inmate afflicted with HIV and concluded that prison officials were not sufficiently concerned about the serious medical needs under the Eighth and 14th Amendments.

Judge Pryor also stood by the petitioner, permitting him to proceed in forma pauperis.

Judge Pryor has faced, in his capacity as Attorney General of Alabama, quite a number of situations where he took positions which were very unpopular politically and contrary to his own views, but did so because of his determination and his recognition that he was supposed to uphold the law of the land.

In a very highly celebrated case nationally and internationally, as Attorney General for Alabama he proceeded against Alabama Chief Justice Roy Moore for refusing to remove the large depiction of the Ten Commandments on display in the Alabama Supreme Court after the Federal courts ruled the display was unconstitutional. In that case, Judge Pryor commented that his personal beliefs were contrary to what he was ruling. He took a lot of criticism from his Alabama constituency and when asked about his decision to enforce the law against Alabama Chief Justice Moore, Judge Pryor stated:

This was not a tough call. I believe that our freedom depends on the rule of law. The reason the American experiment has been successful is because we are a nation of laws and not of men. No person is above the law. We have to abide by the law even when we disagree with it. That is the guiding principle of my public service.

Hard to structure a response better than that. Cannot do any better than

that, when you say you disagree with something and you disagree strongly, but you recognize your obligation to enforce the law.

On other occasions, then-Attorney General Pryor set aside personal beliefs and instructed State law enforcement officials to enforce the Supreme Court rulings. Shortly after the U.S. Supreme Court issued its ruling in Lawrence v. Texas, he released a press statement through the Web site of the Office of Attorney General saying that in light of the Supreme Court ruling in Lawrence:

the law of Alabama . . . which prohibits consensual sodomy between unmarried persons, is now unenforceable.

Similarly, after the Supreme Court ruled in Stenberg v. Carhart, which struck down a Nebraska law prohibiting partial-birth abortion, then-Attorney General Pryor issued a statement to State officials saying State officials ''are obligated to obey the Stenberg ruling until it is overruled or otherwise set aside.''

Judge Pryor's record shows commitment to improving race relations and protecting racial equality. As attorney general, Judge Pryor worked with President Clinton's U.S. attorney Doug Jones to prosecute former klansmen who bombed Birmingham's 16th Street Baptist Church in the 1960s which resulted in the death of four young girls. He helped to start a drive to rid the Alabama Constitution of its racist prohibition on interracial marriage and then stepped up to head the effort to end the ban, ultimately to its victory in November of 2000.

He dedicated much of his career to protecting the interests and the safety of women. As Attorney General, he supported and lobbied for legislation that created a State crime of domestic violence.

I ask unanimous consent the summaries of the cases which I referred to previously be printed in the RECORD, with a pertinent letter, at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. SPECTER. In conclusion, it is a very healthy situation in that we are now proceeding to take up these nominees individually. That is something which I had sought to do since taking over the chairmanship of the Judiciary Committee. We have moved ahead now with three controversial nominees. It is my hope we will continue to take up these nominees, one at a time, and evaluate them on their merits.

As I have said in a number of floor statements, we have reached the current confrontation because of a practice which goes back almost 20 years, starting with the last 2 years of the Reagan administration and continuing with 4 years of President Bush, and when the Democrats took control of the Senate and the Judiciary Committee, they stopped the processing of judges and slowed it down.

Then when we Republicans won the election in 1994, for the last 6 years of the Clinton administration we slowed down the process and tied up some 70 judges in committee, a practice that I objected to at the time, and supported Judge Paez and Judge Berzon and others. Then the controversy was ratcheted up with the unprecedented systematic filibustering of judges, and then the unprecedented move by President Bush in the interim appointment, after the Senate rejected a judge, albeit by the route of not getting cloture.

My time has expired, and I note the presence of the distinguished Democratic leader, so I yield the floor in midsentence, Mr. President.

EXHIBIT 1

Senator SPECTER. The Chairman has asked about whether you have made some comments which you now consider intemperate, and I regret, that I could not be here earlier today, but as you know, we have many conflicting schedules. But I note the comment you made after *Planned Parenthood v. Casey*, where you were quoted as saying—first I would ask you if this quote is accurate. I have seen a quote or two not accurate. ''In the 1992 case of *Planned Parenthood v. Casey* the Court preserved the worst abomination of constitutional law in our history,'' close quote. Is that an accurate quotation of yours?

Mr. PRYOR. Yes.

Senator SPECTER. Is that one which would fall into the category that Senator Hatch has commented on, you wish you had not made?

Mr. PRYOR. No, I stand by that comment.

Senator SPECTER. Why do you consider it an abomination, Attorney General Pryor?

Mr. PRYOR. Well, I believe that not only is the case unsupported by the text and structure of the Constitution, but it had led to a morally wrong result. It has led to the slaughter of millions of innocent unborn children. That's my personal belief.

Senator SPECTER. With that personal belief, Attorney General Pryor, what assurances can you give to the many who are raising a question as to whether when you characterized it an abomination and slaughter, that you can follow a decision of the United States Supreme Court, which you consider an abomination and having led to slaughter?

Mr. PRYOR. I would invite anyone to look at my record as Attorney General, where I've done just that. We had a partial birth abortion law in our State that was challenged by abortion clinics in Alabama in 1997. It could have been interpreted broadly or it could have been interpreted narrowly. I ordered the district attorneys of Alabama to give it its narrowest construction because that was based on my reading of *Roe* and *Casey*. I ordered the district attorneys to apply that law only to post-viable fetuses. I could have read it easily more broadly. The governor who appointed me was governor at the time and a party to the lawsuit, disagreed with me and openly criticized me. A pro-life activist in Alabama criticized me. But I did it because I thought that was the right legal decision. I still had an obligation to defend Alabama law. This was a recently-passed Alabama law. When the Supreme Court of the United States later of course struck down this kind of partial birth abortion law, we conceded immediately in district court that the decision was binding, but until then I was making the narrowest argument I could make, trying to be faithful to the Supreme Court's precedent, while also being faithful to my role as Attorney General and my oath of office to defend a law recently passed by the legislature.

Senator SPECTER. When you talk about post-viability and you have the categorization of partial birth or late-term abortion, is not that statute necessarily directed toward post-viability?

Mr. PRYOR. That was one of the main arguments I made in construing it, but if you look at the actual language—

Senator SPECTER. Well, I asked you that question as to whether there was a basis for construing it to the contrary. When you talk about partial birth abortion, we are talking about an event in the birth canal which is definitely post-viability. When you talk about late-term abortion, we are also talking about post-viability. So aside from having some people who will raise a question about anything, whether there is a question to be raised or not, was it not reasonably plain on the face of the statute that they were talking about post-viability?

Mr. PRYOR. No, I don't think anyone would contend life. I believe that abortion is morally wrong. I've never wavered from that, and in representing the people of Alabama, I have been a candid, engaged Attorney General, who has been involved in the type of—

Chairman HATCH. What does that mean with regard to the Eleventh Circuit Court of Appeals? If you get on that court, how are you going to treat Roe v. Wade?

Mr. PRYOR. Well, my record as Attorney General shows that I am able to put aside my personal beliefs and follow the law, even when I strongly disagree with it, to look carefully at precedents and to do my duty. That is the same duty that I would have as a judge. Now, as an advocate for the State of Alabama of course I have an obligation to make a reasonable argument in defense of the law, but as a judge I would have to do my best to determine from the precedents what the law actually at the end of the day requires. My record demonstrates that I can do that.

Chairman HATCH. So even though you disagree with Roe v. Wade you would act in, accordance with Roe v. Wade on the Eleventh Circuit Court of Appeals?

Mr. PRYOR. Even though I strongly disagree with Roe v. Wade I have acted in accordance with this as Attorney General and would continue to do so as a Court of Appeals Judge.

Chairman HATCH. Can we rely on that?

Mr. PRYOR. You can take it to the bank, Mr. Chairman.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 3, 2005.

Hon. HARRY REID,
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR REID: When we talked earlier this week, we discussed the question of whether or not Judge Pryor had testified that he would follow Roe v. Wade. I have had the transcript reviewed from Judge Pryor's hearing on June 11, 2003. I think that you will find the following exchange between Senator Hatch and Judge Pryor, which can be found on page 45 of the transcript, dispositive:

Chairman HATCH: So even though you disagree with Roe v. Wade you would act in accordance with Roe v. Wade on the Eleventh Circuit Court of Appeals?

Mr. PRYOR: Even though I strongly disagree with Roe v. Wade I have acted in accordance with it as Attorney General and would continue to do so as a Court of Appeals Judge.

Chairman HATCH: Can we rely on that?

Mr. PRYOR: You can take it to the bank, Mr. Chairman.

I am enclosing a copy of the transcript.

Sincerely,

ARLEN SPECTER.

EXHIBIT 2

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, January 12, 2005.

TO MEMBERS OF THE SENATE JUDICIARY COMMITTEE: As you know, Judge William Pryor has been sitting on the United States Court of Appeals for the Eleventh Circuit for the past eleven months. The President has stated his intention to re-submit Judge Pryor's name for confirmation to the Eleventh Circuit. In light of his expected renomination, I have asked my staff to examine Judge Pryor's Eleventh Circuit opinions.

I thought you might be interested in knowing some more about these opinions. In particular, I'd like to bring to your attention several opinions that demonstrate Judge Pryor's willingness to protect the rights of individuals often overlooked in the legal system. It is my hope that these opinions and his record on the Eleventh Circuit for the past eleven months will be considered by the Committee on evaluating him on his re-nomination.

Sincerely,

ARLEN SPECTER.

MEMORANDUM

During his tenure on the Eleventh Circuit Court of Appeals, Judge William Pryor has authored several opinions demonstrative of his willingness to protect the rights of those often overlooked in the legal system.

Standing up to Corporations: *DIRECTV, Inc.* v. *Treworgy,* 373 F.3d 1124 (11th Cir. 2004)

Judge Pryor ruled against a major satellite-transmission corporation, siding instead with a private citizen to shield him from liability.

Background: DIRECTV (DTV), a provider of satellite television, encrypts transmissions of pay-per-view and premium programming. The security encryption can be illegally circumvented by using ''pirate access devices,'' which allow users to intercept and decrypt DTV's transmissions. Mike Treworgy bought two pirating cards, which enable someone with a satellite dish to receive signals without paying for the service. There was no evidence that Treworgy actually intercepted a signal wth his cards. DTV sued Treworgy for possessing these devices under the Electronic Communications Privacy Act of 1986 (Wiretap Act), which criminalizes the intentional manufacture, distribution, possession and advertising of piracy devices. Treworgy argued that the Wiretap Act did not create a private right of action against persons merely in possession of access devises.

Holding: The Eleventh Circuit, Judge Pryor writing, held that DTV did not have a private right of action against Treworgy for mere possession of intercepting technology, and required that the device must have been used to pirate programming before private rights of action arise. ''Congress chose to confine private civil actions to defendants who had 'intercepted, disclosed, or intentionally used' [a communication] . . . possession of a pirate access device alone, although a criminal offense, creates nothing more than conjectural or hypothetical harm.''

Protecting Religious Liberty: *Benning* v. *Georgia*, 2004 WL 2749172 (11th Cir. 2004)

When the Georgia prison system refused an inmate's requests to practice his Jewish faith, Judge Pryor enabled the prisoner to continue to worship in his preferred manner.

By finding that RLUIPA is a proper exercise of Congress' Spending authority, the Eleventh Circuit kept viable similar legal remedies for the elderly, disabled and other victims of discrimination.

Background: Ralph Benning, an inmate in the Georgia prison system, asserted that as a ''Torah observant Jew'' he was being prevented from fulfilling his religious duties, such as eating only kosher food, and wearing a yarmulke. Georgia moved to dismiss and argued that §3 of The Religious Land Use and Institutionalized Persons Act (RLUIPA) exceeds the authority of Congress under the Spending and Commerce Clauses, and violates the Tenth Amendment and the Establishment Clause. RLUIPA imposes strict scrutiny on federally funded programs or activities that burden the religious rights of institutionalized persons.

Holding: The Eleventh Circuit, Judge Pryor writing, rule that Congress did not exceed its authority under the Spending Clause in enacting §3 of RLUIPA. The court held that Congress' spending conditions need meet only a ''minimal standard of rationality.'' The court found that protecting religious exercise of prisoners is a rational goal, and the United States ''has a substantial interest in ensuring that state prisons that receive federal funds protect the federal civil rights of prisoners.'' The Eleventh Circuit also concluded that the statute did not violate the Tenth Amendment by infringing on areas reserved to the states, nor did it violate the Establishment Clause. Judge Pryor further recognized that, ''given the necessarily strict rules that govern every aspect of prison life, the failure of prison officials to accommodate religion, even in the absence of RLUIPA, would not be neutral; it would be hostile to religion.''

Protecting Civil Rights: *Wilson* v. *B/E Aerospace, Inc.*, 376 F.3D 1079 (11th Cir. 2004)

When the district court dismissed a female employee's gender discrimination claims, Judge Pryor reinstated her claim of bias as to a promotion, and remanded back to the district court.

Background: Loretta Wilson filed an employment discrimination action against B/E Aerospace, Inc. (B/E) alleging sex discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended in 42 U.S.C. sections 2000e et seq., and the Florida Civil Rights Act, Fla. Stat. sections 760.01 et seq. She claimed that B/E discriminated against her on the basis of sex by not promoting her to the position of Site Vice President and by later terminating her.

Procedural Summary: B/E filed a motion for summary judgment at the conclusion of discovery. The district court granted the motion in its entirety finding that Wilson failed to both provide direct evidence of discrimination and establish a prima facie case of discrimination.

Holding: Judge Pryor, writing for the Eleventh Circuit, allowed Wilson's case to proceed against the corporation. Focusing on the two distinct types of conduct alleged—discrimination in promotion and discharge—the court concluded that an admission by a supervisor at B/E that Wilson was ''the obvious choice'' and the ''most qualified'' for the then-pending promotion created a genuine issue of fact, prompting Judge Pryor to remand as to the failure-to-promote claim. As to the discharge claim, the court concluded that Wilson had offered no evidence that her termination was based on sex.

Protecting Immigrant Rights: *Sarmiento-Cisneros* v. *U.S. Attorney General,* 381 F.3d 1277 (11th Cir. 2004).

Judge Pryor stood up for a Mexican immigrant who desired to remain in the United States with his family.

By vacating the deportation order, Judge Pryor enabled a family to remain together and brought a commonsensical interpretation to the harsh Bureau of Immigration and Customs Enforcement order.

Background: Jose Sarmiento-Cisneros was an alien from Mexico who was deported and then reentered the United States illegally, married an American citizen, and then applied for an adjustment of status before the effective date of 8 U.S.C. 1231(a)(5). The Bureau of Immigration and Customs Enforcement (BICE) sought to reinstate a removal order under 8 U.S.C. 1231(a)(5) and argued that the statute's provisions barring an alien from filing an application for discretionary relief apply retroactively.

Holding: After examining the statute, Judge Pryor, writing for the Eleventh Circuit, joined five other circuits in concluding that 8 U.S.C. 1231(a)(5) does not apply retroactively. The court therefore granted the petition for review and vacated the BICE deportation order. Sarmiento Cisneros was thus able to enjoy discretionary relief available to him prior to the BICE's rescission of the previously granted relief.

Protecting Prisoners' Rights: *Brown* v. *Johnson*, 387 F.3d 1344 (11th Cir. 2004).

Judge Pryor recognized the need for improved treatment for an inmate afflicted with HIV, concluding that prison officials were indifferent to his serious medical needs under the Eighth and Fourteenth Amendments.

Judge Pryor not only stood up for the prisoner, but enabled him to proceed in forma pauperis.

Background: John Brown, a prisoner in the Georgia State Prison, had been prescribed medication for HIV and hepatitis. Two months after this prescription had been granted, a different doctor ceased treatment. Eight months later, Brown filed a §1983 claim against the second doctor and the Medical Administrator for the Georgia State Prison alleging deliberate indifference to his serious medical needs in violation of the due process clause of the Fourteenth Amendment and the Eighth Amendment. Additionally, Brown filed a petition to proceed in forma pauperis.

Procedural Summary: The Prison Litigation Reform Act (PLRA) establishes the procedures for courts to use to assess prisoner complaints brought in forma pauperis. The provision of the PLRA in question, 28 U.S.C. section 1915(g) (often referred to as the ''three strikes rule''), bars a prisoner from proceeding in forma pauperis after he has filed three meritless lawsuits, unless the prisoner is in imminent danger of serious medical injury. A magistrate judge recommended that Brown's petition to proceed in forma pauperis be denied and that his complaint be dismissed without prejudice because Brown had filed at least three meritless lawsuits previously, and had not met the imminent physical injury exception. Brown then filed timely objections to the recommendation and he filed a motion to amend his complaint. The district court denied Brown's motion to amend his complaint because the complaint was subject to ''three strikes'' dismissal. Subsequently, the district court adopted the recommendation of the magistrate judge and dismissed Brown's complaint without prejudice. Brown then appealed, and the district court granted him permission to proceed in forma pauperis.

Holding: Judge Pryor, writing for the Eleventh Circuit, determined that the district court's dismissal of Brown's motion to amend his complaint under the PLRA, and its conclusion barring Brown from proceeding in forma pauperis, were in error. Further, Judge Pryor found that the district court abused its discretion in denying him the right to amend his complaint pursuant to FRCP 15. The amended complaint, sufficiently alleging imminent danger of serious physical injury under 28 U.S.C. 1915(g), permitted Brown to proceed in forma pauperis.

Finally, Judge Pryor found that Brown had stated a valid claim of deliberate indifference to serious medical needs under the Eighth and Fourteenth Amendments. Therefore the district court's judgment was reversed and remanded for further proceedings, effectively allowing Brown's suit to go forward, and enabling him to get necessary medical treatment.

(At the request of Mr. LEAHY, the following statement was ordered to be printed in the RECORD.)

● Mr. JEFFORDS. Mr. President, I would like to express my opposition to the nomination of William H. Pryor, Jr., to the Eleventh Circuit Court of Appeals.

Mr. Pryor has a distinguished legal career. He graduated magna cum laude from Tulane University Law School, clerked for a judge on the Fifth Circuit Court of Appeals, was a law professor at Samford University, and served as attorney general for the State of Alabama. While he deserves recognition for his legal background, that alone is not enough in my estimation to be confirmed for a lifetime appointment to the Federal bench. In my review of Mr. Pryor's statements, actions, and writings, I am concerned that Mr. Pryor's personal opinion, rather than the law, will compel his decisions in some cases.

My areas of concern arise in areas of the law that I have spent my career working to address, including the environment, reproductive rights, and gay rights.

On the environment, for example, Mr. Pryor urged the U.S. Supreme Court to declare unconstitutional Federal efforts to protect wildlife on private lands under the Endangered Species Act. In regard to this case, the lower court stated that Mr. Pryor's constitutional arguments would ''place in peril the entire federal regulatory scheme for wildlife and natural resource conservation.'' The case is Gibbs v. Babbitt.

In another important case, Solid Waste Authority of Northern Cook County v. United States, Mr. Pryor urged the Supreme Court to strike down Federal efforts to protect waters and wetlands that provide habitat for migratory birds. Finally, Mr. Pryor has advocated in testimony before the Senate that States should not be held accountable in court for failing to enforce minimum Federal standards from the joint hearing before the U.S. Senate Committee on Environment and Public Works and the U.S. Senate Committee on the Judiciary, July 16, 2002.

On reproductive rights Mr. Pryor in 1997 called the Roe v. Wade decision, ''the day seven members of our highest court ripped the Constitution and ripped out the life of millions of unborn children.'' In a speech during that same year, Mr. Pryor criticized the 1992 Supreme Court decision in Planned Parenthood v. Casey by stating that this decision ''preserved the worst abomination of constitutional law in our history: Roe v. Wade.''

Finally, during Mr. Pryor's career he has actively worked to oppose gay rights. In fact, he has gone so far as to seek out cases to file briefs, or spoken out on the merits of such cases, that have no connection to the job he was currently performing. For example, even though Alabama had no similar statute, Mr. Pryor filed an amicus brief in the Romer v. Evans case supporting Colorado's law prohibiting local governments from enacting laws protecting gays and lesbians from discrimination. In addition, despite the fact that the Lawrence v. Texas case did not involve Alabama law, Mr. Pryor's interest was so keen that he petitioned the Supreme Court for leave to participate in the oral argument and filed a brief on the merits of the case.

Some have argued that Mr. Pryor should not be held to all these briefs and statements because he was just doing his job and protecting the rights and positions of his client or employer. However, the problem with this argument is that many of the positions he has taken have not related to the requirements of the job he was performing, but were positions he singularly advocated because he believed in them and sought out cases to express and uphold his beliefs. It is this fact that concerns me and leads me to believe that Mr. Pryor will use his personal beliefs rather than settled law to decide cases.

His actions as a recess appointment to the Eleventh Circuit Court of Appeals have not diminished my concern, especially when Mr. Pryor was the deciding vote that prohibited the full Eleventh Circuit to consider the unique Florida law banning gay adoption. Given these facts and Mr. Pryor's history, I opposed limiting debate on his nomination in 2003, and continue to do so today.

Unfortunately, I will be necessarily absent for the votes that will occur related to this nominee. However, I feel it is necessary to express my position on this important nomination.●

Mrs. CLINTON. Mr. President, the nomination of William H. Pryor, Jr., to the Eleventh Circuit Court of Appeals is nothing more than a political promotion cloaked in the thin veil of a judicial nomination. Judge Pryor has been an active and dutiful soldier in the administration's systematic assault on the Constitution and individual rights, effectively making his nomination for a lifetime appointment to the Eleventh Circuit Court of Appeals political payback for a job perceived well done. Given Judge Pryor's disdain for the Constitution and individual rights, I encourage my colleagues to join me in opposing Judge Pryor's nomination.

If confirmed for a lifetime appointment to the Eleventh Circuit Court of Appeals, Judge Pryor would pose an enormous threat to the rights, protections, and freedoms of all Americans. Judge Pryor's professional record demonstrates a willingness to contort the law in order to make it fit his political agenda. During his 7-year tenure as attorney general of Alabama, Judge Pryor advanced his own personal, conservative agenda not only through litigation in which Alabama was a party, but also by filing amicus curiae briefs in cases in which Alabama was neither an interested party nor under any obligation to participate. As attorney general of Alabama, Judge Pryor amassed a stunning record replete with hostility for the rights of Americans and contempt for constitutionally mandated protections. In addition to attacking the validity of constitutional freedoms, Judge Pryor advocated for the dissolution of congressionally required protections intended to preserve individual rights, to safeguard our environment and to maintain the barriers that separate church and state.

Judge Pryor has advocated a view that the Constitution does not harbor some of our most critical individual rights and freedoms. He has taken the position that these freedoms should be decided by the States, based on majority vote, regardless of whether constitutional rights are violated. The danger of this simple thinking is of course to regionalize the Constitution, making one's constitutional rights dependent on where one resides. But much more egregious is what this proposal would do to our Bill of Rights; it effectively makes our inalienable rights as Americans open to public and political debate. This surely could not have been what the Framers envisioned when they drafted our Constitution.

Judge Pryor's general contempt for the Constitution is clear in the positions he advocated as attorney general of Alabama. In one amicus brief to the Supreme Court, Judge Pryor defended a State practice of handcuffing prisoners to a hitching post and exposing them to the hot sun for 7 hours at a time without water or bathroom breaks. This cruel and unusual brand of punishment advocated by Judge Pryor was later rejected by the U.S. Supreme Court, which held that ''the use of the hitching post under these circumstances violated 'the basic concept underlying the Eighth Amendment, [which] is nothing less than the dignity of man.' ''

Showing disdain for constitutionally protected reproductive freedom, Judge Pryor has called Roe v. Wade ''the worst abomination of constitutional law in our history.'' In this spirit, he has endorsed the formation of unconstitutional barriers that would thwart the practice of reproductive freedom, going as far as defending Alabama's so-called ''partial-birth abortion'' ban despite the fact that it lacked the constitutionally required exception to protect the health of the pregnant woman.

But Judge Pryor's attacks against privacy interests are not only relegated to reproductive rights. Judge Pryor believes that it is constitutional to imprison gay men and lesbians for having sex in the privacy of their own homes. In an amicus brief asking the Supreme Court to uphold Texas' ''Homosexual Conduct'' law, Judge Pryor

advocated criminalizing homosexual intercourse between consenting adults, ignoring the equal protection clause of the 14th amendment. In his brief on behalf of the people of Alabama, Judge Pryor equated sex between two consenting adults of the same gender with ''activities like prostitution, adultery, necrophilia, bestiality, possession of child pornography, and even incest and pedophilia . . .'' This is from a brief in Support of Respondent at 25, *Lawrence* v. *Texas*, 539 U.S. 558, 2003.

Judge Pryor's disrespect for the rule of law however, is not limited to his disregard for the Constitution. Judge Pryor has long been a foot soldier in the conservative movement's attack on the authority of Congress to enact laws protecting individual and other rights. He and like-minded conservative ideologues have hidden behind the labels ''States rights'' and ''federalism,'' when what they are truly advocating is the restriction of Congress to protect Americans' rights against discrimination and injury based on disability, race, and age.

Again as attorney general of Alabama, Judge Pryor abused his discretion, making Alabama the only State to file an amicus brief in support of striking down part of the Violence Against Women Act. As Alabama's attorney general, Judge Pryor filed briefs calling for the elimination of protections contained in the Family and Medical Leave Act, the Age Discrimination in Employment Act, the Clean Water Act, and the Endangered Species Act. On two separate occasions, he testified in Congress against EPA enforcement of the Clean Air Act and against key provisions of the Voting Rights Act.

In one Supreme Court case in which his office again filed an amicus brief, Judge Pryor urged the Supreme Court to hold that State employees cannot sue for damages to protect their rights against discrimination under the Americans with Disabilities Act. In a narrow 5-to-4 decision, the Court agreed with Judge Pryor's ''States' rights'' argument. After the decision, Judge Pryor expressed tremendous satisfaction for his part in dismantling a portion of one of this generation's seminal pieces of civil rights legislation. Judge Pryor said he was ''proud'' of his role in ''protecting the hard-earned dollars of Alabama taxpayers when Congress imposes illegal mandates on our state.''

Americans deserve better than this. They deserve even-tempered jurists who will not use the bench as a pulpit for the advancement of their own political agenda. Given Judge Pryor's disregard for individual rights, the Constitution and congressionally mandated protections, I cannot in good faith extend my constitutionally required consent to his nomination, and I encourage my Senate colleagues to again withhold their support as well.

Mrs. FEINSTEIN. Thank you, Mr. President.

I would like to discuss the nomination of William Pryor to the Eleventh Circuit Court of Appeals. I have closely reviewed Judge Pryor's record, and based upon it, I believe that Judge Pryor would have difficulty putting aside his extreme views in interpreting the law. Consequently, I do not believe that Judge Pryor should be confirmed to a lifetime appointment on the Eleventh Circuit Court of Appeals.

Before President Bush's recess appointment of William Pryor to the Eleventh Circuit in February 2004, Pryor had not been a judge. As a result, he lacks a record as a sitting judge through which his judicial temperament and impartiality may be examined. Consequently, one must look to Judge Pryor's actions and statements throughout his career.

In his career, Judge Pryor has primarily been a politician, and considering the vehemence with which he has advocated his political views, I have serious concerns that he can set aside those views and apply the law in an independent, non-partisan fashion.

First, I want to be very clear about one thing. My objection to confirming Judge Pryor to a lifetime seat on the Eleventh Circuit Court of Appeals has nothing to do with Judge Pryor's personal religious beliefs.

There are those who have been spreading the false statement that some Democrats vote against judicial nominees because of a nominee's religious beliefs. And that has been said about me. The majority leader even had on his Web site a newspaper column that says I voted against Judge Pryor because of his religious beliefs.

So I went back and I took a look at my statement on the floor, and I took a look at my statement in the Judiciary Committee markup, and they are both clear that my concerns with Judge Pryor have nothing to do with his religious beliefs. As I stated before this body in July of 2003:

> Many of us have concerns about nominees sent to the Senate who feel so very strongly and sometimes stridently and often intemperately about certain political beliefs, and who make intemperate statements about those beliefs.

So we raise questions about whether those nominees can truly be impartial, particularly when the law conflicts with those beliefs.

It is true that abortion rights can often be at the center of these questions. As a result, accusations have been leveled that, at any time reproductive choice becomes an issue, it acts as a litmus test against those whose religion causes them to be anti-choice.

But pro-choice Democrats on the Judiciary Committee have voted for many nominees who are anti-choice and who believe that abortion should be illegal—some of whom may . . . have been Catholic. I do not know, because I have never inquired.

So this is truly not about religion. This is about confirming judges who can be impartial and fair in the administration of justice.

Before the Judiciary Committee, I said of Judge Pryor that, ''I think his faith speaks favorably to his nomination and to his commitment to moral values, which I have no problem with. I would like people in the judiciary with positive and strong moral values.''

I am troubled that legitimate and serious concerns over Judge Pryor and other nominees have been brushed aside, and instead it is said that we on this side are trying to make a case against people of faith. That simply is not true.

Thomas Jefferson wrote of the establishment clause of the first amendment, ''I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and state.''

The Supreme Court has written that ''the most important of all aspects of religious freedom in this country is that of the separation of church and state.''

It is because the separation of church and state ensures religious freedom, that some of Judge Pryor's actions and statements concern me.

There are those who have minority-held religious views. There are those who have majority-held religious views. But one of the beautiful things about America is that it is a pluralistic society and that the government has stayed out of religion. The founding fathers, looking at the history of Europe, recognized the sectarian strife and religious oppression that can arise from favoring one religion over another. They came here and they founded a government where there was to be a distinct line drawn between government and religion, and it has served this country well.

So when people confuse arguments that are made to support the separation of religion and government with an opposition to people of faith, they could not be more wrong. And I think this has to be made increasingly clear. We've all seen the inflammatory ads. We've all heard the commercials.

I hope that a more responsible tone will be struck, because the value of the separation between church and state is based on the fact that once that bright line is broken, what one has to grapple with is which religion do you put in the courtroom? Which religion do you allow to be celebrated in a governmental framework?

If the separation of church and state, that has been a part of this nation since its founding, is abolished, these become very real and very disturbing questions.

Accordingly, I am extremely concerned by Judge Pryor's actions and statements promoting the erosion of the division between church and state.

As deputy attorney general and attorney general of Alabama, Judge Pryor vigorously defended the display of a statue of the Ten Commandments

in the Alabama supreme court. However, when questioned about whether it would be constitutional to display religious artifacts or symbols from other religions in the court room, Pryor was noticeably silent.

According to an April 4, 1997 Associated Press account, Pryor said that ''the State has no position on whether the Alabama supreme court Chief Judge's right to pray and have a religious display in his courtroom extends to people of other faiths.'' That Judge Pryor did not take that opportunity to make clear that all religions are equal before our courts is distressing.

Also while Deputy Attorney General, Judge Pryor defended the Alabama supreme court Chief Judge's practice of having Christian clergymen give prayers when jurors first assembled in his courtroom for a trial. Judge Pryor sought to have an Alabama trial judge declare this practice constitutional under the U.S. and Alabama constitutions. The trial judge ruled against Pryor, concluding that the prayer was unconstitutional.

The judge cited the Chief Judge's own statements that ''acknowledged that through prayer in his court, he is promoting religion.'' Pryor's decision to pursue this case despite the Chief Justice's own admission that the prayer was intended to promote religion—thereby violating the establishment clause of the Constitution—is perplexing.

It is imperative that our judges—particularly judges on our Courts of Appeals—respect and follow the law, especially the Constitution. I do not believe that a lawyer with Judge Pryor's record of consistent attacks on the establishment clause and the separation of church and state enshrined therein should be given a lifetime appointment to the Eleventh Circuit.

Another concern I have with Judge Pryor is the extreme positions he has advocated regarding a woman's right to choose. I have voted for numerous anti-choice judicial nominees. However, Judge Pryor's positions are beyond the mainstream even of those who oppose the right to choose. Furthermore, his incendiary remarks on the subject demonstrate not only a lack of appropriate judicial temperament, but a lack of respect for the Supreme Court.

Judge Pryor opposes abortion even in cases of rape and incest and supports an exception only where a woman's life is endangered. He has called Roe v. Wade ''the worst abomination of constitutional law in our history,'' and said, ''I will never forget January 22, 1973, the day seven members of our highest court ripped the Constitution and ripped out the life of millions of unborn children.''

As attorney general of Alabama, Judge Pryor called Roe and Miranda v. Arizona, the well known Supreme Court decision requiring that criminal defendants be informed of their right to remain silent, ''the worst examples of judicial activism.'' This depth of hostility to the established precedent of the Supreme Court is disquieting in an appellate court nominee.

At his confirmation hearing, Judge Pryor had the opportunity to clarify or step back from these inflammatory remarks. Nevertheless, he stood by his statement that Roe is the ''worst abomination of constitutional law in our history''—worse than Plessy v. Ferguson, the decision upholding segregation, the Dred Scott decision, which denied citizenship and court access to all slaves and their descendants, or the Korematsu case, validating the government's internment of Japanese citizens during World War II.

That a nominee for a court just below the Supreme Court believes that an existing precedent of the Supreme Court protecting a woman's right to choose is worse than long discredited decisions denying blacks citizenship or permitting segregation is deeply disturbing and out of line with the last hundred years of American jurisprudence.

In statements addressing the scope of Federal Government, Judge Pryor has promoted a role so limited that the Federal Government would be forced to abdicate many of its central responsibilities. For example, he has stated that Congress ''should not be in the business of public education nor the control of street crime.''

I do not believe that the Federal Government should ignore critical matters like education and crime, and neither do most Americans. However, my larger concern is not that Judge Pryor's position is contrary to my viewpoint or even that it is contrary to the views of most Americans, but that it is contrary to binding Supreme Court precedent establishing the breadth of the Federal Government's powers.

This extremely limited view of the role of Federal Government is reflected in the positions Judge Pryor has taken on a number of important issues.

Testifying before the Judiciary Committee as attorney general of Alabama in 1997, Judge Pryor urged the repeal of Section 5 of the Voting Rights Act, calling it an ''affront to federalism, and an expensive burden that has far outlived its usefulness.''

Section 5 of the Voting Rights Act requires any changes in voting laws in states with a specific history of voting discrimination to be pre-cleared by the Justice Department or the Federal District Court in Washington. D.C. to ensure they have no discriminatory purpose or effect. In this way, Section 5 of the Votings Rights Act has been a critical tool in guaranteeing the voting rights of minorities.

Today, Section 5 of the Voting Rights Act continues to ensure voting rights. In the last ten years, Section 5 of the Voting Rights Act has been applied in more than a half-dozen states to ensure that districts are not redrawn to intentionally dilute minority votes and that polling places are not moved for the primary purpose of discouraging minority voting.

Judge Pryor's strong criticism of this important safeguard of civil rights, particularly on federalism grounds—meaning he believes that the Federal Government has no right to intervene, even where a citizen's right to vote is threatened—concerns me.

One of Judge Pryor's legacies as attorney general of Alabama is his effort to weaken and undermine the Americans with Disabilities Act, passed in 1990 to protect the rights of the disabled. For example, in Tennessee v. Lane, Pryor, then attorney general of Alabama, submitted an amicus brief seeking to deny a disabled defendant access to his own trial.

Pryor argued that the constitutional guarantees of equal protection and due process ''do not require a State to provide unassisted access to public buildings'' and even took the extraordinary position that there is no absolute right for a defendant to be present at his own criminal trial, stating that ''even as to parties in legal proceedings, there is no absolute right to attendance.'' The Supreme Court rejected these extreme positions advocated by Pryor.

Pryor's repeated attempts to use judicial means to undo the legislation protecting basic civil rights raise questions about both his willingness to protect individual's civil rights and his propensity to judicial activism— using the courts as a partisan vehicle to undo legislation he does not support.

Supporters of Judge Pryor's nomination point to his brief record as a recess appointee to the Eleventh Circuit as evidence of Judge Pryor's ability to set aside his strong political views. While Judge Pryor, in his short tenure on the Eleventh Circuit has not authored any particularly controversial opinions, decisions he has written addressed what are largely technical and uncontroversial legal issues.

Judge Pryor's brief stint as a recess appointee may or may not offer a representative preview of the opinions he would render as a lifetime member of the Eleventh Circuit.

Ultimately, my concern is that Judge Pryor does not display the dispassionate, independent view that we want from our judges. While in private practice, Pryor's commitment to the Republican Party apparently interfered with his representation of clients. Valstene Stabler, a partner at the Birmingham firm of Walston, Stabler, Wells, Anderson & Baines, described Pryor as being ''so interested in what the Republican Party was doing in the state, he was having trouble devoting attention to his private clients.''

A Washington Post editorial observed that:

Mr. Pryor's speeches display a disturbingly politicized view of the role of the courts. He has suggested that impeachment is an appropriate remedy for judges who ''repeatedly and recklessly . . . overturn popular will and . . . rewrite constitutional law.'' And he talks publicly about judging in the vulgarly political terms of the current judicial culture

war. He concluded one speech, for example, with the following prayer: ''Please, God, no more Souters'' a reference to the betrayal many conservatives feel at the honorable career of Supreme Court Justice David H. Souter.

Republicans who have worked with Judge Pryor have voiced concerns over his ability to be an independent, nonpartisan judge. Grant Woods, the former Republican attorney general of Arizona said that ''he would have great question of whether Mr. Pryor has an ability to be non-partisan. I would say he was probably the most doctrinaire and most partisan of any attorney general I dealt with in 8 years. So I think people would be wise to question whether or not he's the right person to be non-partisan on the bench.''

A judge must be able to set aside his views and apply the law evenly and fairly to all. Mr. Pryor's intemperate legal and political beliefs, and his strident statements and actions in furtherance of those beliefs, have led me to question whether he can be truly impartial.

Aside from his brief tenure on the Eleventh Circuit as a recess appointee, Judge Pryor has no judicial record upon which to evaluate him. Consequently, we must consider his fitness for the Eleventh Circuit on the basis of his actions and statements as deputy attorney general and attorney general of Alabama. Looking back on this highly partisan and controversial tenure, I cannot vote for Judge Pryor's confirmation to a lifetime appointment on the Eleventh Circuit Court of Appeals.

Mr. KOHL. Mr. President, I rise today to express my continued opposition to the nomination of William Pryor to be a judge on the Eleventh Circuit Court of Appeals. Judge Pryor's record was extensively considered and examined by the Senate when he was first nominated for this position in 2003. After he failed to obtain confirmation, President Bush used a recess appointment to appoint him to the Eleventh Circuit, an appointment that will expire at the end of the year, and now has renominated him to a permanent seat on the court. I find no reason today to alter my earlier conclusion that his record of extremism makes clear that he falls far outside the mainstream, and that I have no choice but to vote against his confirmation.

When considering a nominee to a Federal court judgeship, we consider many things. The nominee should possess exemplary legal skills, judgment, and acumen. The nominee should be learned in the law. And the nominee should be well regarded among his peers, and in his or her community. Perhaps most important of all is the nominee's judicial temperament.

An appeals court judge's solemn duty and paramount obligation is to do justice fairly, impartially and without favor. An appeals court judge must be judicious—that is, he or she must be open minded, must be willing to set his personal preferences aside, and judge without predisposition. And, of course, he or she must follow controlling precedent faithfully, and be able to disregard completely any views he or she holds to the contrary.

In the case of Judge Pryor, we are presented with a nominee whose views are so extreme that he fails this basic test. In case after case, and on issue after issue, Judge Pryor compiled a public record as Alabama's attorney general of taking the most extreme positions, often at odds with controlling Supreme Court precedent, and in the most hard-line and inflexible manner.

Judge Pryor's views are outside of the mainstream on issues affecting civil rights, women's rights, disability rights, religious freedom, and the right to privacy. During his confirmation hearings at the Judiciary Committee 2 years ago, he assured us that despite these views, he would follow settled law and Supreme Court precedent. But he made this promise only after making extreme statements to the Committee and during his hearing and refusing to disavow other zealous positions that he has taken throughout his career. I concluded then—and do not believe differently now—that I had no basis to believe Judge Pryor could put his personal views aside and apply the law of the land as decided by the Supreme Court.

Judge Pryor's supporters argue that his record in the year since he has sat as a judge on the Eleventh Circuit as a recess appointee demonstrates that he is worthy of confirmation. Yet, in each of the decisions that his supporters rely on for this judgment, Judge Pryor joined unanimous panels in supporting results virtually mandated by controlling precedent. Much more relevant than Judge Pryor's short and temporary tenure on the Eleventh Circuit is his record during all the years of his professional career prior to his recess appointment, especially his seven years of service as Alabama's attorney general, as well as his testimony before our committee in 2003.

And his record of extremism and ideologically motivated decision making during his years as attorney general could not be more clear. While attorney general of Alabama, Judge Pryor actively sought out cases where he could expand on his cramped view of federalism and challenge the ability of the Federal Government to remedy discriminatory practices. Many of the cases in which he took his most extreme legal positions were on behalf of the State of Alabama where he had the sole decision under State law as to what legal position to assert. These cases include his assertion of federalism claims to defeat provisions of the Age Discrimination in Employment Act and the Americans With Disabilities Act; his opposition to Congress's authority to provide victims of gender-motivated violence to sue their attackers in federal court; his argument that Congress exceeded its authority in passing the Family and Medical Leave Act; and many other cases. The extreme legal positions advanced in these cases were fully and entirely the responsibility of this nominee while he served as Alabama's attorney general.

Of course, Judge Pryor has every right to hold his views, whether we agree with him or not. He can run for office and serve in the legislative or executive branches should he convince a majority of his fellow Alabamians that he is fit to represent them. But he has no right to be a federal appeals court judge. Only those who we are convinced are impartial, unbiased, fair, and whose only guiding ideology is to follow the Constitution to apply equal justice to all are fit for this position. Unfortunately, we can have no confidence that he will set these views aside and faithfully follow the Constitution and binding precedent. For these reasons, I must oppose his confirmation.

The ACTING PRESIDENT pro tempore. Under the previous order, the time from 3:15 until 3:30 shall be under the control of the Democrats, and the time from 3:30 until 3:45 shall be under the control of the Democratic leader.

The Senator from Nevada.

Mr. REID. Mr. President, the time I have left over from the 15 minutes that is from 3:30 to 3:45 I will leave to Senator LEAHY. I am going to use part of his time now.

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

Mr. REID. Mr. President, I rise to express my strong opposition to the nomination of William Pryor to the Eleventh Circuit Court of Appeals.

At the outset, let me note the unusual fact that we are considering whether to confirm this nominee to a court on which he has been sitting for over a year as a recess appointee. In my view) this nomination is entitled to no special deference as a result of the nominee's status as a sitting federal judge.

There are serious constitutional questions about the validity of Mr. Pryor's recess appointment, and his confirmation at this time does not answer those questions with regard to cases heard by this or other recess appointees. Nor should it embolden President Bush to continue the questionable practice of appointing judges without the advice and consent of the Senate.

I oppose this nominee because his views on a wide range of vital issues are far outside the mainstream of legal thought, and I question his ability to put those views aside to decide cases impartially.

I said during the floor debate yesterday that Janice Rogers Brown is President Bush's most objectionable nominee. But I want to be clear: on the critical issue of civil rights, William Pryor holds views that are equally offensive as those of Justice Brown. The Pryor nomination deserves to be defeated just as the Brown nomination deserved to be defeated.

Any analysis of Mr. Pryor's judicial philosophy should begin with his views on federalism. This nominee has been a self-styled leader of the so-called federalism revolution conservative legal circles, a movement that challenges the authority of Congress to remedy civil rights violations.

Now, I am certainly thankful that the Framers of the Constitution had the wisdom to create a Federal system that divided power between the national and State governments. But for Mr. Pryor, the word ''federalism'' is more than that—it is a code word or a systematic effort to undermine important Federal protections for the disabled, the aged, women, minorities, labor, and the environment.

While attorney general of Alabama, Pryor told a Federalist Society conference that Congress:

should not be in the business of public education nor the control of street crimes . . . With real federalism, Congress would . . . make free trade its main domestic concern. Congress would not be allowed to subvert the commerce clause to regulate crime, education, land use, family relations, or social policy . . .

One proponent of the federalism movement is Michael Greve, a conservative scholar at the American Enterprise Institute. Greve told the New York Times that:

what is really needed here is a fundamental intellectual assault on the entire New Deal edifice.

Greve said he thinks this attack on the New Deal will get a good hearing from judges like William Pryor. Greve says of Pryor:

[he] is the key to this puzzle; there's nobody like him.

Let's look at some of the bedrock laws that Mr. Pryor has challenged under the banner of federalism. Mr. Pryor has argued that the Federal courts should narrow, or throw out entirely, all or portions of the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Civil Rights Act, the Clean Water Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Violence Against Women Act, and the Voting Rights Act.

What would America look like if this federalist revolution were to take hold in the Federal courts? University of Chicago Law Professor Cass Sunstein describes it well:

Many decisions of the Federal Communications Commission, the Environmental Protection Agency, the Occupational Safety and Health Administration and possibly the National Labor Relations Board would be unconstitutional. It would mean that the Social Security Act would not only be under political but also constitutional stress . . . the Securities and Exchange Commission and maybe even the Federal Reserve would be in trouble. Some applications or the Endangered Species Act and Clean Water Act would be struck down as beyond Congress's commerce power.

As attorney general of Alabama, Pryor had the sole power to decide what legal action the State and its agencies would take, and he used that power to file ''friend of the court'' briefs attacking many of these statutes. In fact, Alabama was the only State to file a brief against the Violence Against Women Act, while 36 States submitted briefs in support of the statute—which had passed Congress with bipartisan support.

With regard to the Voting Rights Act, Mr. Pryor had the following to say when he testified before Congress in 1997:

I encourage you to consider seriously, for example, the repeal or amendment of section 5 of the Voting Rights Act, which is an affront to federalism and an expensive burden that has far outlived its usefulness, and consider modifying other provisions of the Act that have led to extraordinary abuses of judicial power.

The Voting Rights Act is still of vital importance, and section 5 is one of its most important sections. I have grave concerns that if Mr. Pryor cannot understand the continuing need for voting rights protections for minorities, he is unlikely to rigorously enforce the act in cases before the Circuit. This is especially important since all of the States within the circuit are covered, in whole or in part, by Section 5.

Mr. Pryor has waged an assault on other civil rights laws. In the case of Alexander v. Sandoval, Pryor filed a brief for Alabama which urged the Court to drastically restrict title VI of the Civil Rights Act, which bars discrimination in federally funded programs. In a 5-to-4 opinion written by Justice Scalia, the Supreme Court agreed with Pryor and held that there is no private right of action to enforce title VI regulations. This ruling was a dramatic setback for the civil rights movement and continues to impede the enforcement of civil rights laws.

While five Supreme Court Justices agreed with Pryor about title VI, his outside-the-mainstream views have often been rejected by the current conservative Supreme Court. In fact, the Court unanimously rejected three of Mr. Pryor's federalism arguments: that sovereign immunity applies not only to States but to counties; that the Americans with Disabilities Act does not apply to State prisons; and that a law barring a State from selling the personal information of its citizens without permission is unconstitutional.

It is no wonder that the Atlanta-Journal Constitution, in an editorial entitled ''Right-wing Zealot is Unfit to Judge,'' wrote that Mr. Pryor's nomination:

is an affront to the basic premise that a candidate for the federal bench must exhibit respect for established constitutional principles and individual liberties. Pryor may be a good lawyer and a faithful Republican, but his lifelong extremism disqualifies him for a federal judgeship.

And there is more.

There is Mr. Pryor's view of the equal protection clause, which led him to oppose a 7-to-1 ruling by the Supreme Court that opened the Virginia Military Institute, a State-funded university, to women. Predictably, Mr. Pryor called that case an example of the Supreme Court being ''both antidemocratic and insensitive to federalism.''

There is Mr. Pryor's contempt for what he called the ''so-called wall of separation between church and state'' and his belief that this important doctrine was created by ''errors of case law.'' In fact, Mr. Pryor remarked at a graduation ceremony that ''the challenge of the next millennium will be to preserve the American experiment by restoring its Christian perspective.''

There is his view of the Constitution's prohibition on cruel and unusual punishment. The Supreme Court—which has not exactly been liberal on this issue—rejected Mr. Pryor's argument that prison guards could handcuff prisoners to a hitching post in the Alabama sun and deny them bathroom breaks or water. It also rejected his argument that it is permissible to execute the mentally retarded. It also rejected his argument that counsel need not be provided to indigent defendants charged with a misdemeanor that carries a jail sentence.

Is this the kind of judge we want to confirm to a lifetime seat on a Federal appellate court?

Do we want a judge who, when the Supreme Court questioned the constitutionality of Alabama's use of the electric chair in 2000, lashed out at the Court by saying ''[T]his issue should not be decided by nine octogenarian lawyers who happen to sit on the U.S. Supreme Court''?

Do we want a judge who, on the day after the Supreme Court's final ruling in Bush v. Gore, said:

I'm probably the only one who wanted it 5–4. I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.

On another occasion he said:

Please God, no more Souters.

This kind of temperament served Pryor well as a Republican politician, but this doesn't represent the kind of judicial temperament we want on the Federal bench.

The Senate must exercise its advice and consent responsibility with great care. In fact, we should follow Mr. Pryor's own advice. He once told a Senate subcommittee that:

your role of advice and consent in judicial nominations cannot be overstated.

I agree with him on that point. For these reasons, I urge my colleagues to withhold the in consent to this very unacceptable nomination.

Mr. President, I apologize to my friend. Since he was not here, I used my time a little early. So the record is clear, my friend is the great Senator PAT LEAHY from Vermont.

Mr. LEAHY. I thank the Senator.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, how much time is available?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Vermont has such time until 3:45 remaining.

Mr. LEAHY. I appreciate that.

Mr. President, last month 80 American service men and women died in Iraq, along with more than 700 Iraqis. This week, there are reports that the Army National Guard and the Marines are not meeting their recruitment goals, in spite of the bonuses and benefits being offered. The price of gasoline, prescription drugs, health care, and so many essentials for American working families are rising a lot faster than their wages. This week, the Washington Times reported that the rate of increase in the Consumer Price Index doubled in the last year. This week, we have learned that General Motors has planned to lay off another 25,000 workers and that other companies are not expanding or are, even worse, downsizing. The report of only 78,000 jobs created last month puts us back to the dismal levels that have characterized so many months during this administration. A loss of our manufacturing jobs continues at a steady drip. Millions are suffering and dying in Africa. The British Prime Minister visited to urge greater efforts to help.

But, of course, we debated none of these issues in the Senate. The Republican leadership continued to force us to expend our precious days debating something else. And what is that? The Senate's time has been focused not on these things that touch the pocketbooks of Americans but almost exclusively on this administration's divisive and contentious judicial nominees.

Over the last several months, and for many days and weeks over the last few years, the work of the Senate has been laid aside by the Republican leadership to force debate after debate on divisive nominations, on people who are going to be paid almost $200,000 a year in lifetime jobs. Those who are barely able to make their week's rent or their month's mortgage ask what we are doing in the Senate.

Among the matters the Senate has neglected this week in order to devote its attention to these nominations are many issues that concern the American people. One matter is the consideration and passage of the NOPEC bill. It is bipartisan legislation. It affects all Americans, Republicans and Democrats. Senator DEWINE, a Republican of Ohio, Senator KOHL, a Democrat of Wisconsin, are key sponsors. The sponsors of the bill include Senator GRASSLEY, Senator SPECTER, Senator COBURN, and Senator SNOWE.

With an increase in gasoline prices of almost 50 percent during the four years of the Bush Presidency, with Americans having to pay so much more to drive to work, to get their kids to school, just to get around to conduct the daily business of their lives, the Republican leadership of the Senate is ignoring this substantial burden on American working families.

This week, the national average price for a gallon of regular gasoline was $2.12. When the President took office, it was $1.46. We just heard reports that in Vermont and New Hampshire home heating oil prices will be up another 30 percent this fall and winter.

The artificial pricing scheme enforced by OPEC affects all of us, and it is especially tough on our hard-working Vermont farmers. Rising energy expenses can add thousands of dollars a year to the costs of operating a 100-head dairy operation, a price that could mean the difference between keeping the family business alive for another generation or shutting it down.

With summer coming, many families are going to find that OPEC has put an expensive crimp in their vacation plans. Some are likely to stay home; others will pay more to drive or to fly so that they can visit their families or take their well-deserved vacations.

Americans deserve better. If the White House is not going to intervene, then Congress has to act. It is past time—it is past the time—for holding hands and exchanging kisses with Saudi princes, princes who have artificially inflated the price of gasoline. The President's jawboning with his close friends in Saudi Arabia has proven unsuccessful. It is time to act, but the Senate, under Republican leadership, is choosing instead to revisit another extreme judicial nomination, one that has already been considered.

The production quota set by OPEC continues to take a debilitating toll on our economy, our families, our businesses, industry, and farmers. Last year and again earlier this year, the Judiciary Committee voted to report favorably to the full Senate the bipartisan NOPEC bill, which is short for No Oil Producing and Exporting Cartels Act. Our legislation would apply America's antitrust laws to OPEC's anti-competitive cartel. It would prohibit foreign states from working together to limit production and set prices, restrain the trading of petroleum and natural gas, when such actions affect the United States. It would give the Department of Justice and the Federal Trade Commission authority to enforce the law through antitrust actions in Federal courts.

Why not give the Justice Department clear authority to use our antitrust laws against the anti-competitive, anti-consumer conduct in which the OPEC cartel is engaged here in the United States?

This bipartisan bill was reported by the Judiciary Committee more than a year ago, in April of last year. It was reintroduced this year and reported, again, in April of this year. It has been stalled on the Senate Business Calendar for too long. It is a bipartisan initiative that could help in the fight to reduce gasoline prices now and heating oil prices in the fall and winter. It deserves a vote. Why not have an up or down vote on this measure without further delay by the Republican leadership? Why can't we do that when we have seen gasoline go from $1.46 to $2.12 in this President's administration? No, instead we spend weeks and months, not passing legislation that would win the support of a majority of Republicans and Democrats, but talking about a handful of people who are going to get lifetime, well-paid jobs.

Another consequence of the Republican leadership's fixation on carrying out this President's attempt to pack the Federal courts with activist jurists may be much-needed asbestos compensation reform. For more than 3 years, I have been working on asbestos reform to provide compensation to asbestos victims in a fair and more expedited fashion. Chairman SPECTER and I have worked closely on S. 852, the FAIR Act. It, too, is pending on the Senate Business Calendar, even though it was voted out in a bipartisan effort last month.

Chairman SPECTER deserves enormous credit for this achievement, even though we were slowed significantly by the extensive debate on contentious nominees and the nuclear option the past few months. We have been working in good faith to achieve a bipartisan legislative process on this issue. We have done so, despite criticism from the left and the right. In fact, after the bill was successfully reported by the committee, Senator HATCH called it the most important measure the Senate would consider this year for the American economy. Are we debating it on the floor? No. We are debating a handful of right-wing activist judges for lifetime, highly paid jobs.

There are many items that need prompt attention. The Armed Services Committee completed its work on the Department of Defense authorization bill. But we are seeing the Republican leadership delay action on the Defense authorization bill at a time when we have so many of our men and women under arms overseas. I don't know why they are doing it, unless it is to allow more activist judges to come through. At a time when we have young men and women serving their country around the world, and we are talking about the recently recommended base closings, I would have thought the Defense authorization would be more of a priority than three or four activist judges.

The Senate Energy Committee successfully completed its consideration of an Energy bill, and it was reported to the Senate with a strong bipartisan majority. Despite its balance and a bipartisan vote, the Senate Republican leadership said, no, we can't talk about it. We have to talk about a couple more right-wing activist judges.

Another matter that deserves timely attention is the Stem Cell Research Enhancement Act which was just passed by the House of Representatives. It is another bipartisan effort that deserves our attention. It had 200 House sponsors, led by Congressman CASTLE and Congresswoman DEGETTE. It passed with 238 votes. It is critically important. It authorizes work on embryonic stem cells which otherwise would be discarded, work which holds great promise and hope for those families suffering from debilitating disease and injury. More effective treatments for Parkinson's, Alzheimer's disease, diabetes, for spinal cord injuries, for many other diseases are all possibilities. Why are we not debating that? We have three or four more activist right-wing judgeships for lifetime, highly paid positions. That is far more important than stem cell research.

While the administration continues to talk about its efforts to weaken Social Security, there is bipartisan legislation we should be considering, the Social Security Fairness Act. Are we going to talk about that? No. Will we talk about the fact that the administration is raiding the Social Security fund to pay for their war in Iraq? That is something they don't want to talk about. They want to talk about Social Security failing, but they don't talk about the fact that they have to take the money out of the Social Security fund to pay for the war in Iraq. We can't talk about the Social Security Fairness Act here on the floor because we have to take the time for three or four more right-wing activist judges.

The bill I talked about is a bill that Republican and Democratic Senators have cosponsored over the years to protect the Social Security retirement of police officers. Those on the front lines protecting all of us from crime and violence should not see their Social Security benefits reduced. That needs fixing. We could have done that easily this week. But, no, we can't protect our police officers. Instead, we will make sure that a handful of right-wing activist judges get highly paid lifetime jobs.

These are merely examples of some of the business matters the Republican majority of the Senate has cast aside to force more debate on more contentious nominees. The Senate could be making significant legislative progress on an agenda that would result in much-needed and tangible relief to the American people on a number of important fronts. We could be acting to lower gas prices, authorize actions against illegal cartels, make asbestos compensation efficient and effective, authorize vital scientific research, provide fairness to police officers and to make health care more affordable, create new and better jobs and give our veterans and their families the support they need and deserve. Instead, the Republican leadership of the Senate continues its narrow focus on helping this Administration pack the federal courts with extreme nominees.

For more than four years, we have seen the Republican congressional leadership and the administration ignore the problems of Americans with a single-minded effort to pack and control the Federal courts. Unemployment, gas prices, the number of uninsured, the Nation's budget, the trade deficit were all lower when President Bush assumed office. Through Republican Senate obstruction of more than 60 of President Clinton's moderate and qualified judicial nominees, more than 60 of President Clinton's nominees who were subjected to a pocket filibuster by Republicans, judicial vacancies went up. But let's take a look.

Since President Bush came in, what are the things that have gone up? Unemployment has gone up 21 percent. Since President Bush came in, what has gone up? The budget deficit has gone up. It has gone from a $236 billion surplus under President Clinton to a $427 billion deficit under President Bush—$663 billion down the rat hole. What else has gone up? The price of gas has gone from $1.42 to $2.10. That is not helping the average American. Let's take a look at the trade deficit. It has gone up from $36 billion to $55 billion. How about the percentage of the uninsured? That has gone up another 10 percent.

But the full-time, highly paid positions of judgeships is the one thing that has come down. Judicial vacancies have come down 49 percent.

It seems that is far more important than seeing projected trillions of dollars in surpluses go to trillions of dollars in projected deficits, far more important than the problem we create when we allow the Saudis, the Chinese, the South Koreans, the Japanese, and others to pay our bills but then be able to manipulate our economy. It seems wrong.

We helped the President confirm a record number of his judges, but we Democrats would like to see us talk about the people who are out of work, the price of gasoline, the huge deficits that have been created by this presidency.

We know that yesterday the Senate confirmed Janice Rogers Brown to the Court of Appeals for the D.C. Circuit, despite the fact she is a divisive and controversial nominee. She was opposed by both her home State Senators because she had a record so extreme it marked her as one of the most activist judicial nominees ever chosen by any President.

In the past, when both Senators from a nominee's State opposed them, the person, even if highly qualified, would be turned down. In this case, we have somebody who is not qualified, an activist judge opposed by both of her State's Senators, who still passed. I mention that because I remember Justice Ronnie White, now the first African American to serve as Chief Justice of the Missouri Supreme Court. When the two Senators from his home State, Republican Senators, said they were opposed to him, what happened? In 1999, every Republican Senator came on to the floor and voted down Justice Ronnie White, even though he had been voted out of the Judiciary Committee with heavy support. They said: Whoops, he may be this distinguished African-American jurist from Missouri. But we have two Senators from his State who oppose him so we will vote him down. And they did.

But yesterday, what a difference. What a difference if you have a Republican in the White House. Those same Republican Senators, joined by new Republican Senators, the same Republican Senators who told me, ''We know that Justice Ronnie White is well qualified, but, after all, we have to follow the fact that the two Senators from his State say they don't want him, so we have to vote him down,'' those same Senators come up here and meekly come in, in lockstep, and vote for Judge Brown, even though the two home-state Senators, for very good reasons, opposed her.

Last week, all but one Republican Senator voted to confirm Priscilla Owen.

Yesterday's vote on the Brown nomination apparently indicates Republican Party discipline has been restored. For all the talk about profiles in courage and Senators voting their conscience, the Republican majority has reduced the Senate to a rubberstamp of this President's extreme and activist nominees. Even though Senators will tell you privately they would vote against this person if it was secret ballot, the White House tells them what to do.

William Pryor has argued that Federal courts should cut back on the protections of important and well-supported Federal laws, including the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Civil Rights Act of 1964, the Clean Water Act, the Violence Against Women Act, the Family and Medical Leave Act. That should be enough to vote against him, but it won't be, not with this rubberstamp. He has repudiated decades of legal precedents that permitted individuals to sue States to prevent violations of Federal civil rights regulations. Is that going to cause us to vote him down? Heck no.

His aggressive involvement in the Federalist revolution shows he is a goals-oriented activist who has used his official position to advance his cause. While his advocacy is a sign to most people of the extremism, he trumpets his involvement. He is unabashedly proud of his repeated work to limit congressional authority to promote the health, safety, and welfare of all Americans.

His passion is not some obscure legal theory but a legal crusade that has driven his actions since he was a student and something that guides his actions as a lawyer. His speeches and his testimony before Congress demonstrate just how rooted his views are, how much he wants to effect a fundamental change in this country.

Just remember this: These judicial nominees are being confirmed for life. They do not leave or get reconsidered after the congressional elections next year or after this administration ends. They serve as lifetime appointments to the Federal court.

It is one thing for us to ignore all the things we should be doing for the American people, but I urge all Senators, on both sides of the aisle, to end this up-or-down rubberstamp, fulfill the Senate's constitutionally mandated duty to evaluate with clear eyes the fitness of judicial nominees, even President Bush's nominees, when they are for lifetime appointments. Stop telling me privately how you would vote if it was a secret ballot. Have the courage to vote in an open ballot the same way.

In the last Congress, following one of the most divisive debates I have seen on the floor of the Senate, I explained why I felt strongly about voting against the nomination of William Pryor to the U.S. Court of Appeals for the Eleventh Circuit—in committee and in two unsuccessful cloture attempts. The President disregarded the advice given to him by the Senators opposing this nomination, and he installed Mr. Pryor as a recess-appointed judge on the Eleventh Circuit where he will serve until the end of this year. Today, because the President continues to insist on pushing his most divisive nominees in a group that he renominated to the Senate, we are here voting yet one more time on this nomination.

I expect some will try to point to the few cases he has worked on during his time ''auditioning'' on the circuit court as evidence that he should be confirmed. But nothing Judge Pryor has done in the intervening period has changed my view that based on his entire career and record, if he were to receive life tenure on the Federal bench, he would put ideology above the law. I cannot support him.

In the course of their march toward the ''nuclear option''—a development thankfully averted—the President and the Republican leadership escalated the rhetoric surrounding this issue in alarming ways. The majority leader last month participated in a telecast smearing opponents of the most extreme judicial nominees as ''against people of faith.'' Arrayed behind the podium at that gathering were photos of the filibustered nominees, and speaker after speaker accused Democrats of opposing nominees such as Judge Pryor because of his faith. These are baseless and despicable accusations, and it is time the Republican leadership and other Republicans in and out of the Senate disavow them.

Senate Democrats do not oppose William Pryor because of his faith. We oppose the nomination of William Pryor to the Eleventh Circuit because of his extreme—some, with good reason, use the word ''radical''—ideas about what the Constitution says about federalism, criminal justice and the death penalty, violence against women, the Americans with Disabilities Act, and the Government's ability to protect the environment on behalf of the American people. Of course, those substantive concerns will not do much to advance Republicans' political ambitions and the agendas of polarizing interest groups. So some Republican partisans are putting the truth to one side. They dismiss the views of Democratic Senators doing their duty under the Constitution to examine the fitness of every nominee to a lifetime position on the Federal bench and choose, instead, to use smears and accusations.

The last time Judge Pryor came before this committee and the Senate, slanderous accusations were made by Republican Senators, and scurrilous newspaper advertisements were run by a group headed by the President's father's former White House counsel and a group whose funding includes money raised by Republican Senators and even by the President's family. Other Republican members of the Judiciary Committee and of the Senate stood mute in the face of these McCarthyite charges, or, worse, fed the flames. Now, the same type of rhetoric—identifying opponents as against faith—has again reared its ugly head.

This kind of religious smear campaign hurts the whole country. It hurts Christians and non-Christians. It hurts all of us, because the Constitution requires judges to apply the law, not their personal views. Remember that all of us, no matter what our faith—and I am proud of mine—are able to practice our religion as we choose or not to practice a religion. That is a fundamental guarantee of our Constitution. The Constitution's prohibition against a ''religious test'' in Article VI is consistent with that fundamental freedom. I hope that Republican Senators will debate this nomination absent the scurrilous charges that marked it the past and the discourse during the ''nuclear option'' last month.

Instead, the Senate's debate should center on the nominee's qualifications for this lifetime post in the Federal judiciary. There is an abundance of substantive and compelling reasons why William Pryor should not be a judge on the Eleventh Circuit. Opposition to Judge Pryor's nomination is shared by a wide spectrum of objective observers. Judge Pryor's record is so out of the mainstream that a vast number of editorial boards and others have weighed in with significant opposition.

Even The Washington Post, which has been exceedingly generous to the Administration's efforts to pack the courts, has termed Judge Pryor ''unfit'' and consistently opposed his nomination. In Alabama, both the Tuscaloosa News and the Hunstville Times wrote against the nomination. Other editorial boards across the country have spoken out, including the Atlanta Journal-Constitution, the Pittsburgh Post-Gazette, The New York Times, the Charleston Gazette, the Arizona Daily Star, and The Los Angeles Times.

We have also heard from a large number of organizations and individuals concerned about justice before the federal courts. The Log Cabin Republicans, the Leadership Conference on Civil Rights, the AFL–CIO, the National Partnership for Women and Families and many others have provided the Committee with their concerns and the basis for their opposition. We have received letters of opposition from organizations that rarely take positions on nominations but feel so strongly about this one that they are compelled to publicly oppose it, including the National Senior Citizens' Law Center, the Anti-Defamation League and the Sierra Club.

The ABA's evaluation also indicates concern about this nomination. Their Standing Committee on the Federal Judiciary gave Mr. Pryor a partial rating of ''not qualified'' to sit on the Federal bench. Of course this is not the first ''not qualified'' rating or partial ''not qualified'' rating that this administration's judicial nominees have received. More than two dozen of President Bush's nominees have received indications of concerns about their qualifications from the ABA's peer reviews, which have been less exacting and much more accommodating to this administration than to previous ones. I would note that this softer treatment follows the changes in the process imposed by the Bush administration.

Judge Pryor has long been a leader of the federalist movement, promoting State power over the Federal Government. A leading proponent of what he refers to as the ''federalism revolution,'' Judge Pryor seeks to revitalize state power at the expense of Federal protections, seeking opportunities to attack Federal laws and programs designed to guarantee civil rights protections. He has urged that Federal laws on behalf of the disabled, the aged, women, minorities, and the environment all be limited. Not long ago, in a New York Times Magazine article about the so-called ''Constitution-in-Exile'' movement, Michael Greve, was quoted as saying, ''Bill Pryor is the key to this puzzle; there's nobody like him. I think he's sensational. He gets almost all of it.'' That is precisely why he should not be confirmed.

William Pryor has argued that the Federal courts should cut back on the protections of important and well-supported Federal laws including the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Civil Rights Act of 1964, the Clean Water Act, the Violence Against Women Act, and the Family and Medical Leave Act. He has repudiated decades of legal precedents that permitted individuals to sue states to prevent violations of Federal civil rights regulations. His aggressive involvement in this ''federalist revolution'' shows that he is a goal-oriented, activist conservative who has used his official position

to advance his ''cause.'' Alabama was the only state to file an amicus brief arguing that Congress lacked authority to enforce the Clean Water Act. He argued that the Constitution's commerce clause does not grant the Federal Government authority to prevent destruction of waters and wetlands that serve as a critical habitat for migratory birds. The Supreme Court did not adopt his narrow view of the commerce clause powers of Congress. While his advocacy in this case is a sign to most people of the extremism, he trumpets his involvement in this case. He is unabashedly proud of his repeated work to limit congressional authority to promote the health, safety and welfare of all Americans.

His passion is not some obscure legal theory but a legal crusade that has driven his actions since he was a student and something that guides his actions as a lawyer. His speeches and testimony before Congress demonstrate just how rooted his views are, how much he seeks to effect a fundamental change in the country, and how far outside the mainstream he is.

Judge Pryor is candid about the fact that his view of federalism is different from the current operation of the Federal Government—and that he is on a mission to change the government to fit his vision. His goal is to continue to limit Congress's authority to enact laws under the Fourteenth Amendment and the commerce clause—laws that protect women, ethnic and racial minorities, senior citizens, the disabled, and the environment—in the name of sovereign immunity. Is there any question that he will pursue his agenda as a judge on the Eleventh Circuit Court of Appeals reversing equal rights progress and affecting the lives of millions of Americans for decades to come?

Judge Pryor's comments have revealed insensitivity to the barriers that disadvantaged persons and members of minority groups and women continue to face in the criminal justice system. This is what is at stake for Americans, the consumers of our justice system. This is the type of judge this President and this Republican leadership are intent on permanently installing in our justice system.

In testimony before Congress, William Pryor has urged repeal of Section 5 of the Voting Rights Act—the centerpiece of that landmark statute—because, he says, it ''is an affront to federalism and an expensive burden that has far outlived its usefulness.'' That testimony demonstrates that Judge Pryor is more concerned with preventing an ''affront'' to the States' dignity than with guaranteeing all citizens the right to cast an equal vote. It also reflects a long-discredited view of the Voting Rights Act. Since the enactment of the statute in 1965, every Supreme Court case to address the question has rejected the claim that Section 5 is an ''affront'' to our system of federalism. Whether under Earl Warren, Warren Burger, or William Rehnquist, the United States Supreme Court has recognized that guaranteeing all citizens the right to cast an equal vote is essential to our democracy not a ''burden'' that has ''outlived its usefulness.''

His strong views against providing counsel and fair procedures for death row inmates have led William Pryor to doomsday predictions about the modest reforms in the Innocence Protection Act that would create a system to ensure competent counsel in death penalty cases. When the United States Supreme Court questioned the constitutionality of Alabama's method of execution in 2000, William Pryor lashed out at the Supreme Court, saying: ''[T]his issue should not be decided by nine octogenarian lawyers who happen to sit on the U.S. Supreme Court.'' Aside from the obvious disrespect this comment shows for the Nation's highest court, it shows again how results-oriented Judge Pryor is in his approach to the law and to the Constitution. Of course an issue about cruel and unusual punishment ought to be decided by the Supreme Court. It is addressed in the Eighth Amendment, and whether or not we agree on the ruling, it is an elementary principle of constitutional law that it be decided by the Supreme Court, no matter how old its members.

Judge Pryor has also vigorously opposed an exemption for persons with mental retardation from receiving the death penalty, exhibiting more certainty than understanding or sober reflection. He authored an amicus curiae brief to the Supreme Court arguing that the Court should not declare that executing mentally retarded persons violated the Eighth Amendment. After losing on that issue, Judge Pryor made an unsuccessful argument to the Eleventh Circuit that an Alabama death-row defendant is not mentally retarded.

Judge Pryor has spoken harshly about the moratorium imposed by former Illinois Governor George Ryan, calling it a ''spectacle.'' Can someone so dismissive of evidence that challenges his views be expected to hear these cases fairly? Over the last few years, many prominent Americans have begun raising concerns about the death penalty including current and former supporters of capital punishment. For example, Justice O'Connor recently said there were ''serious questions'' about whether the death penalty is fairly administered in the United States, and added: ''[T]he system may well be allowing some innocent defendants to be executed.'' In response to this uncertainty, Judge Pryor offers us nothing but his obstinate view that there is no problem with the application of the death penalty. This is a position that is not likely to afford a fair hearing to a defendant on death row.

Judge Pryor's troubling views on the criminal justice system are not limited to capital punishment. He has advocated that counsel need not be provided to indigent defendants charged with an offense that carries a sentence of imprisonment if the offense is classified as a misdemeanor. The Supreme Court nonetheless ruled that it was a violation of the Sixth Amendment to impose a sentence that included a possibility of imprisonment if indigent persons were not afforded counsel.

Judge Pryor is overwhelmingly hostile to a woman's right to choose. There is every indication from his record and statements that he is committed to reversing Roe v. Wade. Judge Pryor describes the Supreme Court's decision in Roe v. Wade as the creation ''out of thin air [of] a constitutional right,'' and opposes abortion even in cases of rape or incest.

Judge Pryor does not believe Roe is sound law, neither does he give credence to Planned Parenthood v. Casey. He has said that ''Roe is not constitutional law,'' and that in Casey, ''the court preserved the worst abomination of constitutional law in our history.'' When Judge Pryor appeared before the Committee, he repeated the mantra suggested by White House coaches that he would ''follow the law.'' But his willingness to circumvent established Supreme Court precedent that protects fundamental privacy rights seems much more likely.

Judge Pryor has expressed his opposition to fair treatment of all people regardless of their sexual orientation. The positions he took in a brief he filed in the Supreme Court case of Lawrence v. Texas were entirely repudiated by the Supreme Court majority two years ago when it declared that: ''The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private conduct a crime.'' Judge Pryor's view is the opposite. He would deny certain Americans the equal protection of the laws, and would subject the most private of their behaviors to public regulation.

Capping Judge Pryor's record of extreme activism were sworn statements made by former Alabama Governor Fob James and his son, both Republicans, explaining that Judge Pryor was only chosen by James to be the State's Attorney General after promising that he would defy court orders, up through and including orders of the Supreme Court of the United States. In sworn affidavits, Governor James and his son recount how Pryor persuaded them he was right for the job by showing them research papers he had supervised in law school about ''nonacquiesence'' to court orders. Indeed, under penalty of perjury, the former Republican Governor and his son say that Judge Pryor's position on defying court orders changed only when he decided he wanted to be a Federal judge.

If true, this information, consistent with the activism and extremism present elsewhere in Judge Pryor's record, is revealing. To think that this

man would come before the Senate after having made a promise like that—to undermine the very basis of our legal system—and ask to be confirmed to a lifetime position on the Federal bench, is beyond belief.

Indeed, William Pryor's activism has often transcended judicial philosophy and entered the realm of pure partisan politics to the point where it appeared political concerns openly affected his legal views. As Attorney General of Alabama, Pryor was one of the founders of the Republican Attorneys General Association, or RAGA, an organization which raised money from corporations for Republican candidates for state Attorney General positions. Before RAGA was founded, Attorney General candidates usually shied away from corporate fundraising because of the potential for conflicts of interest with an Attorney General's duty to go after any corporate wrongdoing.

But William Pryor not only ignored the tradition of keeping Attorney General's races above politics, he embraced with both hands the mixing of law and politics. He spoke out, vocally and often, against state attorneys general bringing aggressive cases against the tobacco industry, the gun industry, and other corporate interests. And then RAGA, Pryor's organization, raised money for attorney general campaigns from these very industries and others like them that hoped to avoid lawsuits and prosecution. Pryor's philosophy of opposing mainstream government regulation of corporations advanced his politics and his organization's fundraising, and his political interests in turn informed his pro-corporation legal philosophy. Curiously, when asked about RAGA at his hearing, Mr. PRYOR could remember very little about the organization or his role in it.

His partisan, political worldview colors the way he thinks about the role of the courts as well. He ended one speech with the prayer, ''Please God, no more Souters!''—a slap at a Supreme Court Justice seen by some as insufficiently conservative. And he said he was pleased the Court's vote in Bush v. Gore was a 5–4 split because that vote would give President Bush ''a full appreciation of the judiciary and judicial selection;'' in other words, it would show the president that he needed to appoint partisan conservatives to the bench. These are the sentiments of an activist and a politician. They are not the considered deliberations that all of us, as Republican or Democrat would expect from an impartial judge.

On a full slate of issues—the environment, voting rights, women's rights, gay rights, federalism, and more—William Pryor's record of activism and advocacy is clear. That is his right as an American citizen, but it does not make him qualified to be a judge. As a judge, it is his duty impartially to hear and weigh the evidence and to impart just and fair decisions to all who come before the court. In their hands, we entrust to the judges in our independent Federal judiciary the rights that all of us are entitled to enjoy through our birthright as Americans.

Judge Pryor's time on the Eleventh Circuit brings out the very problem with recess appointments of controversial judges. The Constitution sets out that Article III judges receive lifetime appointments precisely so that they can be independent. Judge Pryor, in contrast, cannot be independent during the pendency of his recess appointment because he is dependent on the Senate for confirmation to a lifetime position. He is, in essence, trying out for the job. Accordingly, the opinions he writes while temporarily on the court are not much of a predictor for what he would do if he did receive a lifetime appointment and became truly independent.

What is a good predictor for what he would do as a permanent Eleventh Circuit judge? Quite simply, his actions and statements in the many years of his professional life before he was appointed provide the best insight. And these actions and statements paint a clear and consistent picture of a judicial activist whose extreme views place him far outside the mainstream. A year of self-serving restraint does little to alter this picture.

The President has said he is against what he calls ''judicial activism.'' How ironic, then, that he has chosen several of the most committed and opinionated judicial activists ever to be nominated to our courts.

The question posed by this controversial nomination is not whether Judge Pryor is a skilled and capable politician and advocate. He certainly is. The question is whether—not for a two-year term but for a lifetime—he would be a fair and impartial judge. Could every person whose rights or whose life, liberty or livelihood were at issue before his court, have faith in being fairly heard? Could every person rightly have faith in receiving a just verdict, a verdict not swayed by or yoked to the legal philosophy of a self-described legal crusader? To see Judge Pryor's record and his extreme views about the law is to see the stark answer to that question.

I oppose giving Judge Pryor a lifetime appointment to the Eleventh Circuit where he can impose his radical activist vision on the many people whose lives and disputes come before him. I believe the President owes them a nominee who can unite the American people.

Mr. President, I believe my time has expired.

The ACTING PRESIDENT pro tempore. The Senator is correct.

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

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

The legislative clerk proceeded to call the roll.

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

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

Under the previous order, the time until 4 o'clock is under the control of the majority leader.

The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, it is a great honor for me to stand in this great Senate Chamber to share a few thoughts about my friend, one of the best lawyers I have ever known, now Judge Bill Pryor, serving on the Eleventh Circuit Court of Appeals, to speak in favor of his confirmation.

He is principled. He is highly intelligent. He is committed to doing the right thing. He has won the support, respect, friendship, and admiration of people on both sides of the aisle—African Americans, Whites, Democrats—throughout our State of Alabama. He has virtually unanimous support among those groups, and he has earned that by his principled approach to being attorney general, his love and respect for the law, his courageous commitment to doing the right thing.

He has views about the law and public policy in America, and he expresses those, but he absolutely understands that there is a difference between advocacy and being on a bench and having to judge, that you are not then an advocate, you are a referee, you are a judge, a person who is supposed to fairly and objectively decide how the dispute should be settled. He understands that totally. That is true with most good lawyers in America, but I think he understands it more than even most good lawyers. Most good lawyers have been good advocates, and they have become good judges. Certainly we understand that.

Criticism has been raised against him that is painful to me. I think much of it is a result of misinformation. For example, my colleague from Iowa, who is such a champion of the disabled, always is a champion of the interests of the disabled, suggested that Bill Pryor is not a believer in rights for the disabled because in a disabilities act that was passed by this Congress it allowed people to sue their employers for back pay, for injunction, and for damages if they were wronged by an employer. But the Congress never thought at that time what it meant if it involved a State.

Three percent of the people in Alabama work for the State of Alabama. He understood, as a skilled constitutional lawyer, that the Congress would have then undertaken, if the law was to be interpreted so that damages could be rendered against the State, to wipe out the doctrine of sovereign immunity. That is a doctrine that prohibits States from being sued for money damages. He said, yes, the employee can get the job back, yes, the employee can receive back pay if they were discriminated in any way as a result of that disability, but they cannot, in a case against the State of Alabama or any State, get money damages because that violates the constitutional principle of sovereign immunity.

He took that to the Supreme Court and won. Nobody in Alabama or anywhere else who knows anything about disabilities would think this represented an action by him to harm the disabled. It was simply to clarify this important principle as to what power the Congress has under these kinds of legislation to wipe out the traditional historic right of a State under sovereign immunity.

That is how these issues become confused. That is what hurts me about this debate process. So often nominees are accused of things based on results or maybe outcome of any one given case, and they are said to be against poor people or against education or against the disabled.

I will offer for the RECORD an editorial from the Mobile Press that totally analyzes the complaints and allegations that were raised by Senator KENNEDY about fundraising for the Attorney Generals Association. It completely refutes those allegations. We had a full look at it. I think everybody who was involved in the Judiciary Committee and the staff people who made lots of phone calls found there was absolutely nothing to show any wrongdoing.

How do we decide what a good person is or a good nominee is? I do not know. You may know them and respect them personally. You have seen their integrity and their courage in trying to do the right thing daily. What do others say who may have a different political philosophy? Let me read a letter from Alvin Holmes, a member of the State House of Alabama.

I see the majority leader here. I will be willing to yield to him or take a couple minutes, if he allows me.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, we will start voting about 4. If I can start in a couple minutes, that will be good.

Mr. SESSIONS. Mr. President, I will state what Representative Alvin Holmes said. He is an African American. He starts off saying:

> Please accept this as my full support and endorsement of Alabama's Attorney General Bill Pryor to the United States Court of Appeals for the 11th Circuit.
>
> I am a black member of the Alabama House of Representatives having serving for 28 years. During my service . . . I have led most of the fights for civil rights of blacks, women, lesbians and gays and other minorities.

He lists seven different points where Attorney General Bill Pryor has stood up for minority rights and African-American rights in the State, including a mentor program where he for 3 years worked every week reading as a tutor to Black children.

He goes on to note a number of points. He finally concludes this way:

> Finally, as one of the key civil rights leaders in Alabama who has participated in basically every major civil rights demonstration in America, who has been arrested for civil rights causes on many occasions, as one who was a field staff member of Dr. Martin Luther King's SCLC, as one who has been brutally beaten by vicious police officers for participating in civil rights marches and demonstrations, as one who has had crosses burned in his yard by the KKK . . . as one who has lived under constant threats day in and day out because of his [stands] . . . I request your swift confirmation of Bill Pryor to the 11th Circuit because of his constant efforts to help the causes of blacks in Alabama.

Bill Pryor has the support of every Democratic official in the State, the top African-American leaders, the people of Alabama. They know him and respect him to an extraordinary degree.

I am pleased to now yield the floor. I see the majority leader is here.

The PRESIDING OFFICER (Mr. CORNYN). The majority leader.

Mr. FRIST. Mr. President, I thank my distinguished colleague from Alabama for his leadership. I mentioned to him yesterday it was just a few weeks ago that it was uncertain whether we would ever reach this moment—about 3½ weeks ago and I remember the conversation. We committed to have an up-or-down vote, whatever it took. Indeed, I am delighted to say that in a few moments we will vote up or down on William Pryor's nomination to serve on the Eleventh Circuit Court of Appeals. This body will be allowed that opportunity to give Judge Pryor what he deserves, and that is the respect of an up-or-down vote.

He was first nominated to the Federal bench on April 9, 2003, over 2 years ago. So it has been a long time coming. That wait is almost over. It will be over in about 6 or 7 minutes. The partisan charges and obstruction leveled against him are going to be brought to a close. Soon William Pryor will get the fairness and the respect he deserves with that vote.

Judge Pryor's experience and achievements in the legal profession have prepared him well to serve on the Federal bench. He graduated magna cum laude from Tulane University School of Law where he served as editor in chief of the Law Review.

He began his legal career as a law clerk for a legendary civil rights advocate, the late Judge John Minor Wisdom of the U.S. Court of Appeals for the Fifth Circuit.

While practicing law at two of Alabama's most prestigious firms, Judge Pryor also taught several years as adjunct professor at Samford University's Cumberland School of Law.

Later he served as deputy attorney general and then attorney general of Alabama. As attorney general, he was overwhelmingly reelected by the people of Alabama in 2002.

Two years later, President Bush, in 2004, recess appointed Judge Pryor to the Eleventh Circuit. During this time, Judge Pryor has served with distinction. While on the appellate bench, many of Judge Pryor's opinions have been supported by judges appointed by both Democrats and Republicans.

But this should not come as a surprise. His rulings as a Federal judge are entirely consistent with his past record. William Pryor believes in interpretation of the law, not rewriting the law according to his own political views.

He has an outstanding record on civil rights. Dr. Joe Reed, chairman of the African-American caucus for Alabama's Democratic Conference, said of Judge Pryor: He ''will uphold the law without fear or favor. I believe all races and colors will get a fair shake when their cases come before him.''

Many other prominent African-American leaders have submitted letters of support for Judge Pryor praising him for his commitment to upholding civil rights and equality for all Americans. It is simple. Those who criticize Judge Pryor's record have not examined it with the care and respect that every nominee's record deserves.

His record consistently proves his unwavering dedication to the protection of individual liberties and his commitment to treating all people fairly.

Further, those who study his record, as I have, know that Judge Pryor understands and appreciates the obligation of the judiciary branch to interpret the law, not to write the law. He stated in his hearing before the Judiciary Committee the following:

> I understand my obligation to follow the law, and I have a record of doing it. You don't have to take my word that I will follow the law. You can look at my record as Attorney General and see where I have done it.

It has been over 2 years since the President sent William Pryor's nomination to the Senate. In that time, he has endured a hearing before the Senate Judiciary Committee lasting 4 hours where he answered over 185 questions.

Judge Pryor answered another 45 written questions from Senators and submitted over 26 pages in response.

On two separate occasions, his nomination has been favorably voted out of the Judiciary Committee, consuming another 4 hours of debate.

Two times his nomination has come to the Senate floor for a cloture vote, and twice the motion to invoke cloture failed because of partisan obstruction.

But that day is over. During the last 2 days, we have continued to debate the nomination of Judge Pryor, and now it is time to give him that long overdue vote. With the confirmation of Justice Owen and Justice Brown, and the upcoming vote on Judge Pryor, the Senate does continue to make good progress, placing principle before partisan politics and results before rhetoric.

I hope and I know we will continue working together. As the debate on judicial nominees has shown, we can disagree on whether individual nominees deserve confirmation, but we can all agree on the principle that each nominee deserves a fair up-or-down vote.

I urge my colleagues to join me in supporting the confirmation of Judge William H. Pryor.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Under the previous order, the hour of 4 o'clock having arrived, the question is, Will the Senate advise and consent to the nomination of William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit? The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS) is necessarily absent.

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

The result was announced—yeas 53, nays 45, as follows:

[Rollcall Vote No. 133 Ex.]

YEAS—53

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

NAYS—45

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

NOT VOTING—2

Jeffords	Murkowski

The nomination was confirmed.

The PRESIDING OFFICER (Mr. CHAFEE). The President will be immediately notified of the Senate's action.

NOMINATION OF RICHARD A. GRIFFIN TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

NOMINATION OF DAVID W. MCKEAGUE TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. The clerk will report the next two nominations en bloc.

The assistant legislative clerk read the nominations of Richard A. Griffin, of Michigan, to be United States Circuit Judge for the Sixth Circuit, and David W. McKeague, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

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

Ms. STABENOW. Mr. President, I rise this afternoon in support of the nominations of Judge David McKeague and Judge Richard Griffin to the Sixth Circuit Court.

For some time now, Senator LEVIN and I have been proposing the Senate move forward on these nominees as part of a good-faith effort for us to be working together in a bipartisan way in the Senate. I am pleased we are now to vote on the nomination of Judge Griffin and Judge McKeague as a result of the bipartisan agreement to move forward and stop what was called the nuclear option, which would have eliminated the checks and balances in the Senate. It is my hope this bipartisan agreement will help restore comity and civility in our very important Chamber.

I will say a few words about these two nominees. Judge Richard Griffin is a lifelong resident of Michigan. He would be the first nominee to the Sixth Circuit from Traverse City, MI. He has had a distinguished career both as an attorney and as a State appeals judge. He has served on the Michigan Court of Appeals for over 16 years and has been rated as ''well-qualified'' by the American Bar Association.

Judge David McKeague is also a lifelong resident of Michigan. He would be the first nominee from my home of Lansing, MI, to the Sixth Circuit. Judge McKeague has also had a distinguished career as an attorney, a law professor, and a Federal judge. He served on the U.S. District Court for the Western District of Michigan for over 12 years and has been rated ''well-qualified'' by the American Bar Association.

I urge my colleagues to join me and Senator LEVIN in supporting the nomination of Judge Griffin and Judge McKeague. It is important for us to move forward.

I hope confirming the Sixth Circuit nominees before the Senate will help restore comity and civility to the judicial nominations process. We have a constitutional obligation to advise and consent on Federal judicial nominees. This is a responsibility I take extremely seriously, as I know my colleagues do on both sides of the aisle. These are not decisions that will affect our courts for three or four years, but for 30 or 40 years, making it even more important for the Senate not to act as a rubberstamp.

This is the third branch of government and it is important we move forward in a positive way and be able to work with the White House on nominees who will reflect balance and reflect a mainstream approach for our independent judiciary.

I hope the White House will begin working with the Senate in a more bipartisan and inclusive manner on judicial nominations. I look forward to working with the White House on any future Michigan nominees since it is absolutely critical we work together in filling these positions.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Michigan.

Mr. LEVIN. Mr. President, I am supporting the two nominations before the Senate.

With today's confirmation of William Pryor, 211 of 218 of President Bush's judicial nominees have been confirmed. After Richard Griffin's and David McKeague's upcoming confirmation, 213 of 218 of President Bush's nominees will have been confirmed. What a contrast to the way that President Clinton's nominees were treated. More than 60 of President Clinton's nominees never received a vote in the Judiciary Committee. In the battles over judicial nominations that have consumed this body in recent years, the way those nominees were treated stands out as uniquely unfair. Even then-White House Counsel Alberto Gonzales acknowledged that treatment of President Clinton's nominees was ''inexcusable.''

For the last 4 years of the Clinton Presidency, there were Michigan vacancies on the Sixth Circuit court. The Republican majority refused to hold hearings in the Judiciary Committee on Clinton nominations for those vacancies. Indeed, one of those nominees waited longer for a hearing in the Senate Judiciary Committee than any nominee in American history had—a hearing she ultimately never received.

Her nomination was held up for some time by former Senator Spencer Abraham in an attempt to secure the nomination of his preferred candidate to a second position. Then, the seats were kept vacant because the majority hoped that a Republican would be elected President and would put forward his nominees for those vacancies. When President Bush came to office, he not only filled positions which should have been filled by nominees of President Clinton, his nominees were allowed to go forward even over the objections of their home state senators.

Today, we will confirm two of President Bush's Michigan nominees to the Sixth Circuit Court. They should be confirmed and I will vote for them. In deciding to move on, we should not excuse the treatment of President Clinton's nominees or the refusal of President Bush to adopt a bipartisan solution to the acknowledged wrong. A brief history of the Michigan vacancies on the Sixth Circuit will also hopefully prevent a recurrence of the tactic which was used against Clinton nominees—denial of a hearing in the Judiciary Committee, year after year—not just in the last year of a presidential term but in the years before the last year of a presidential term.

Michigan Court of Appeals Judge Helene White was nominated to fill a

Sixth Circuit vacancy on January 7, 1997. Some months later, Senator LEAHY, as ranking member of the Judiciary Committee, came to this floor to urge that the Committee act on her nomination. This would be the first of at least sixteen statements on the Senate floor by Senator LEAHY regarding the Sixth Circuit nominations over a 4 year period.

A year and a half after Judge White was nominated—Senator LEAHY came to the floor and said: ''At each step of the process, judicial nominations are being delayed and stalled.'' His plea was again ignored and the 105th Congress ended without a hearing for Judge White.

On January 26, 1999, President Clinton again submitted Judge White's nomination. That day, I urged both Senator Abraham and Chairman HATCH to recognize that fundamental fairness dictated that she receive an early hearing in the 106th Congress, having received no hearing in the 105th.

On March 1, 1999, a second Michigan vacancy on the Sixth Circuit opened up. The next day, Senator LEAHY returned to the floor, reiterated that nominations were being stalled by the majority.

The reason that the majority in the Judiciary Committee did not hold a hearing on Judge White was because of Senator Abraham's opposition, based on his effort to obtain the nomination of Jerry Rosen, a district court judge in the Eastern District of Michigan, to the second Michigan opening on the Sixth Circuit. President Clinton, however, in September of 1999, decided to nominate Kathleen McCree Lewis to that seat.

Soon thereafter, I spoke with Senator Abraham about the Lewis and White nominations, Senator LEAHY again urged the Committee to act, calling the treatment of judicial nominees ''unconscionable.''

On November 18, 1999, I again urged Senator Abraham and Chairman HATCH to proceed with hearings for the two Michigan nominees. At that time I noted that Judge White had been waiting for nearly 3 years and that the confirmation of the two women was ''essential for fundamental fairness.'' 1999 ended without Judiciary Committee hearings.

In February of 2000 Senator LEAHY spoke again on the Senate floor about the multiple vacancies on the Sixth Circuit. Less than two weeks later, I again made a personal plea to Senator Abraham and Chairman HATCH to grant a hearing to the Michigan nominees.

On March 20, 2000, the chief judge of the Sixth Circuit sent a letter to Chairman HATCH expressing concerns about a reported statement from a member of the Judiciary Committee that ''due to partisan considerations'' there would be no more hearings or votes on vacancies for the Sixth Circuit Court of Appeals during the Clinton administration. His concern would turn out to be well founded.

On May 2, 2000, I sent a note to Chairman HATCH, but neither Judge White's nor Ms. Lewis's nominations were placed on the Committee's hearing agenda. Over the next several months, Senator LEAHY went to the floor ten more times to urge action on the Michigan nominees. I also raised the issue on the Senate floor on several occasions.

In the fall of 2000, in a final attempt to move the nominations of the two Michigan nominees, I met with Majority Leader LOTT to discuss the situation. On September 12, I sent him a letter saying ''the nominees from Michigan are women of integrity and fairness. They have been stalled in this Senate for an unconscionable amount of time without any stated reason.'' Neither the meeting with Senator LOTT nor the letter prompted the Judiciary Committee to act on the nominations, and the 106th Congress ended without hearings for either woman.

By this point, Judge White's nomination had been pending for nearly 4 years—the longest period of time that any circuit court nominee had waited for a hearing in the history of the United States Senate. Ms. Lewis's nomination had been pending for about a year and a half.

The experience of Kent Markus of Ohio will shed some light on these events. Professor Markus was nominated by President Clinton in February of 2000, to fill an Ohio vacancy on the sixth Circuit. Both home state senators indicated their approval of his nomination. Nevertheless, he was not granted a Judiciary Committee hearing. In his testimony before the Judiciary Committee, Professor Markus recollected the events:

''. . . To their credit, Senator DeWine and his staff and Senator Hatch's staff and others close to him were straight with me. Over and over again they told me two things:

(1) There will be no more confirmations to the 6th Circuit during the Clinton Administration, and

(2) This has nothing to do with you; don't take it personally—it doesn't matter who the nominee is, what credentials they may have or what support they may have.

And Professor Markus continued:

''. . . On one occasion, Senator DeWine told me ''This is bigger than you and it's bigger than me.'' Senator Kohl, who had kindly agreed to champion my nomination within the Judiciary Committee, encountered a similar brick wall . . . The fact was, a decision had been made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could go to Bush rather than Clinton nominees.

The logic of it was quite straightforward, and unfair.

Senator STABENOW and I are not alone in our view that what occurred with respect to the Michigan nominees was fundamentally unfair. As I said, even Judge Gonzales, then-White House Counsel, has acknowledged that the treatment of some nominees during the Clinton administration was ''inexcusable.''

Given that belief, Senator STABENOW and I had hoped that the Bush administration might consider a bipartisan approach and believed that simply moving forward with Bush nominees would mean the unfair tactic used against the Clinton nominees would succeed.

The number of Michigan vacancies on the federal courts provided an unusual opportunity for bipartisan compromise. In an effort to achieve a fair resolution of the mistreatment of President Clinton's Michigan nominees, Senator STABENOW and I proposed a bipartisan commission to recommend nominees to the President for two of the then-four open Michigan Sixth Circuit positions. Similar commissions have successfully been used in other states. Such a commission would not guarantee the recommendation of any particular individual, much less the nomination of any particular individual, since the nomination decision is the President's alone. That proposal was rejected. The administration rejected another proposal to resolve the matter suggested by Senator LEAHY and endorsed by then-Republican Governor John Engler.

In the hopes of stimulating a bipartisan response, Senator STABENOW and I returned negative blue slips on President Bush's nominees. Despite past practice of not proceeding in the face of negative blue slips from home state Senators, the Judiciary Committee held hearings on the nominees.

In 1999, Chairman HATCH had stated, with respect to the Clinton nomination of Judge Ronnie White, ''had both home-State Senators been opposed to Judge (Ronnie) White in committee, [he] would never have come to the floor under our rules, [and] that would be true whether they are Democrat Senators or Republican Senators. That has just been the way the Judiciary Committee has operated . . .''

During the entire Clinton Presidency, it is my understanding that not a single judicial nominee got a Judiciary Committee hearing if there was opposition by one home-state Senator, let alone two. In our case, both home-state Senators opposed proceeding with President Bush's Michigan judicial nominees absent a bipartisan approach, but the Committee held hearings anyway.

So, the unreturned blue slips of one Republican Senator was enough to block Judiciary Committee consideration of two nominees by a Democratic President. But despite negative blue slips of both home State Democratic Senators, hearings were held for Sixth Circuit nominations of President Bush. That is inconsistent and unfair.

Mr. President, each of us who was here during that time knows what happened to President Clinton's Michigan nominees to the Sixth Circuit was unfair. Senator HATCH said it accurately, and I give him credit for putting it just this way when, in July of 2004, he said the following:

The two senators from Michigan have been very upset and if I'd put myself in their shoes I'd feel the same way.

Well, it is time, however, to move on. And we support moving on with these two nominations and hope that in doing so, it might produce some bipartisanship and compromise. But bipartisanship cannot just be a one-way street. It requires reciprocity.

In closing, I thank the many Senators who worked for a bipartisan approach to the Michigan nominees. In particular, I thank Senator HARRY REID, who, like Senator Daschle before him, got personally involved and tried to achieve a compromise. I thank Senator LEAHY for his extraordinary efforts over the many years. I cannot tell you how many times he came to the Senate floor to make a statement. I thank him for his efforts personally to try to resolve this matter. I also thank Senator SPECTER, who has recently provided some bipartisan suggestions to the White House.

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

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, President George W. Bush first nominated Judge Richard Allen Griffin to the Sixth Circuit on June 26, 2002.

During the 108th Congress, on June 16, 2004, the committee held a hearing on the nomination of Judge Griffin. He was successfully voted out of committee on July 20, 2004.

Judge Griffin is a judge of the Michigan Court of Appeals currently serving his 16th year on the court.

Judge Griffin is an outstanding and highly qualified candidate.

After graduating magna cum laude from Western Michigan University Honors College, Judge Griffin received his juris doctor from the University of Michigan Law School in 1977.

Upon graduating from law school, Judge Griffin clerked for the Honorable Washtenaw Circuit Judge Ross W. Campbell. He then became an associate and eventual partner at Coulter Cunningham, Davison & Read.

In 1985, Judge Griffin started his own firm, Read & Griffin, where he practiced a broad range of litigation, including automobile negligence, premises liability, products liability, and employment law. Judge Griffin engaged in both plaintiff and defense personal injury litigation.

During this time, Judge Griffin also provided pro bono legal services as a volunteer counselor and attorney with the Third Level Crisis Clinic.

In 1989, Judge Griffin successfully ran for the Michigan Court of Appeals. He was reelected to retain his seat in 1996, and again in 2002.

The American Bar Association rated Judge Griffin ''Well-Qualified'' for appointment to the Sixth Circuit.

Judge Griffin has engaged in numerous noteworthy activities. In addition to his duties on the Michigan Court of Appeals, Judge Griffin also devotes a significant amount of time to volunteer activities. Judge Griffin has served as president of the Grant Traverse Zoological Society since 1987. He also has served as chief judge of the YMCA Youth in Government Mock Trial Program since 1997.

Judge Griffin has widespread support.

Gerald Ford, 38th President of the United States, said:

I can say with conviction that Judge Griffin is a person of the highest quality character. As the record shows, he has been a very excellent Judge with unquestioned integrity.

Maura D. Corrigan, chief justice, Michigan Supreme Court, said:

Judge Griffin brings a depth of practical experience and a grasp of real life problems to the decisions of cases . . . Richard Allen Griffin is a man of integrity and probity who is fully capable of discharging the duty of protecting our Constitution and laws. He is deserving of the public trust as he has already proven himself worthy of that trust during his years of service to the State of Michigan.

William C. Whitbeck, chief judge, Michigan Court of Appeals, said:

[T]here is no question that the United States Senate should promptly confirm Judge Griffin for the position on the Sixth Circuit . . . He is a decisive, scholarly judge with an instinct for the core issues and with a flair for authoring crisp, understandable opinions.

Stephen L. Borrello, judge, Michigan Court of Appeals, said:

Judge Griffin possesses a rare trait amongst my colleagues: an intrinsic sense of justice. His innate fairness is combined with a rigorous work ethic and a thorough grasp of legal issues. Judge Griffin is one of the finest jurists in this State.

Mr. President, Judge David McKeague was originally nominated by President George W. Bush on November 8, 2001, and was renominated by the President on February 14, 2005. He received a hearing on June 16, 2004, and was voted out of the Judiciary Committee on July 20, 2004.

Judge McKeague is extremely well qualified to sit on the Court of Appeals for the Sixth Circuit. Judge McKeague has a B.A. from the University of Michigan and a J.D. from the University of Michigan Law School. Upon his graduation from law school, he joined the law firm of Foster, Swift, Collins & Smith, P.C., in Lansing, MI, and was elected a shareholder and director of the firm. Judge McKeague served on the firm's Executive Committee in various offices, and was chairman of the firm's Government and Commerce Department, for many years before his confirmation to the Federal bench in 1992.

Since February 1992, Judge McKeague has served as a judge on the U.S. District Court for the Western District of Michigan. Judge McKeague has regularly participated by designation on, and authorized appellate opinions for, panels of the U.S. Court of Appeals for the Sixth Circuit. The American Bar Association has rated Judge McKeague as unanimously ''well-qualified'' for appointment to the Sixth Circuit.

Judge McKeague is an active member of the community and several professional associations. Judge McKeague has been active as a member of several community, local, and professional organizations, including the Judicial Conference of the United States, the Federal Judicial Center, the Michigan State and Ingham County bar associations. Both while in private practice and while on the Federal bench, Judge McKeague has directed and participated in numerous seminars, moot court competitions, and trial advocacy programs at high schools, universities and law schools throughout Michigan.

Prior to his confirmation to the Federal bench, he served 6 years in the U.S. Army Reserve. Since 1998, he has also served as an adjunct professor of law at Michigan State University's Detroit College of Law, where he teaches Federal Jurisdiction and Trial Advocacy.

Judge McKeague has the support of many attorneys and peers in Michigan, including several Democrats.

John H. Logie, attorney and Mayor of Grand Rapids, said:

What emerged from our mutual experiences was a deep admiration for Judge McKeague's concerns both with the processes of the court and with their impact on people. If these are matters that we want out appellate judges to have in equal measure, then I can and do assure you that he will be an excellent choice.

Paul D. Borman, U.S. District Judge for the Eastern District of Michigan, said:

I have known Judge McKeague for seven years and I can vouch for his intelligence, hard work, and commitment to equal protection under the law.

Randall S. Levine, attorney and lifelong Democrat, said:

Judge McKeague is extremely intelligence, possesses a sharp wit and keen intellect . . . His integrity is beyond reproach.

Mr. LEAHY. Mr. President, as we debate the nominations of Richard Griffin and David McKeague to the Sixth Circuit Court of Appeals, and move on to their almost certain confirmation, I believe we must acknowledge the cooperation and statesmanship of the two Senators from Michigan who have compromised a great deal in order to contribute to the preservation of the rules and traditions of the Senate. Senator LEVIN and Senator STABENOW have spent much of the last 4 years trying to persuade the President to fulfill his constitutional duty and consult with them on his Michigan appointments, to no avail. Because of that lack of cooperation, combined with the shameful treatment given to President Clinton's nominees, the Michigan Senators exercised their right as home State Senators to withhold their consent to the nominations of candidates chosen without consultation to the Sixth Circuit.

The Michigan Senators had the support of other Senators. Nonetheless, the Michigan Senators, with grace and dedication to this institution, withdrew their opposition to three of those nominees as part of the discussions related to averting the nuclear option. Because of their willingness to go forward, we are here today debating and voting upon the confirmation of two nominees to the Sixth Circuit despite a lack of consultation by President Bush and a complete disregard for the history of this court.

First, it is essential to explain what a significant break with precedent it was that these two nominees were even given a hearing in the last Congress without the support of either of their home State Senators. The scheduling of that hearing was another example of the downward spiral the committee traveled over the last 2 years, when we witnessed rule after rule broken or misinterpreted away.

The list is long. From the way that home State Senators were treated to the way hearings were scheduled, to the way the committee questionnaire was altered, to the way our committee's historic protection of the minority by committee rule IV was violated; the Republican leadership on the committee last Congress destroyed virtually every custom and courtesy that had been available to help create and enforce cooperation and civility in the confirmation process.

The then-chairman of the committee crossed a critical line that he had never before crossed when in June of 2003, he held a hearing for Henry Saad, another of the Michigan nominees to the Sixth Circuit, opposed by both of his home State Senators. It may have been the first time any chairman and any Senate Judiciary Committee proceeded with a hearing on a judicial nominee over the objection of both home State Senators. It was certainly the only time in the last 50 years, and I know it to be the only time during my 31 years in the Senate.

Having broken a longstanding practice of the Judiciary Committee founded on respect for home State Senators, whether in the case of a district or circuit court nominee, the committee's leadership did not hesitate to break it again and hold a hearing for Richard Griffin and David McKeague.

The Michigan Senators did not do what so many other Senators did when holding up more than 60 of President Clinton's nominees, and block them silently. To the contrary, they came to the committee and articulated their very real grievances with the White House and their honest desire to work towards a bipartisan solution to the problems filling vacancies in the Sixth Circuit. We should have respected their views, as the views of home State Senators have been respected for decades. I urged the White House to work with them. I proposed reasonable solutions to the impasse that the White House rejected. The Michigan Senators proposed reasonable solutions, including a bipartisan commission, but the White House rejected every one.

Although President Bush promised on the campaign trail to be a uniter and not a divider, his practice once in office with respect to judicial nominees has been most divisive. Citing the remarks of a White House official, The Lansing State Journal reported that President Bush was simply not interested in compromise on the existing vacancies in the State of Michigan. It is unfortunate that the White House was never willing to work toward consensus with all Senators and on all courts. Over the last 4 years, time and again the good faith efforts of Senate Democrats to repair the damage done to the judicial confirmation process over the previous six years were rejected. And time and again, the rules were thrown by the wayside.

When Republicans chaired the Judiciary Committee and we were considering the nominations of a Democratic President, one negative blue slip from just one home State Senator was enough to doom a nomination and prevent a hearing on that nomination. This included all nominations, including those to the circuit courts. How else to explain the failure to schedule hearings for such qualified and noncontroversial nominees as James Beaty and James Wynn, African-American nominees from North Carolina? What other reason could plausibly be found for what happened to the nominations of Enrique Moreno and Jorge Rangel—both Latino, both Harvard graduates, both highly rated by the ABA, and both denied hearings in the Judiciary Committee? There is no denying that was the rule during the previous Democratic administration. There is no way around the conclusion that with a Republican in the White House, the Republicans in the Senate have found it politically expedient to change the rules and reverse their own practices time and again.

In all, more than 60 of President Clinton's judicial nominees and more than 200 of his executive branch nominees were defeated in Senate committees through the enforcement of rules and precedents that the Republican majority later found inconvenient—now that there is a Republican in the White House. Indeed, among the more than 60 Clinton judicial nominees who the committee never considered there were more than a few who were blocked despite positive blue slips from both home State Senators. So long as a Republican Senator had an objection, it appeared to be honored, whether that was Senator Helms of North Carolina objecting to an African-American nominee from Virginia or Senator Gorton of Washington objecting to nominees from California.

During the last Congress, the Judiciary Committee also took the unprecedented action of proceeding to a hearing on the nomination of Carolyn Kuhl to the Ninth Circuit over the objection of Senator BOXER. When the senior Senator from California announced her opposition to the nomination as well at the beginning of a Judiciary Committee business meeting, I suggested to the chairman that further proceedings on that nomination ought to be carefully considered. I noted that he had never proceeded on a nomination opposed by both home State Senators once their opposition was known. Senator FEINSTEIN likewise reminded the then-chairman of his statements in connection with the nomination of Ronnie White when he acknowledged that had he known both home Sstate Senators were opposed, he would never have proceeded. Nonetheless, in one in a continuing series of changes of practice and position, the committee was required to proceed with the Kuhl nomination. A party-line vote was the result.

With the Saad nomination, the committee made a further profound change in its practices. When a Democratic President was doing the nominating and Republican Senators were objecting, a single objection from a single home State Senator stalled the nomination. There was not a single example of a single time that the committee went forward with a hearing over the objection or negative blue slip of a single Republican home State Senator during the Clinton administration. But once a Republican President was doing the nominating, no amount of objecting by Democratic Senators was sufficient. The committee overrode the objection of one home State Senator with the Kuhl nomination. The committee overrode the objection of both home State Senators when a hearing and a vote was held on the Saad nomination, and once more by holding a hearing and vote for the two circuit court nominees we are discussing today.

I know it is frustrating that there have been unfilled vacancies on the Sixth Circuit for so long. Many of us experienced worse frustration during the Clinton years when good nominees were held up for no discernable reason—other than politics. During President Clinton's second term, the Republican Senate majority shut down the process of confirmations to the Sixth Circuit entirely, and three outstanding nominees were not accorded hearings, committee consideration or Senate votes. In fact, while there were numbers of vacancies on the Sixth Circuit and nominees for those vacancies, from November of 1997 there was not a confirmation to that court until the confirmation of Julia Smith Gibbons while I was chairman on July 29, 2002, a span of nearly 5 years. Not a single Sixth Circuit nominee was even given a hearing during Republican control of the 106th Congress, and one of the nominees, Kent Marcus from Ohio, testified at a Judiciary subcommittee hearing in 2002 that he was told that he would not be confirmed despite public support from his home State Senators. Republicans wanted to keep the vacancies in

case a Republican was elected President.

When I chaired the committee, we broke that impasse with the first Sixth Circuit confirmation in those many years. I scheduled a hearing and a vote for Julia Smith Gibbons of Tennessee, who was confirmed shortly thereafter, and I did the same for John Rogers of Kentucky, who was confirmed in November of 2002.

I know that around the time a Republican leadership staffer was found to have stolen confidential Democratic files there were outrageous accusations made that Judge Gibbons' confirmation was delayed to affect a pending affirmative action case in some way. I have never considered the outcome of any particular case when scheduling that or any other nominee for a hearing.

The facts of this nomination belie this scurrilous accusation. Judge Gibbons was nominated to the Sixth Circuit in October 2001 but did not have a completed file until November 15, shortly before the end of the first session of the 107th Congress. Before her paperwork was complete, the Sixth Circuit panel assigned to the affirmative action cases had already circulated a request for the full court to hear argument, and on November 16, the Sixth Circuit ordered that the case to be argued to the full court. The oral argument in that case took place after Thanksgiving, on December 6.

Given the lateness of her nomination, her paperwork, and the year, Gibbons could not realistically have expected a hearing, a committee vote and a confirmation vote to all have taken place in the 3 weeks between the time her paperwork was complete and the time the Sixth Circuit sat for the oral argument in that case and took a poll about the outcome of that case. The ordinary practice is that only the judges who are on the court at the time the court votes to hear the case ''en banc'' can participate in the case, even if they retire. It is just unreasonable to contend that Judge Gibbons could have heard the December 6 argument in that case.

When we returned for the second session of the 107th Congress, I scheduled several hearings at the request of a number of different Republican Senators. The first circuit court nominee to get a hearing was Michael Melloy for the Eighth Circuit at Senator GRASSLEY's request; followed by Judge Pickering, who was supported by Senator LOTT; then Judge D. Brooks Smith, for the Third Circuit, at Senator SPECTER's request; then Terrence O'Brien, for the Eighth Circuit, at the request of Senators THOMAS and ENZI; and Jeffrey Howard, for the First Circuit, who was supported by Senator Bob Smith.

Once those hearings were completed, in the week of April 15, I scheduled a hearing for Judge Gibbons. Her hearing was held on April 25. I listed her for a committee vote the very next week, and all of the Democratic Senators joined in voting her out the same day, May 2. She did not get an immediate floor vote due to a dispute between the White House and Senators over commissions, but she was ultimately confirmed on July 29, 2002.

The Sixth Circuit issued its decision in the Michigan affirmative action case on May 14, 2002, which means the judges were already working on the majority and dissenting opinions for weeks, likely even months, given the complexity of the case. The Supreme Court, where I think we all knew the issue would finally be decided, accepted the appeal of the affirmative action decision later that year and issued its ruling on June 23, 2003.

To say that Democrats used their power to influence the Sixth Circuit in any case is demonstrably false. What is factually true is that from the time the case against the University of Michigan case was filed in District Court until the time I facilitated the confirmation of Judge Gibbons, Republicans had successfully blocked any and all appointees to that Circuit.

Even after the 107th Congress, Democrats continued to cooperate in filling seats on the Sixth Circuit. Although many of us strongly opposed their nominations, we did not block the confirmations of two more controversial judges to that court: Deborah Cook and Jeffrey Sutton. With their confirmations, that brought us to a total of four Sixth Circuit confirmations in 3 years as opposed to no confirmation in the last 3 years of the Clinton administration. We cut Sixth Circuit vacancies in half. With cooperation from the White House, we could have done even better.

The Republican Senate majority refused for over 4 years to consider President Clinton's well-qualified nominee, Helene White, to the Sixth Circuit. Judge White has served on the Michigan Court of Appeals with Judge Griffin since 1993, and, prior to her successful election to that seat, served for nearly 10 years as a trial judge, handling a wide range of civil and criminal cases. She was first nominated by President Clinton in January 1997, but the Republican-led Senate refused to act on her nomination. She waited in vain for 1,454 days for a hearing, before President Bush withdrew her nomination in March 2001. It stands in contrast to the recent mantra from Republicans that every judicial nominee is entitled to an up-or-down vote.

President Clinton had also nominated Kathleen McCree Lewis. She is the daughter of a former Solicitor General of the United States and a former Sixth Circuit Judge. She was also passed over for hearings for years. No effort was made to accord her consideration in the last 18 months of President Clinton's term. The Republican double standard denied her the treatment they now demand for every Bush nominee.

Despite the flawed process that brought us here, the Michigan Senators understood that in recent weeks we found ourselves on the brink of a terrible moment in the United States Senate when the majority leader would break the rules to change the rules in order to achieve the President's goal of packing the courts. They understood the extreme tactics of the Republican majority. I applaud their sacrifice, and hope that the President was listening to the 14 other Senators who expressly asked him in their memorandum of understanding on nominations to engage in real consultation with home State Senators. That is sound advice.

In deference to the Michigan Senators, I will no longer oppose these confirmations. Still, there are issues related to their records and views that trouble me. I hope that they will be able to put any ideologies or preconceptions aside and rule fairly in all cases.

As a judge on the Michigan Court of Appeals since 1989, Judge Griffin has handled and written hundreds of opinions involving a range of civil and criminal law issues. Yet, a review of Judge Griffin's cases on the Michigan Court of Appeals raises concerns. He has not been shy about interjecting his own personal views into some of his opinions, indicating that he may use the opportunity, once confirmed, to further his own agenda when confronted with cases of first impression.

For example, in one troubling case involving the Americans with Disabilities Act—ADA—Doe v. Mich. Dep't of Corrections, Judge Griffin followed precedent and allowed the State disability claim of disabled prisoners to proceed, but wrote that, if precedent had allowed, he would have dismissed those claims. Griffin authored the opinion in this class action brought by current and former prisoners who alleged that the Michigan Department of Corrections denied them certain benefits on the basis of their HIV-positive status. Although Judge Griffin held that the plaintiffs had stated a claim for relief, his opinion makes clear that he only ruled this way because he was bound to follow the precedent established in a recent case decided by his Court. Moreover, he went on to urge Congress to invalidate a unanimous Supreme Court decision, written by Justice Scalia, holding that the ADA applies to State prisoners and prisons. He wrote, ''While we follow Yeskey, we urge Congress to amend the ADA to exclude prisoners from the class of persons entitled to protection under the act.''

In other cases, he has also articulated personal preferences that favor a narrow reading of the law, which would limit individual rights and protections. For example, in Wohlert Special Products v. Mich. Employment Security Comm'n, he reversed the decision of the Michigan Employment Security Commission and held that striking employees were not entitled to unemployment benefits. The Michigan Supreme Court vacated part of Judge Griffin's decision, noting that he had inappropriately made his own findings of fact

when ruling that the employees were not entitled to benefits. This case raises concerns about Judge Griffin's willingness to distort precedent to reach the results he favors.

In several other cases, Judge Griffin has gone out of his way to interject his conservative personal views into his opinions. The appeals courts are the courts of last resort in over 99 percent of all federal cases and often decide cases of first impression. If confirmed, Judge Griffin will have much greater latitude to be a conservative judicial activist.

It is ironic that Judge Griffin's father who, as Senator in 1968, launched the first filibuster of a Supreme Court nominee and blocked the nomination of Justice Abe Fortas to serve as Chief Justice. Despite the deference given in those days to the President's selected nominee, former Senator Griffin led a core group of Republican Senators in derailing President Johnson's nomination by filibustering for days. Eventually, Justice Fortas withdrew his nomination. I know that the Republicans here have called filibusters of Federal judges ''unconstitutional'' and ''unprecedented'', but this nominee's father actually set the modern precedent for blocking nominees by filibuster on the Senate floor.

The second of the two nominees before us today is David McKeague. His record raises some concerns, and his answers to my written questions on some of these issues did little or nothing to assuage them.

In particular, I am concerned about Judge McKeague's decisions in a series of cases on environmental issues. In *Northwoods Wilderness Recovery* v. *United States Forest Serv.*, 323 F.3d 405 (6th Cir. 2003), Judge McKeague would have allowed the U.S. Forest Service to commence a harvesting project that allowed selective logging and clear-cutting in areas of Michigan's upper peninsula. The appellate court reversed him and found that the Forest Service had not adhered to a ''statutorily mandated environmental analysis'' prior to approval of the project, which was dubbed ''Rolling Thunder.''

Sitting by designation on the Sixth Circuit, Judge McKeague joined in an opinion that permitted the Tennessee Valley Authority—TVA—broadly to interpret a clause of the National Environmental Policy Act in a way that would allow the TVA to conduct large-scale timber harvesting operations without performing site-specific environmental assessments. This is the case of *Help Alert Western Ky., Inc.* v. *Tenn. Valley Authority*, 1999 U.S. App. LEXIS 23759 (6th Cir. 1999). The majority decision in this case permitted the TVA to determine that logging operations that covered 2,147 acres of land were ''minor,'' and thus fell under a categorical exclusion to the environmental impact statement requirement. The dissent in this case noted that the exclusion in the past had applied only to truly ''minor'' activities, such as the purchase or lease of transmission lines, construction of visitor reception centers and onsite research.

Judge McKeague also dismissed a suit brought by the Michigan Natural Resources Commission against the Manufacturer's National Bank of Detroit, finding that the bank was not liable for the costs of environmental cleanup at sites owned by a ''troubled borrower.'' This is the case of *Kelley ex rel. Mich. Natural Resources Comm'n* v. *Tiscornia*, 810 F. Supp. 901 (W.D. Mich. 1993). The bank took over the property from Auto Specialties Manufacturing Company when it defaulted on its loans. The Natural Resources Commission argued that the bank should be responsible for taking over the cost of cleanup because it held the property when the toxic spill occurred, but Judge McKeague disagreed.

In *Miron* v. *Menominee County*, 795 F. Supp. 840 (W.D. Mich. 1992), Judge McKeague rejected the efforts of a citizen who lived close to a landfill to require the Federal Aviation Administration to enjoin landfill cleanup efforts until an environmental impact statement regarding the efforts could be prepared. The citizen contended that if the statement were prepared, the inadequacies of a State-sponsored cleanup would be revealed and appropriate corrective measures would be undertaken to minimize further environmental contamination and wetlands destruction. Holding that the alleged environmental injuries were ''remote and speculative,'' Judge McKeague denied the requested injunctive relief.

In *Pape* v. *U.S. Army Corps of Engineers*, 1998 U.S. Dist. LEXIS 9253 (W.D. Mich.), Judge McKeague seems to have ignored relevant facts in order to prevent citizen enforcement of environmental protections. Dale Pape, a private citizen and wildlife photographer, sued the U.S. Corps of Army Engineers under the Federal Resource Conservation and Recovery Act of 1976 (RCRA), alleging that the Corps mishandled hazardous waste in violation of RCRA, destroying wildlife in a park near the site. Despite the Supreme Court's holding in Lujan v. Defenders of Wildlife that ''the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing,'' and even though RCRA specifically conferred the right for citizen suits against the government for failure to implement orders or to protect the environment or health and safety, Judge McKeague dismissed the case, holding that plaintiff lacked standing to sue.

Judge McKeague found plaintiff's complaint insufficient on several grounds, in particular plaintiff's inability to establish which site specifically he would visit in the future. Plaintiff had stated in his complaint that he ''has visited the 'area around' the RACO site 'at least five times per year' and that he has made plans to vacation in 'Soldiers Park' located 'near' the RACO site in early October 1998, where he plans to spend his time 'fishing, canoeing, and photographing the area.' '' Comparing Pape's testimony with that of the Lujan plaintiff, who had failed to win standing after he presented general facts about prior visits and an intent to visit in the future, Judge McKeague rejected Pape's complaint as too speculative, based on the Court's holding in Lujan that:

> [Plaintiffs'] profession of an ''intent'' to return to the places [plaintiffs] had visited before—where they will, presumably, this time, be deprived of the opportunity to observe animals of the endangered species—is simply not enough to establish standing . . .. Such ''some day'' intention— without any description of concrete plans, or indeed, even any specification of when the some day will be—do not support a finding of the ''actual or imminent'' injury that our cases require.

In concluding that ''the allegations contained in plaintiff's first amended complaint fail to establish an actual injury because they do not include an allegation that plaintiff has specific plans to use the allegedly affected area in the future,'' Judge McKeague seemed to ignore completely the detailed fact description that Pape submitted in his amendment complaint. The judge further asserted that there was no causal connection between the injury and the activity complained of, and that, in any case, the alleged injury was not redressable by the suit.

On another important topic, that of the scheme of enforcing the civil and constitutional rights of institutionalized persons, I am concerned about one of Judge McKeague's decisions. In 1994, in *United States* v. *Michigan*, 868 F. Supp. 890 (W.D. Mi. 1994), he refused to allow the Department of Justice access to Michigan prisons in the course of its investigation into some now notorious claims of sexual abuse of women prisoners by guards undermines the long-established system under the Constitutional Rights of Institutionalized Persons Act or CRIPA. That act's investigative and enforcement regime is unworkable if the Department of Justice is denied access to State prisons to determine if enough evidence exists to file suit, and Judge McKeague's tortured reasoning made it impossible for the investigation to continue in his district.

I know that concern for the rights of prisoners who have often committed horrendous criminal acts is not politically popular, but Congress enacted the law and expected its statute and its clear intent to be followed. It seems to me that Judge McKeague disregarded legislative history and the clear intent of the law, and that sort of judging is of concern to me.

Finally, I must express my profound disappointment in his answer to a question I sent him about a presentation he made in the Fall of 2000, when he made what I judged to be inappropriate and insensitive comments about the health and well-being of sitting Supreme Court Justices. In a speech to a law school audience about the impact of the 2000 elections on the

courts, Judge McKeague discussed the possibility of vacancies on the Court over the following year. In doing so he felt it necessary to not only refer to—but to make a chart of—the Justices' particular health problems, and ghoulishly focus on their life expectancy by highlighting their ages. He says he does not believe he was disrespectful, and used only public information. There were other, better ways he could have made the same point, and it is too bad he still cannot see that.

Under our Constitution, the Senate has an important role in the selection of our judiciary. The brilliant design of our Founders established that the first two branches of Government would work together to equip the third branch to serve as an independent arbiter of justice. As columnist George Will once wrote: ''A proper constitution distributes power among legislative, executive and judicial institutions so that the will of the majority can be measured, expressed in policy and, for the protection of minorities, somewhat limited.'' The structure of our Constitution and our own Senate rules of self-governance are designed to protect minority rights and to encourage consensus. Despite the razor-thin margin of recent elections, the majority party has never acted in a measured way but in complete disregard for the traditions of bipartisanship that are the hallmark of the Senate. It acted to ignore precedents and reinterpret longstanding rules to its advantage, but fortunately its attempt to eliminate the voice of the minority entirely failed because of the efforts of well-meaning and fair-minded Senators. Two more well-meaning and fair-minded Senators did their part to save the Senate by clearing the way for the confirmation of the two nominees today. I hope that despite the concerns I have expressed and others that may emerge during this debate, once confirmed Judge Griffin and Judge McKeague will fulfill their oath and provide fair and impartial justice to all who come before them.

Mr. McCONNELL. Mr. President, I rise in support of the nominations of David McKeague and Richard Griffin to the Sixth Circuit Court of Appeals.

The Sixth Circuit covers thirty million people in Michigan, Ohio, Tennessee and my home State of Kentucky. For the last several years, the Sixth Circuit has been operating with at least one-fourth of its 16 seats empty. This 25 percent vacancy rate is the highest vacancy rate among Federal circuit courts. The Administrative Office of the Courts has declared all four of these empty seats to be ''judicial emergencies.''

Because of this high vacancy rate, the Sixth Circuit has been operating under a crushing caseload burden and has been the slowest circuit in the Nation. According to the AOC, last year—like the year before it—the Sixth Circuit was a full 60 percent behind the national average. In 2004, the national average for disposing of an appeal in the Federal circuit courts was 10.5 months. But in the Sixth Circuit, it took almost 17 months to decide an appeal. For your average litigant, that means in other circuits, if you file your appeal at the beginning of the year, you get your decision around Halloween. But in the Sixth Circuit, if you file your appeal at the same time, you get your decision after the following Memorial Day—over a half year later.

Mr. President, you know the old saying that ''justice delayed is justice denied.'' Well, the thirty million residents of the Sixth Circuit have been denied justice due to the continued obstruction of Michigan nominees by my Democrat colleagues. What is the reason for this sorry state of affairs? An intra-delegation spat in the Michigan delegation from years ago—when a quarter of the current Senate was not even here. Nor, I might add, was the current President around either. This dispute has dragged on year after year. I do not know who started it.

My colleagues from Michigan cite Clinton nominees to the Sixth Circuit who did not receive hearings. Other people note that our colleagues from Michigan do not have a monopoly on disappointment. They point to Michigan nominees from President George Herbert Walker Bush, such as Henry Saad and John Smietanka, who did not get hearings when Democrats controlled the Senate Judiciary Committee in the early 1990s.

Regardless of who started what and when, all the residents in the Sixth Circuit have been suffering from the refusal of our Democratic colleagues to allow these seats from Michigan to be filled. Moreover, this obstruction has been out of all proportion to any alleged grievance. Specifically, our colleagues had been blocking four circuit court nominees from Michigan, as well as three district court nominees from Michigan. But of these seven Michigan vacancies that the Democrats had been refusing to let the Senate fill, five of the seats were not even involved in this dispute. President Clinton never nominated anyone to the seat to which current nominee Henry Saad has been nominated. The seat to which current nominee David McKeague has been nominated did not even become vacant until the current Bush administration. And the three district court seats that are being blocked were not involved in the dispute either. So my friends from Michigan had been holding up one-fourth of an entire circuit in crisis, along with three district court seats, because of an internal dispute about two seats, the genesis of which occurred years ago.

What had my friends from Michigan been demanding in order to lift this blockade? They had wanted to pick circuit court appointments. Mr. President, let us get back to first principles. As much as they would like to, Democrat Senators do not get to pick circuit court judges in Republican administrations. For that matter, Republican Senators do not get to pick circuit court judges in Republican administrations.

Article II, section 2 of the Constitution clearly provides that the President, and the President alone, nominates judges. It then adds that the Senate is to provide its advice and consent to the nominations that the President has made. By tradition, the President may consult with Senators. But the tradition of ''consultation'' does not transform individual Senators into co-presidents. We have elections for that, and President Bush has won the last two.

Fortunately, it appears our friends from Michigan have reconsidered their position. As a result, two fine jurists, Judge Richard Griffin and Judge David McKeague, will get up or down votes, and will be confirmed to the Sixth Circuit Court of Appeals. All residents of the Sixth Circuit will benefit from their service on that court. We should all be thankful for that.

Mr. FRIST. Mr. President, before the recess, the Senate confirmed Priscilla Owen to the Fifth Circuit Court of Appeals. Yesterday, we confirmed Janice Rogers Brown to the DC Circuit. And earlier today, William Pryor was confirmed to serve on the Eleventh Circuit Court of Apeals.

All three of these judges had been waiting for years to get an up-or-down vote on the Senate floor. Until 2 weeks ago, all three of these nominees had been blocked by partisan obstructionist tactics.

In a few minutes, we will give Judge Richard Griffin and Judge David McKeague fair up or down votes. We are making progress on fulfilling our constitutional duty to advise and consent.

The judges before us now are nominees to the Sixth Circuit Court of Appeals—a circuit which includes Michigan, Ohio, Kentucky, and my home State of Tennessee. It is a circuit that desperately needs new judges. My circuit—the Sixth Circuit—has the highest vacancy rate and the slowest appeals process in the Nation.

For the last 3 years, the Sixth Circuit has had the highest the vacancy rate for Federal judges in the nation. Twenty five percent—4 out of 16—of its seats are empty. All four have been declared judicial emergencies.

These vacant judgeships have turned the Sixth Circuit into the slowest circuit in the country. Consider that the national average for an appeal is about 10 months. In the Sixth Circuit, it takes almost 17.

This situation is unfair to our constituents and unfair to the hard-working judges who labor under increasingly heavy caseloads.

Judicial obstruction has been delaying and denying justice to the 30 million people who live in the Sixth Circuit. It is time to end this judicial obstruction and fill these seats with qualified judges.

I would like to comment briefly on the backgrounds of Judges McKeague and Griffin.

The President nominated Judge McKeague on November 8, 2001, and Judge Griffin on June 26, 2002.

Judge Griffin has extensive experience as a practicing attorney. He has appeared before the Federal district courts in Michigan and before the Sixth Circuit Court of Appeals.

He also has served with distinction as a State court judge for well over a decade. As an appellate judge, he wrote over 280 published opinions and heard thousands of criminal and civil cases.

He enjoys bipartisan support from his colleagues. The chief judge of the Michigan Court of Appeals has called Judge Griffin a ''decisive scholarly judge with an instinct for the core issues and with a flair for authoring crisp understandable opinions.''

Judge Griffin has been waiting nearly 3 years for a fair up or down vote. It is time to give him that courtesy. It is time to vote.

Judge David McKeague, likewise, is a highly regarded jurist. In 1992, the Senate voted unanimously to confirm him to serve on the U.S. District Court for the Western District of Michigan.

Many of those same Senators who confirmed Judge McKeague to the district court have been obstructing his nomination to the appellate court for over 3 years.

Judge McKeague was also appointed by Supreme Court Chief Justice Rehnquist to serve on the Judicial Conference's Committee on Defender Services and on the Federal Judicial Center's District Judges Education Committee, which he chairs.

Those in the legal community who have worked with Judge McKeague respect him. One fellow attorney called him ''a person of unquestioned honor and integrity. Judge McKeague's judgments are sound, impartial, and prompt.''

Attorneys who have represented clients before Judge McKeague say that he is fair and ''treats all litigants and litigators with courtesy and respect'' and that ''his rulings are well reasoned with due regard for precedent and the law.''

Judge McKeague has been waiting nearly 4 years for an up-or-down vote. It is time to give him that courtesy. It is time to vote.

Judges Griffin and McKeague are highly qualified individuals with extensive legal experience and bipartisan support. Both have been rated ''well qualified'' by the American Bar Association, the highest rating possible.

It is only because of partisan obstruction that they have not received a fair vote. Justice has been delayed because an up-or-down vote has been denied.

I hope things are changing in the Senate. I am pleased that with today's votes the Senate is continuing to move forward to embrace the principle of fair up or down votes on judicial nominees.

I urge my colleagues to join me to vote to confirm Judge Griffin and Judge McKeague to the Federal appeals court.

Mr. President, for the information of our colleagues, we plan on beginning the votes—there will be two votes—in about 5 minutes. I know a number of people are in meetings and around the Hill, but I want to notify them that we will begin voting at 4:55, in about 5 minutes.

Mr. LEAHY. Mr. President, with the leader on the floor, have the yeas and nays been ordered on these two nominees?

The PRESIDING OFFICER. They have not.

Mr. LEAHY. Mr. President, I ask unanimous consent that it be in order at this time to ask for the yeas and nays on both nominations.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, I know the two Senators from Michigan support both these nominees. They both returned positive blue slips, which is one of the reasons they are moving so quickly.

As to when the time arrives that the leader wishes to begin the votes, I ask unanimous consent that at that time the time on this side of the aisle be yielded back, whether I am on the floor or not.

Mr. FRIST. No objection.

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

Mr. FRIST. Mr. President, I understand that all time will have been yielded back and, therefore, we will be starting the vote at 4:55 sharp.

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. SPECTER. 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. SPECTER. Mr. President, I know our colleagues are anxious to vote. I have put into the RECORD statements in support of the nominations of Richard Allen Griffin to be a judge on the Sixth Circuit Court of Appeals and David W. McKeague to be, similarly, a judge on the Sixth Circuit. It would have been gratifying a couple of years ago to have had this confirmation at that time, but it is good to have it now rather than at some time in the future. It would not serve any useful purpose to go through the litany of reasons these nominees have been held up. Suffice it to say, they are very well qualified, and the Sixth Circuit is in a state of crisis, and it will help the administration of justice to have these nominees confirmed.

Mr. President, I believe we are ready to vote.

VOTE ON NOMINATION OF RICHARD A. GRIFFIN

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Richard A. Griffin, of Michigan, to be United States Circuit Judge for the Sixth Circuit? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Alaska (Ms. MURKOWSKI).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Vermont (Mr. JEFFORDS), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN) would vote ''yea.''

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

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 134 Ex.]

YEAS—95

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

NOT VOTING—5

Alexander	Jeffords	Obama
Biden	Murkowski	

The nomination was confirmed.

VOTE ON NOMINATION OF DAVID W. MCKEAGUE

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of David W. McKeague, of Michigan, to be a United States Circuit Judge for the Sixth Circuit? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), and the Senator from Alaska (Ms. MURKOWSKI).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), and the Senator from Vermont (Mr. JEFFORDS), are necessarily absent.

I further announce that if present and voting, the Senator from Delaware (Mr. BIDEN) would vote ''yea.''

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

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 135 Ex.]

YEAS—96

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

NOT VOTING—4

Alexander	Jeffords
Biden	Murkowski

The nomination was confirmed.

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

The majority leader.

ORDER OF PROCEDURE

Mr. FRIST. Mr. President, pursuant to the order of May 24, I ask unanimous consent that at 2:30 p.m. on Monday, June 13, the Senate proceed to the Griffith nomination as provided under the order; provided further that following the use or yielding back of time, the Senate resume legislative session and the vote occur on the confirmation of the nomination at 10 a.m. on Tuesday, June 14.

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

Mr. FRIST. I ask unanimous consent that on Tuesday, immediately following the vote on the Griffith nomination, the Senate proceed to the consideration of H.R. 6, the Energy bill; provided further that the chairman be recognized in order to offer the Senate-reported bill as a substitute amendment, the amendment be agreed to and considered as original text for the purpose of further amendment.

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

Mr. FRIST. I ask unanimous consent that at 6:30 p.m. on Monday, June 13, the Judiciary Committee be discharged from further consideration of S. Res. 39 and the Senate proceed to its immediate consideration. I further ask unanimous consent there be 3 hours for debate with the time equally divided and controlled between Senators LANDRIEU and ALLEN or their designees, and upon the use or yielding back of time, the Senate proceed to a vote on the adoption of the resolution without intervening action or debate. I ask unanimous consent that upon adoption, the preamble then be agreed to, and the motion to reconsider be laid upon the table.

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

MORNING BUSINESS

Mr. FRIST. Mr. President, 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.

FUNDING FOR HOMELAND SECURITY

Mr. GREGG. Mr. President, I rise to speak a little bit about the Department of Homeland Security. I have the good fortune to chair their appropriations committee, and we will be marking up the appropriations bill relative to that agency next week, hopefully, if we can straighten out the proper allocations for funding within the budget, which I expect to happen today under the leadership of Chairman COCHRAN.

The Homeland Security Department is a big one because, of course, this goes to the essence of how we protect ourselves as a nation, how we make sure that we are ready should we be attacked, and how we, hopefully, make it possible for us to avoid such an attack. Regrettably, the Department of Homeland Security has been thrown together and has had some problems as it has tried to shake out in the post-9/11 world.

In fact, the problems have been so extreme that almost a day does not go by that we do not see an inspector general report or a GAO report outlining some function of that agency which simply is not working correctly. Today, there was a report where the inspector general found that there were no backup computer systems within the Department for some of the critical agencies that are involved, but that is only one of literally a stack of GAO and inspector general reports which probably is 2 or 3 feet high.

There is a lot to do in this agency. Certainly, I congratulate the President on bringing aboard Secretary Chertoff. I know he is a hard-driving and committed individual, and I know he is going to try to put together programs which will get that agency focused and functioning in a manner in which the American people expect.

As we look at the agency, however, I do think we have to be driven by a certain theory or theme, a set of policies. The first is that we address threat first and that we start with the highest threats as being the first threats which we should focus on. Of course, the highest threats are weapons of mass destruction coming into the country or being developed in the country which would be used against American citizens.

Those weapons involve things such as chemical or biological weapons or potentially some sort of nuclear device. So we must prepare ourselves and focus that Department on making sure that it is ready to deal with those types of threats.

Some of the responsibility for making ourselves adequately prepared in the area, especially biologics, falls outside the Department and falls with the CDC or HHS—the Health and Human Services Department—which have responsibility for developing vaccines. NIH, for example, National Institutes of Health, has the responsibility for making sure that we are on course to bring on line adequate responses should we be attacked with a biological weapon such as anthrax, a plague or botulism.

The Department still has a huge role in this area, and it obviously has a role in the nuclear area of detection and making sure that we are ready to try to anticipate and stop a weapon of that sort. Below that level of addressing the weapons of mass destruction issues, we have to look at the other areas of threat and how we as a government are structured to handle it.

There was a report today that the President of the United States, in a meeting with the leadership of the House at least, and maybe the Senate, said that he thought we should be focusing on border security as a priority in the area of maintaining our security as a nation. I think that is absolutely true. Most Americans today wonder why there are still literally tens of thousands, maybe hundreds of thousands of people coming across our borders, entering this country illegally.

A lot of other Americans wonder why today there is so much happening in the area of people coming into the country without us knowing what their purposes are or what their potential threat is as individuals. There is concern about our capacity to screen folks who are coming into this Nation who may have as one of their purposes to do us harm. We need to strengthen our ability to stay on top of this situation.

There is significant concern about what is happening within our ports and whether we are putting in place systems which adequately review and give us the capacity to address what might be in a container in one of the hundreds of thousands of containers that

come into this country on a daily basis. So this is an area of high priority. If this report is correct, it is very good that the President has decided to put significant focus on the issue of border security beyond what was obviously energy that was being put into that effort to begin with anyway.

There is no question there has been significant effort in this area, but it needs a lot more effort, and that brings me to what we are planning to do with the appropriations bill. I want to lay out a bit of a precursor to that bill so people will know what is coming and can anticipate it.

Basically, what we intend to do is reorient, to the extent we can, funds within the moneys we have available to us for the Department of Homeland Security to focus on border security because we consider that—or I happen to consider—after we go below the weapons of mass destruction issue, to be the most significant area of need from the standpoint of protecting our national security and making sure that we are able to manage our national security.

Unfortunately, the proposal that came up to us from the administration prior to this recent discussion which occurred at the White House yesterday or the day before did not put the type of resources or focus on that Department that was necessary within the context of the entire Homeland Security Department. As a result, in order to accomplish that within the dollars we have—and the dollars are going to be fairly significant because the chairman of the Appropriations Committee, I believe, has stated not publicly yet but has at least implied that he intends to fund aggressively this activity of the Federal Government because he understands the importance of the security of our Nation. He used to be chairman of this subcommittee and certainly knows its needs. So he is going to give us an allocation which is fairly significant. Within that allocation we do intend to reform and restructure so that we are putting more money into homeland security.

That is going to mean that other accounts we might want to have funded at a higher level are not going to be funded at quite so high a level. We are going to set priorities. My view of how we fund the issue of protecting our national security is that we address the issue of threat, pick the highest threat, and fund responses to that threat. After the issue of weapons of mass destruction, the highest threat is our failure to manage our borders; thus, we are going to put more money into that. That means we will have to take money from accounts which are not necessarily going to make those folks happy in those accounts, but it is necessary if we are going to adequately fund this area.

It is a two-step effort, really. First, we have to put on the border the necessary capability to have a reasonable review of who is coming into the country and what is coming into the country. Today, we do not have that capacity. Within that effort we need to have not only people, but we need to have infrastructure in the form of technology capability and in the form of physical plant capability.

Secondly, we have to have a program in place as a nation which does not create an incentive for people to come into the country illegally. That gets into this whole question of guest worker. My Appropriations Committee may not have that jurisdiction. We would love to have that jurisdiction. We have it marginally, but that is an authorizing exercise, and maybe it will be debated on this bill. But, in any event, we are going to focus on that first part where we do have jurisdiction, which is we are going to significantly tool up our physical and personnel capabilities and our technology capabilities in order to try to address border security at the first level, which is a question of having the people and the resources on the borders, in the ports, in order to effectively manage our borders.

This is not an overnight event. This has been attempted before and it has been singularly unsuccessful. When I had responsibility for Immigration and Border Patrol in the prior committee that was moved over from the Justice Department when they had the Justice Department responsibility moved over to Homeland Security, we were in the midst of trying to gear up the number of Border Patrol agents and we made a commitment to add literally thousands of Border Patrol agents over a series of years. Unfortunately, the Border Patrol first was not able to recruit the people at the price we were willing to pay them because the people were required to be bilingual and actually had talents that in the marketplace could command more than we were willing to pay them, and second, we did not have the training facilities, so we ended up never reaching the increase in numbers of Border Patrol we need in order to effectively address the border.

We are going to try again. The Border Patrol told us the number they think they can train up in a year. We are going to give them more training capacity so in later years we can train more people. We are going to put in pay scales—we already have—that will make it a more attractive job. And we are going to start to hire people who can do the job effectively at fairly significant numbers.

On top of that, we have to do other things. There is within the Department of Homeland Security a program called US-VISIT, about which I have serious misgivings. It is a massive computer undertaking. I have seen these before in other agencies and my sense is this computer initiative is not going well and is not evolving the software and hardware capabilities necessary. We are going to try to focus on that and hopefully turn that corner so that program will in the end be an asset, so we will know who is coming in the country.

There is other work we need to do. We need to increase the number of detention beds. We need to increase the number of people who are doing the prosecution of detainees. We need to increase the capability, the physical plant capacity of the Border Patrol and the Immigration and Customs officers. We need a lot of physical plant and people and technology and we are going to take from other accounts to try to accomplish that as we move this Homeland Security bill forward.

I am putting people on notice that this is the direction we are going. It is my opinion as we move this bill across the floor there should be and will be a lot of interest in this area because securing our borders is, as the President has stated at least indirectly, through hearsay as presented by the leadership of the House, a priority on which it is time we focused like a laser beam and took some action.

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

Mr. GREGG. I am happy to yield to the Senator from Alabama for a question, or I will yield the floor.

Mr. SESSIONS. I am very pleased the Senator from New Hampshire, Mr. GREGG, is chairing this important committee. He has had a large number of years of intense interest in improving homeland security.

I am not sure he is aware, but yesterday there was a hearing in the Judiciary Committee on the Joint Terrorism Subcommittee and the Immigration Subcommittee. It dealt with people coming into the country illegally, people who were other than Mexicans, on the Mexican border. The story, as described by a reporter in a newspaper article of early May, said that a group—for example, in this case 20 from Brazil—came across the border, looked for the Immigration Border Patrol people, and immediately went up to them and turned themselves in to them. They were taken into some form of custody, placed in some form of transportation, transported further into the country, and then released on their own recognizance. Of the 8,908 notices to appear that the immigration court in Harlington issued to non-Mexicans, 8,767 of them never showed up when they were supposed to come to court.

First, I would note there are a lot of people other than our Mexican neighbors who are coming across that border. Second, there were some plans to expedite removal to these other countries, which is somewhat difficult. Maybe one-fifth of these are being handled in the more expedited and effective way. But I wanted to share that with the Senator. I ask if he thought the committee would be responsive to requests from the Administration to fund those expedited programs, because what we are doing now is not effective at all.

Mr. GREGG. The Senator from Alabama has pointed to one of the many

anecdotal but glaringly difficult instances that should cause us all concern. We are hearing anecdotal information that the Border Patrol is finding material that is clearly written in Arabic, and is clearly Islamic fundamentalist, at the border. People have left it there or it has been left behind by people coming across the border, it appears. So that is obviously an extreme concern.

But your story reflects the fact that these borders are simply not controlled and we don't have the capacity to handle the people when we do catch them. That is going to take a rethinking of the effort. It is going to take a lot of resources. As we move forward as a Congress, we have to think about: Are we putting too many resources in other accounts when we should be focusing on the border? I will take two examples.

One is TSA, our transportation security, which we see in our airports. How many people can we afford there versus the border? The first responder funds that are going out not necessarily on the basis of threat but on the basis of formula, can we afford that in light of the fact we have a threat, which is the border, or should we take another look at other approaches to funding a significant increase in the border security effort?

I look forward to working with the members of the Judiciary Committee. Our role is the money role. We look to you folks to give us the authorizing leadership, which I know you have in the past. You certainly have and certainly other members in your committee are leaders in this area. We look forward to any ideas or thoughts you have which you want to bring forward.

I do think on this bill we should have a fairly open and substantive debate as to how we are going to move forward on the issue of border security. Clearly the White House is committed to this. It is going to take resources.

Mr. SESSIONS. I thank the Senator, also the Chair of the Budget Committee. He answered very well when he said we can't always fund the new things we want to do by pumping new money into them. Sometimes we need to ask ourselves if there is not some money being spent in a way that is less useful, and utilize that money where we have to utilize it.

I am proud to serve with him on that Budget Committee.

THE TEACHER EXCELLENCE FOR ALL CHILDREN ACT OF 2005

Mr. DURBIN. Mr. President, good teachers lead to good students. In fact, recent evidence suggests that providing great teachers may be the single most important thing that we can do to give our children the good education they deserve.

Most of our teachers are hard-working, selfless, and dedicated to helping our children learn. We are asking them for more, however. We continue to demand that our teachers develop greater subject matter expertise, but we have yet to figure out how to help teachers learn while they are still needed in the classroom full time. In addition, to meet growing student need we will need to bring over 2 million new teachers into our public schools over the next decade.

We must attract, develop, and retain as many talented teachers as we can muster. We must act now to begin meeting this critical national crisis.

That is why I am proud to introduce with Senator KENNEDY the Teacher Excellence For All Children Act of 2005. The TEACH Act provides financial incentives to attract and retain our best teachers and principals. The TEACH Act helps schools recognize and reward the best teachers. The TEACH Act encourages good teachers to work in the schools that need good teachers the most, and it also encourages teachers to specialize in the subjects which need the most teachers. Finally, the TEACH Act helps new teachers transition into the classroom, it helps veteran teachers keep their skills sharp, and it attracts talented new principals into our schools.

Developing great teachers takes time, but this is an investment that we as a nation must make. I therefore encourage my colleagues to support the TEACH Act now. Our children deserve nothing less.

FAMILIES OF SEPTEMBER 11'S FINAL REPORT

Mr. LEAHY. Mr. President, less than 2 weeks after the horrific events of September 11, Congress passed a law to establish the September 11 Victim Compensation Fund, providing assistance to victims and their families during an unimaginably difficult time. I was pleased to work with my colleagues to create this needed resource for the families of this national tragedy. The families of victims that died in the September 11 attacks also came together and created their own nonprofit organization, Families of September 11.

Although no amount of compensation can replace a lost loved one, Families of September 11 and Ken Feinberg, the Special Master in charge of overseeing the Fund, worked diligently to improve the rules governing the September 11 Victim Compensation Fund, to give the victims and their families more flexibility and to provide information to victims and their families about how and where they could find support. Working together, Mr. Feinberg and Families of September 11 reached out to the victims and their families to make sure they understood their rights and to assist them in filing their claims. This task was made all the more difficult because many victims and survivors of those terrorist attacks had to confront the logistical burden and emotional pain of filing a death or injury claim.

Last October, Mr. Feinberg submitted to the Department of Justice a final report summarizing the accomplishments and work of the September 11 Victim Compensation Fund. While the September 11 Victim Compensation Fund has reached its final deadline, Families of September 11 continues its mission, including supporting legislation on security and intelligence reform. This week, Families of September 11 also submitted a final report to the Department of Justice, sharing the experiences of the victims and their families, including those who chose not to participate in the September 11 Victim Compensation Fund. The report in its entirety may be read at http://www.familiesofseptember11.org.

Mr. President, I ask that a copy of the Executive Summary of this report be in the RECORD for lawmakers and the public to review.

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

EXECUTIVE SUMMARY: FINAL REPORT OF FAMILIES OF SEPTEMBER 11 ON THE SEPTEMBER 11TH VICTIM COMPENSATION FUND OF 2001

Families of September 11 is a nonprofit organization founded in October 2001 by families of those who died in the September 11 terrorist attacks. We gather and disseminate helpful information, refer victims' families, survivors, and others affected by the events of 9/11 to assistance providers, offer online chat sessions, and address such issues as victims' assistance, methods of response to trauma from terrorist attacks, and the effects of terrorism on children. We support public policies that effectively respond to the threat of terrorism, including support for the 9/11 Commission Recommendations, development of appropriate agency procedures, legislation related to aviation, border, port and transportation security, and intelligence reform.

Our Final Report on the September 11th Victim Compensation Fund follows the format of ''Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001.'' Just as the Special Master's Final Report provides the perspective of the administrator of the Fund, our Report gives voice to those victims and family members who participated in the Fund as well as those who elected not to. Although much of our report serves as counterpoint to the Special Master's observations and conclusions, we agree with much of what is said in his report and our Report should be read with an acknowledgement that the Special Master was asked to and did construct a program in extremely difficult circumstances. The enabling legislation that created the Fund was hastily crafted, imprecise in significant ways, and sometimes internally inconsistent. The Special Master was faced not only with the uncertain nature of the legislation, but with a host of other competing influences: e.g., the enormity of the losses, emotionally overwhelmed victims and families, a stunned public, and conflicting compensation policy ideologies. The Special Master and those who worked with him deserve great credit for their tireless and devoted work under these daunting circumstances, particularly in the administration of the Fund after promulgation by the Department of Justice of the Final Rules.

In many respects, the Fund was a success. Much of this success was due to the efforts of the Special Master and his staff in meeting with individual family members, demonstrating flexibility where possible in making determinations of awards, and expressing

compassion for family members in the process. But, the Special Master's view, expressed in the introduction to his Final Report, that ''the Fund was an unqualified success'' is not shared by many who participated in the Fund and most of those who did not. The options available to the victims and families of September 11 were substantially impaired by the Victim Compensation Act and subsequent legislation. Lawsuits were confined to a narrow population of potentially responsible parties whose liability exposure was limited to available and inadequate insurance (e.g., the airlines). Evidence for use in litigation was sure to be (has been) compromised by government intervention (e.g., assertions of national security and criminal prosecution grounds for non-disclosure). Families were, thus, faced with a Hobson's choice and for most the Fund was the better one.

In December 2004, Families of September 11 conducted a Web-based survey of its members consisting of fourteen questions and an opportunity to make narrative comments designed to elicit information that might be helpful in assessing whether there should be a compensation mechanism in place before another terrorist attack occurs. One hundred forty-four (144) members responded. Though not designed to conform with scientifically reliable protocols, the results are of interest and are included in our Report.

Much of the Special Master's report is devoted to efforts made by him and his staff to assure that families could obtain detailed information about their likely recovery from the Fund and assist families in the process. Although our Report applauds him for these efforts, it points out that had there been pre-existing comprehensive legislation in place, the Special Master's extraordinary efforts to educate potential participants about and assist them with the Fund would not have been necessary and the enormous anxiety created by the uncertainties surrounding the Fund would have been avoided.

The regulations promulgated by the Department of Justice established ''grid'' awards with ''extraordinary circumstances'' thresholds of proof to overcome them and no review process. Claimants were accustomed to the very different and more substantial notions of ''hearings'' and ''due process'' embedded in our legal culture and were left disappointed and uncomfortable by the Fund design. Mr. Feinberg and his staff should, however, receive high marks for the way they played the cards dealt them.

The victims and their families were faced with enormous uncertainty in the weeks and months following September 11, 2001, during which the Department of Justice promulgated regulations and the Special Master developed claims handling procedures. It is this uncertainty that Families of September 11 believes must be eliminated by enactment of forward-looking legislation. The victims of future terrorist attacks will need to go on living, as have the victims of the September 11 attacks and should have the comfort of knowing immediately after a terrorist event occurs that they have rights to compensation sufficient to allow them to do so and a clear and certain path to obtaining those rights.

Issues of accountability and responsibility by those in the chain of causation linked to the injuries and deaths on September 11, 2001, and the suffering that followed are of great importance to the survivors of the attacks. The Fund, its enabling legislation, and related congressional and administrative actions had the effect of limiting that accountability and responsibility. Our Report expresses concern that this model tends to increase the risk of future terrorist attacks and needs to be reassessed and remedied.

The Special Master made determinations on 7,403 claims completing its work by the statutory deadline in June 2004. Congress now has the benefit of more than 11,000 comments made to the Justice Department during the rule-making process; the comments of the Special Master; the opinions of lawyers, economists, academics, mental heath professionals, victims and survivors of the attacks; and the developing history of terrorism and its effects on our society. In its report, Families of September 11 encourages Congress and the Administration to:

a. Use the perspectives of time and experience in implementation of the Victim Compensation Fund to consider carefully issues it was forced to address hastily in the immediate aftermath of the terrorist attacks of September 11, 2001;

b. assess how well the rules adopted in 2002 to implement the legislation met Congressional intent;

c. consider the incentives and disincentives to reducing the risks of terrorist attacks implicit in the legislation; and

d. fashion legislation that will reduce those risks and ensure that victims of future terrorist attacks and their families are made whole.

Copies of the ''Final Report of Families of September 11 on the September 11th Victim Compensation Fund of 2001'' may be obtained by contacting Families of September 11 at the address below or by going to its website at www.familiesofseptember11.org.

Families of September 11, Inc., 1560 Broadway, Suite 305, New York, NY 10036, 212–575–1878.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

A gay white male was severely beaten and sent to the hospital by two men in a Columbus gay bar. The victim and a friend noticed the men in the bar when they arrived. At the end of the evening the two males started calling the victim various derogatory names, and pushed him out of the bar. Once outside, the men continued to beat the victim, using liquor bottles. Since the beating, the victim has had his tires slashed and received a letter in his mailbox telling him to 'watch his back.' A police report was filed, but no arrests have been made.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

BREAKING THE CYCLE OF GUN VIOLENCE

Mr. LEVIN. Mr. President, I would like to bring the results of a recent study on gun violence by a University of Michigan researcher to the attention of my colleagues. The study found that adolescents who are exposed to gun violence are more likely to carry out serious acts of violence.

The study, completed by University of Michigan doctoral student Jeffrey Bingenheimer, analyzed data from more than 1,500 adolescents. The participants underwent a series of interviews over the course of several years as part of the Project on Human Development in Chicago Neighborhoods. Among other things, initial interviews focused on exposure to firearm violence, including being shot or shot at or seeing someone else shot or shot at within the previous year. Subsequent interviews were designed to uncover whether the participant had engaged in violent acts themselves. These acts of violence were defined in the study as shooting at or shooting someone, being in a gang fight, attacking someone with a weapon, or carrying a hidden weapon. Reportedly, 23 percent of those interviewed reported being exposed to gun violence and 12 percent indicated that they had carried out violent acts themselves. Statistical analysis of the resulting data revealed that adolescents who were exposed to gun violence were more than twice as likely to carry out violent acts within the following two years.

Describing the results of his study, Mr. Bingenheimer stated, ''The primary implication of these findings is that violence can be transmitted from person to person by means of exposure in the community. This makes the 'epidemic of violence' metaphor seem particularly apt, and is consistent with sociological theories of violent crime as a contagious social process.''

While Congress cannot simply legislate an end to the gun violence epidemic, we can do more to support local law enforcement officials as they work to prevent gun violence in our communities. One important program, known as COPS, was created by President Clinton in 1994 to assist State and local law enforcement agencies in hiring additional police officers to reduce crime through the use of community policing. Nationwide, the COPS program has awarded more than $11 billion in grants, resulting in the hiring of 118,000 additional police officers. Unfortunately, authorization for the COPS program was permitted to expire at the end of fiscal year 2000. Although the program has survived through continued annual appropriations, its funding has been significantly cut. I am a cosponsor of the COPS Reauthorization Act which would continue the COPS program for another six years at a funding level of $1.15 billion per year, nearly double the amount appropriated for fiscal year 2005. Among other things, this funding would allow State and local governments to hire an additional 50,000 police officers. Having more officers on our streets helps to

deter gun violence and therefore reduces the chance that adolescents are exposed to such crimes.

In addition, Congress can make it more difficult for potential criminals to gain access to dangerous firearms. Under current law, when an individual buys a handgun from a licensed dealer, there are federal requirements for a background check to insure that the purchaser is not prohibited by law from purchasing or possessing a firearm. However, this is not the case for all gun purchases. For example, when an individual wants to buy a handgun from another private citizen who is not a licensed gun dealer, there is no requirement that the seller ensure the purchaser is not in a prohibited category. This creates a loophole in the law, making it easy for criminals, terrorists, and other prohibited buyers to evade background checks and buy guns from private citizens often at organized gun shows. This loophole creates a gateway to the illegal market because criminals know they will not be subject to a background check when purchasing from another private citizen even at a gun show. It is important that Congress close this ''gun show loophole'' to help stop the flow of dangerous firearms to prohibited buyers who may use them in violent crimes.

Much more can be done to break the cycle of gun violence that plagues many of our communities. I urge my colleagues to take up and pass common sense legislation that will help to achieve this goal.

TRIBUTE TO SGT RUSSELL J. VERDUGO

Mr. GRASSLEY. Mr. President, today I rise in honor of a fallen soldier who has paid the highest price in defense our freedom, SSG Russell J. Verdugo of the 767th Ordnance Company died on the 23rd of May, 2005 in Baghdad, Iraq when an improvised explosive device detonated as he was responding to a call to dismantle the bomb. I would like to take this moment to salute his patriotism and his sacrifice.

Russell Verdugo deserves the highest gratitude of this body and the entire Nation. His sacrifice reminds us that freedom is so precious because of its incredibly high cost. My prayers go out to his mother, Susan Stanley, and his wife, Kari, who grieve the loss of a son and a husband and to all of the family, friends, and neighbors who are touched by his passing. I ask my colleagues to join me in remembering Sergeant Verdugo. The love of country and the dedication to service shared by many of it citizens is the great strength of our Nation, and we can all be very proud of patriots such as Russell Verdugo.

NOMINATION OF ALICE S. FISHER

Mr. GRASSLEY. Mr. President, I have notified Senate leadership of my intent to object to any unanimous consent request relating to the nomination of Alice S. Fisher to the position of Assistant Attorney General. This action has nothing to do with Ms. Fisher or her qualifications for the position to which she has been nominated. I have taken this action because there are a number of outstanding issues regarding the activities and operation of the Justice Department that should be resolved before considering this nomination. I am hopeful that, with the cooperation of the Justice Department, these issues can be resolved shortly.

ADDITIONAL STATEMENTS

HONORING THE RETIREMENT OF PAUL SINDERS

● Mr. LUGAR. Mr. President, I rise today to inform my colleagues of the retirement of a fixture of Clay city schools for the past 41 years and faithful friend, Mr. Paul Sinders.

Paul Sinders began his career as an educator in the fall of 1964 at the Clay City Elementary School. He taught fifth grade and moved to Clay City Jr./Sr. High School the following year. This marked the beginning of a remarkable career in which Paul served the Clay community school system in countless capacities. He taught science, math, and health to the junior high students before moving on to instruct health, physical education, and driver education classes in the high school. Additionally, he took time to coach the boys freshman and junior varsity basketball teams, and represented the school as athletic director and guidance director. In 1977, Paul took the reigns as principal of Clay City Jr./Sr. High School.

For the past 28 years Paul has worked extremely long hours overseeing the operations of Clay City High School. In 1992, he was selected as the Principal of the Year in the IASP District 8. In addition, he served as president of the Indiana Association of School Principals of District 8 in 1994–1995. Currently, Paul is on the board of directors for the Clay County Community Foundation and the Wabash Valley Youth for Christ. He is on the advisory board for the Clay City Center for Family Medicine and is a Support Committee Member for the Clay City Area Youth for Christ. He is a member of the Indiana Association of School Principals and Phi Delta Kappa.

Throughout his illustrious career, Paul has been blessed with the consistent support of his wife, Shari, and his children: Annette Ream, Chip Sinders, Natalie Wolfe, Bethany Stoelting, and Justin Sinders. I join his family, friends, and colleagues now in adding my blessing as he embarks on this new chapter in his life.

COMMENDING CHIEF JUDGE JOHN W. BISSELL, U.S. DISTRICT COURT, DISTRICT OF NEW JERSEY

● Mr. CORZINE. Mr. President, I express my sincere appreciation to Chief Judge John W. Bissell for his more than 20 years of outstanding service as a Federal District Court Judge in New Jersey. He is a truly distinguished jurist who represents the best of the New Jersey legal community. Judge Bissell has a depth of experience and a knowledge of both civil and criminal law that few can rival. He also has a keen legal mind and a compassionate understanding of people. Judge Bissell approaches each and every case before him with thoughtfulness and care. Indeed, he has excelled because of his deep appreciation that every case, no matter how small, matters greatly to all those who appear before him. And I believe that it is this understanding that has made Judge Bissell an outstanding Federal District Court Judge.

On behalf of the people of New Jersey, I express my sincere gratitude to Judge Bissell for his many years of distinguished service.●

MOCK ELECTION BUT REAL RESULTS

Mr. CRAPO. Mr. President, as we wind down from a Presidential election year and gear up for yet another cycle of congressional elections, it seems appropriate to take a moment and consider how important an educated electorate is to this country. It is the bedrock upon which our Founding Fathers built a fledgling government, creating a Constitution that functions with protean efficiency—inextricably bound to the necessity of knowledgeable and civic-minded citizens. I am proud to make public mention of the Moscow, ID, chapter of the League of Women Voters, which has won an award from the League of Women Voters of the United States for its efforts to educate future voters in north Idaho.

The League of Women Voters promotes a mock election program through its State and local chapters across the Nation. The Moscow chapter conducted what can only be described as a phenomenal month-long series of events and outreach that culminated in late October in the most successful ''mock election'' in Idaho and one of the top in the Nation. They were able to register and have almost 2900 first through twelfth-graders in the Moscow area vote. And I am relieved to add that I was reelected by these young people.

The chapter worked to bring together local, county, and State officials, teachers, parents, and volunteers to provide these students with a comprehensive and highly educational election experience. The students were given issues ballots, information about the candidates, Web site curriculum, sample ballots and had to abide by all

of the State voting laws. Students were taught their voting rights under the Help America Vote Act, and the overall efforts were so successful that the League of Women Voters of Idaho and the Idaho Secretary of State's office asked them to share their mock election handbook for instruction and use by other organizations in the State.

The Moscow chapter went above and beyond in its outreach efforts, bringing in students from an alternative high school and made voting accessible for handicapped students under Americans For Disabilities Act laws. In the successful aftermath, the effect has been felt throughout the community as private schools and home-schooling parents have expressed interest in becoming involved in the future. Even more noteworthy, although parents were not required to participate, more parents volunteered than in past years, and it could be surmised that this ''mock election'' contributed to the historically high voter turnout in that area of Idaho for the real elections in November.

Thomas Jefferson said: ''If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.'' I congratulate the outstanding efforts of the League of Women Voters of Moscow on its remarkable effort to reinforce civic education and voter responsibility in Idaho's children.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 2:19 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2744. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2006, and for other purposes.

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

H. Con. Res. 159. A concurrent resolution recognizing the sacrifices being made by the families of members of the Armed Forces and supporting the designation of a week as National Military Families Week.

The message also announced that pursuant to 22 U.S.C. 276h, and the order of the House of January 4, 2005, the Speaker appoints the following Members of the House of Representatives to the Mexico-United States Interparliamentary Group, in addition to Mr. KOLBE of Arizona, Chairman, and Ms. HARRIS of Florida, Vice Chairman, appointed on April 14, 2005: Mr. DREIER of California, Mr. BERMAN of California, Mr. BARTON of Texas, Mr. MANZULLO of Illinois, Mr. WELLER of Illinois, Mr. REYES of Texas, and Mr. MCCAUL of Texas.

MEASURES REFERRED

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

H.R. 2744. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2006, and for other purposes; to the Committee on Appropriations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 6. An act to ensure jobs for our future with secure, affordable, and reliable energy.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–2513. A communication from the Senior Vice President and Chief Financial Officer, Potomac Electric Power Company, transmitting, pursuant to law, the Company's Balance Sheet as of December 31, 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–2514. A communication from the Secretary of Energy, transmitting, pursuant to law, the Semiannual Report prepared by the Department's Office of Inspector General; to the Committee on Homeland Security and Governmental Affairs.

EC–2515. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–73, ''Closing of a Public Alley in Square 527, S.O. 03–1181, Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–2516. A communication from the Chairman, United States International Trade Commission, transmitting, pursuant to law, the Semi-annual Report of the Commission's Inspector General; to the Committee on Homeland Security and Governmental Affairs.

EC–2517. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the semiannual report of the Office of Inspector General for the period of October 1, 2004 through March 31, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2518. A communication from the Secretary of Labor, transmitting, pursuant to law, the Semiannual Report of the Department's Inspector General; to the Committee on Homeland Security and Governmental Affairs.

EC–2519. A communication from the Chairman, Railroad Retirement Board, transmitting, pursuant to law, the Semiannual Report of the Board's Office of Inspector General for the period from October 1, 2004 through March 31, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2520. A communication from the Chairman, Board of Governors, Postal Service, transmitting, pursuant to law, the Semiannual Report of the Office of Inspector General for the period ending March 31, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2521. A communication from the Acting Director, Office of Personnel Management, transmitting, pursuant to law, the Semiannual Report of the Inspector General and the Management Response for the period of October 1, 2004 to March 31, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2522. A communication from the Secretary of Education, transmitting, pursuant to law, the Semiannual Report of the Department's Inspector General for the period ending March 31, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2523. A communication from the Senior Procurement Executive, National Aeronautics and Space Administration, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Circular 2005–04; FAR Case 2003–008; Share-in-Savings Contracting'' (RIN9000–AJ74) received on June 3, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2524. A communication from the Acting Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Prevailing Rate Systems; Redefinition of the San Francisco, CA, Nonappropriated Fund Wage Area'' (RIN3206–AK26) received on June 3, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2525. A communication from the Acting Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Recruitment, Relocation, and Retention Incentives'' (RIN3206–AK81) received on June 3, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2526. A communication from the Acting Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Excepted Service—Presidential Management Fellows Programs'' (RIN3206–AK27) received on June 3, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2527. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–75, ''Closing of a Public Alley in Square 342, S.O. 03–5369, Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–2528. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–76, ''Closing of a Portion of Davenport Street, N.W., abutting Squares 1672 and 1673, S.O. 03–2366, Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–2529. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report

on D.C. Act 16–74, ''Rental Housing Act Extension Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–2530. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–85, ''Local, Small, and Disadvantaged Business Enterprises Certification Temporary Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–2531. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–84, ''Victims of Domestic Violence Fund Establishment Temporary Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–2532. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–89, ''Rental Housing Conversion and Sale Amendment Act of 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–2533. A communication from the Secretary of Commerce, transmitting, the report of a draft bill entitled ''National Offshore Aquaculture Act of 2005'' received on June 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2534. A communication from the Director, U.S. Census Bureau, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Requirements for Reporting the Kimberley Process Certificate Number for Exports (Reexports) of Rough Diamonds'' (RIN0607–AA44) received on June 3, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2535. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska'' (I.D. No. 050305C) received on June 3, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2536. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures'' ((RIN0648–AT38) (I.D. No. 043605G)) received on June 3, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2537. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Amendment 2'' (RIN0648–AQ25) received on June 3, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2538. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Annual Adjustments'' (RIN0648–AS72) received on June 3, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2539. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Electronic Dealer Reporting Final Rule'' (RIN0648–AS87) received on June 3, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2540. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Inseason Adjustments; Pacific Halibut Fisheries'' (I.D. No. 042505C) received on June 3, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2541. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #1—Adjustment of the Commercial Fisheries from the Cape Falcon, Oregon, to the Oregon—California Border'' (I.D. No. 050405D) received on June 3, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2542. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Summer Flounder; 2005 Specifications; Commercial Summer Flounder Quota Transfer from North Carolina to Virginia'' (I.D. No. 030305D) received on June 3, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2543. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Summer Flounder; 2004 Specifications; Closure of the North Carolina Summer Flounder Commercial Fishery'' (I.D. No. 122204F) received on June 3, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2544. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Reallocating Pacific Cod from Vessels Using Jig Gear to Catcher Vessels Less than 60 Feet (18.3 Meters) Length Overall Using Pot or Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area'' (I.D. No. 051105C) received on June 3, 2005; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. COCHRAN, from the Committee on Appropriations:

Special Report entitled ''Allocation to Subcommittees of Budget Totals'' (Rept. No. 109–77).

By Mr. CRAIG, from the Committee on Veterans' Affairs:

Special Report entitled ''Legislative and Oversight Activities During the 108th Congress by the Senate Committee on Veterans' Affairs'' (Rept. No. 109–79).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 10. An original bill to enhance the energy security of the United States, and for other purposes (Rept. No. 109–121).

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

H.R. 483. A bill to designate a United States courthouse in Brownsville, Texas, as the ''Reynaldo G. Garza and Filemon B. Vela United States Courthouse''.

S. 1140. A bill to designate the State Route 1 Bridge in the State of Delaware as the ''Senator William V. Roth, Jr. Bridge''.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. SHELBY for the Committee on Banking, Housing, and Urban Affairs.

*Brian D. Montgomery, of Texas, to be an Assistant Secretary of Housing and Urban Development.

*Ben S. Bernanke, of New Jersey, to be a Member of the Council of Economic Advisers.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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. DOMENICI:

S. 10. An original bill to enhance the energy security of the United States, and for other purposes; from the Committee on Energy and Natural Resources; placed on the calendar.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 1206. A bill to designate the facility of the United States Postal Service located at 4960 West Washington Boulevard in Los Angeles, California, as the ''Ray Charles Post Office Building'' to the Committee on Homeland Security and Governmental Affairs.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 1207. A bill to designate the facility of the United States Postal Service located at 30777 Rancho California Road in Temecula, California, as the ''Dalip Singh Saund Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

By Mr. ALEXANDER (for himself and Mr. WARNER):

S. 1208. A bill to provide for local control for the siting of windmills; to the Committee on Energy and Natural Resources.

By Mr. GREGG:

S. 1209. A bill to establish and strengthen postsecondary programs and courses in the subjects of traditional American history, free institutions, and Western civilization, available to students preparing to teach these subjects, and to other students; to the Committee on Health, Education, Labor, and Pensions.

By Mr. HARKIN (for himself, Mr. LUGAR, Mr. OBAMA, and Mr. COLEMAN):

S. 1210. A bill to enhance the national security of the United States by providing for the research, development, demonstration, administrative support, and market mechanisms for widespread deployment and commercialization of biobased fuels and biobased

products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BINGAMAN:

S. 1211. A bill to establish an Office of Foreign Science and Technology Assessment to enable the United States to effectively analyze trends in foreign science and technology, and for other purposes; to the Committee on Foreign Relations.

By Ms. STABENOW (for herself and Mr. LEVIN):

S. 1212. A bill to require the Commandant of the Coast Guard to convey the Coast Guard Cutter *Mackinaw*, upon its scheduled decommissioning, to the City and County of Cheboygan, Michigan, to use for purposes of a museum; to the Committee on Commerce, Science, and Transportation.

By Ms. STABENOW (for herself and Mr. SMITH):

S. 1213. A bill to amend the Internal Revenue Code of 1986 to allow a refundable credit against income tax for the purchase of a principal residence by a first-time homebuyer; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. REID, Mr. WARNER, Mr. LEAHY, Mr. CHAFEE, Mrs. MURRAY, Mr. KENNEDY, Mr. AKAKA, Mr. DURBIN, Ms. CANTWELL, and Mr. LAUTENBERG):

S. 1214. A bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans; to the Committee on Health, Education, Labor, and Pensions.

By Mr. GREGG (for himself, Ms. MIKULSKI, Mr. SARBANES, Mr. BIDEN, Mr. CORZINE, Ms. SNOWE, Mr. REED, Ms. CANTWELL, Mrs. MURRAY, Mr. COCHRAN, Mr. KERRY, Mr. INOUYE, and Mrs. FEINSTEIN):

S. 1215. A bill to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development; to the Committee on Commerce, Science and Transportation.

By Mr. CORZINE:

S. 1216. A bill to require financial institutions and financial service providers to notify customers of the unauthorized use of personal financial information, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BINGAMAN (for himself, Mr. DEWINE, Mr. CORZINE, Mr. DURBIN, Mr. SCHUMER, Mr. JOHNSON, Ms. CANTWELL, Mr. LAUTENBERG, Ms. STABENOW, Mr. KENNEDY, Mrs. CLINTON, Mr. KERRY, Ms. MIKULSKI, Mr. AKAKA, Mr. SALAZAR, and Mr. SARBANES):

S. 1217. A bill to amend title II of the Social Security Act to phase out the 24-month waiting period for disabled individuals to become eligible for medicare benefits, to eliminate the waiting period for individuals with life-threatening conditions, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY (for himself and Mr. DURBIN):

S. 1218. A bill to amend the Elementary and Secondary Education Act of 1965, the Higher Education Act of 1965, and the Internal Revenue Code of 1986 to improve recruitment, preparation, distribution, and retention of public elementary and secondary school teachers and principals, and for other purposes; to the Committee on Finance.

By Mr. BURNS:

S. 1219. A bill to authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the water needs of the Dry Prairie Rural Water Association, Inc; to the Committee on Energy and Natural Resources.

By Mr. DODD (for himself, Ms. COLLINS, and Mr. LEAHY):

S. 1220. A bill to assist law enforcement in their efforts to recover missing children and to strengthen the standards for State sex offender registration programs; to the Committee on the Judiciary.

By Mr. DAYTON (for himself and Mr. KERRY):

S. 1221. A bill to amend chapter 81 of title 5, United States Code, to create a presumption that a disability or death of a Federal employee in fire protection activities caused by any of certain diseases is the result of the performance of such employee's duty; to the Committee on Homeland Security and Governmental Affairs.

By Mr. STEVENS (for himself, Mr. INOUYE, and Ms. CANTWELL):

S. 1222. A bill to amend the Internal Revenue Code of 1986 to reinstate the Oil Spill Liability Trust Fund tax and to maintain a balance of $3 billion in the Oil Spill Liability Trust Fund; to the Committee on Finance.

By Mr. DODD:

S. 1223. A bill to amend the Public Health Service Act to improve the quality and efficiency of health care delivery through improvements in health care information technology, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. BOXER (for herself and Mr. LAUTENBERG):

S. 1224. A bill to protect the oceans, and for other purposes to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. SNOWE (for herself, Mr. COLEMAN, Mr. ISAKSON, Mr. VITTER, Ms. LANDRIEU, Mr. KERRY, Mr. BURNS, Mr. PRYOR, Mr. BAYH, and Mr. LIEBERMAN):

S. Res. 165. A resolution congratulating the Small Business Development Centers of the Small Business Administration on their 25 years of service to America's small business owners and entrepreneurs; to the Committee on Small Business and Entrepreneurship.

By Mr. LOTT:

S. Res. 166. A resolution to authorize the printing of a collection of the rules of the committees of the Senate; considered and agreed to.

By Mr. MCCAIN (for himself and Mr. SUNUNU):

S. Res. 167. A resolution recognizing the importance of sun safety, and for other purposes; considered and agreed to.

By Mr. HAGEL (for himself and Mr. MARTINEZ):

S. Con. Res. 41. Concurrent resolution recognizing the sacrifices being made by the families of members of the Armed Forces and supporting the designation of a week as National Military Families Week; to the Committee on Armed Services.

ADDITIONAL COSPONSORS

S. 169

At the request of Mr. BINGAMAN, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 169, a bill to amend the Intermodal Surface Transportation Efficiency Act of 1991 to identify a route that passes through the States of Texas, New Mexico, Oklahoma, and Kansas as a high priority corridor on the National Highway System.

S. 195

At the request of Mr. LIEBERMAN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 195, a bill to provide for full voting representation in Congress for the citizens of the District of Columbia, and for other purposes.

S. 211

At the request of Mrs. CLINTON, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 211, a bill to facilitate nationwide availability of 2–1–1 telephone service for information and referral on human services, volunteer services, and for other purposes.

S. 241

At the request of Ms. SNOWE, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 241, a bill to amend section 254 of the Communications Act of 1934 to provide that funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act.

S. 432

At the request of Mr. ALLEN, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 432, a bill to establish a digital and wireless network technology program, and for other purposes.

S. 438

At the request of Mr. ENSIGN, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 441

At the request of Mr. SANTORUM, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 441, a bill to amend the Internal Revenue Code of 1986 to make permanent the classification of a motorsports entertainment complex.

S. 471

At the request of Mr. SPECTER, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 471, a bill to amend the Public Health Service Act to provide for human embryonic stem cell research.

S. 484

At the request of Mr. WARNER, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 537

At the request of Mr. BINGAMAN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 537, a bill to increase the number of well-trained mental health service professionals (including those based

in schools) providing clinical mental health care to children and adolescents, and for other purposes.

S. 614

At the request of Mr. SPECTER, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 614, a bill to amend title 38, United States Code, to permit medicare-eligible veterans to receive an out-patient medication benefit, to provide that certain veterans who receive such benefit are not otherwise eligible for medical care and services from the Department of Veterans Affairs, and for other purposes.

S. 633

At the request of Mr. JOHNSON, the name of the Senator from Maine (Ms. SNOWE) 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. 642

At the request of Mr. FRIST, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. 642, a bill to support certain national youth organizations, including the Boy Scouts of America, and for other purposes.

S. 726

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. 726, a bill to promote the conservation and production of natural gas.

S. 727

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. 727, a bill to provide tax incentives to promote the conservation and production of natural gas.

S. 768

At the request of Mr. NELSON of Florida, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 768, a bill to provide for comprehensive identity theft prevention.

S. 809

At the request of Mr. LAUTENBERG, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 809, a bill to establish certain duties for pharmacies when pharmacists employed by the pharmacies refuse to fill valid prescriptions for drugs or devices on the basis of personal beliefs, and for other purposes.

S. 894

At the request of Mr. ENZI, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 894, a bill to allow travel between the United States and Cuba.

S. 962

At the request of Mr. SMITH, his name was added as a cosponsor of S. 962, a bill to amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued to finance certain energy projects, and for other purposes.

S. 969

At the request of Mr. OBAMA, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 969, a bill to amend the Public Health Service Act with respect to preparation for an influenza pandemic, including an avian influenza pandemic, and for other purposes.

S. 1007

At the request of Mr. BINGAMAN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1007, a bill to prevent a severe reduction in the Federal medical assistance percentage determined for a State for fiscal year 2006.

S. 1039

At the request of Mr. HATCH, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1039, a bill to amend the Internal Revenue Code of 1986 to modify the treatment of depreciation of refinery property.

S. 1066

At the request of Mr. VOINOVICH, the names of the Senator from Missouri (Mr. BOND) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. 1066, a bill to authorize the States (and subdivisions thereof), the District of Columbia, territories, and possessions of the United States to provide certain tax incentives to any person for economic development purposes.

S. 1076

At the request of Mr. TALENT, the name of the Senator from Virginia (Mr. ALLEN) 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.

At the request of Mrs. LINCOLN, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 1076, supra.

S. 1077

At the request of Mrs. LINCOLN, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. 1077, a bill to amend the Internal Revenue Code of 1986 to provide a renewable liquid fuels tax credit, and for other purposes.

S. 1104

At the request of Mrs. CLINTON, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1104, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to cover certain legal immigrants under the medicaid and State children's health insurance programs.

S. 1105

At the request of Mr. DODD, the name of the Senator from Massachusetts (Mr. KERRY) 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. 1112

At the request of Mr. BAUCUS, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of 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.

S. 1120

At the request of Mr. BINGAMAN, his name was added as a cosponsor of S. 1120, a bill to reduce hunger in the United States by half by 2010, and for other purposes.

S. 1160

At the request of Mr. SMITH, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1160, a bill to amend the Internal Revenue Code of 1986 to restore, increase, and make permanent the exclusion from gross income for amounts received under qualified group legal services plan.

S. 1177

At the request of Mr. AKAKA, the names of the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 1177, a bill to improve mental health services at all facilities of the Department of Veterans Affairs.

S. 1197

At the request of Mr. BIDEN, the names of the Senator from Idaho (Mr. CRAPO), the Senator from Washington (Ms. CANTWELL) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 1197, a bill to reauthorize the Violence Against Women Act of 1994.

S. RES. 39

At the request of Ms. LANDRIEU, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from Hawaii (Mr. INOUYE), the Senator from New York (Mrs. CLINTON), the Senator from Nebraska (Mr. NELSON), the Senator from Delaware (Mr. CARPER), the Senator from South Carolina (Mr. GRAHAM) and the Senator from North Carolina (Mr. BURR) were added as cosponsors of S. Res. 39, a resolution apologizing to the victims of lynching and the descendants of those victims for the failure of the Senate to enact anti-lynching legislation.

S. RES. 154

At the request of Mr. BIDEN, the names of the Senator from New York (Mrs. CLINTON), the Senator from Maryland (Ms. MIKULSKI), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Washington (Mrs. MURRAY), the Senator from Missouri (Mr. TALENT), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Iowa (Mr. GRASSLEY) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. Res. 154, a resolution designating October 21, 2005 as ''National Mammography Day''.

S. RES. 155

At the request of Mr. BIDEN, the names of the Senator from Oregon (Mr. WYDEN), the Senator from Maryland (Mr. SARBANES) and the Senator from

Maine (Ms. SNOWE) were added as cosponsors of S. Res. 155, a resolution designating the week of November 6 through November 12, 2005, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

S. RES. 158

At the request of Mr. GRAHAM, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. Res. 158, a resolution expressing the sense of the Senate that the President should designate the week beginning September 11, 2005, as ''National Historically Black Colleges and Universities Week''.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ALEXANDER (for himself and Mr. WARNER):

S. 1208. A bill to provide for local control for the siting of windmills; to the Committee on Energy and Natural Resources.

Mr. ALEXANDER. Mr. President, in order to protect our Nation's most scenic areas, Senator WARNER, the senior Senator from Virginia, and I are today introducing a revised version of the Environmentally Responsible Windpower Act of 2005. It will be introduced in the House of Representatives by Congressman John Duncan, a Republican, who is chairman of the Water Resources Subcommittee, and by Representative Bart Gordon, a Democrat, who is the ranking Democrat on the Science and Technology Committee.

Senator WARNER and I have listened to our colleagues, and we have made several changes in our initial bill to simplify it and to make it the kind of bill we hope all Senators will think makes good sense. What we have done is to simplify the local notification procedures and to more precisely protect scenic areas of the country without impacting the entire coastline. We have also removed a provision regarding military bases that was in our bill since that can be addressed in other legislation.

Our revised bill would do three things:

No. 1, to protect America's most scenic treasures, such as the Grand Canyon, the Statue of Liberty, and the Great Smoky Mountains National Park, and deny Federal subsidies for giant wind turbines within 20 miles of any national park, national military park, national seashore, national lakeshore, or 20 World Heritage sites in the United States.

No. 2, to protect our most pristine coastlines, it would deny Federal subsidies for wind turbines less than 20 miles offshore, which is the horizon of a national seashore, a national lakeshore, or a National Wildlife Refuge.

No. 3, to enhance local control, which most of us believe in, it would give communities a 180-day timeout period from when a wind project is filed with the Federal Energy Regulatory Commission in which to review local zoning laws related to the placement of these giant wind turbines.

This legislation is necessary because my research suggests that if the present policies are continued we will spend over the next 5 years nearly $4.5 billion to subsidize windmills. Because of those large subsidies, the number of the giant wind turbines in the United States is expected to grow from 6,700 today to 40,000, or even double that number in 20 years according to estimates by the Department of Energy and the Union of Concerned Scientists.

These wind turbines are not your grandmother's windmills, gently pumping water from the farm well. Here is just one example, which my colleagues from Alabama and South Carolina will especially appreciate. The University of Tennessee has the second largest football stadium in America, seating 107,000 people. The Senator from Alabama and I sat there while Auburn University beat the tar out of the University of Tennessee last year. I ask him to imagine that just one of these giant wind turbines would fit into that stadium. It would rise to more than twice the height of the highest skybox.

Its rotor blades would stretch almost from 10-yard line to 10-yard line. And on a clear night, its flashing red lights could be seen for 20 miles. Usually, these wind turbines are located in wind farms containing 20 or more, but the number can be more than 100. They work best, of course, where the wind blows best which, in our part of the country, is along scenic coastlines or scenic ridgetops.

Now, reasonable Members of this body may disagree about the cost, effectiveness, and appropriateness of such wind turbines. We can have that debate at another time. But at least we ought to be able to agree not to subsidize building them in places that damage our most scenic areas and coastlines.

Since wind turbines of this giant size are such a relatively new phenomenon, it fits our American traditions to give local communities time to stop and think about their most appropriate location.

In conclusion, Mr. President, let me emphasize that our legislation does not prohibit the building of a single wind turbine. It only denies a Federal taxpayer subsidy in highly scenic areas. And it ensures local governments have the time to review wind turbine proposals.

This revised version does not give local authorities any power they do not already have. It simply gives them a little time to act.

We intend to offer our legislation as an amendment when the full Senate debates the Energy bill next week, and we hope our colleagues will join us in this effort to ensure the Federal Government does not provide tax incentives that ruin the beauty of our most pristine and scenic areas around our country.

Egypt has its pyramids, Italy has its art, England has its history, and the United States has the great American outdoors. We should prize that and protect it where we can. One way to do that is to make sure when we look at the Statue of Liberty, when we look at the Great Smoky Mountains, when we look at the Grand Canyon, we do not have giant windmills, twice as tall as Neyland Stadium, with flashing red lights, in between us and that landscape.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of the legislation which Senator WARNER and I are introducing, a copy of the attachment which includes the approximately 200 highly scenic sites that could be protected by the Environmentally Responsible Windpower Act of 2005, and two editorials from Tennessee newspapers—one from the Chattanooga Times Free Press and one from the Knoxville News Sentinel—which comment on the previous legislation we introduced.

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

S. 1208

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Environmentally Responsible Windpower Act of 2005''.

SEC. 2. LOCAL CONTROL FOR SITING OF WINDMILLS.

(a) LOCAL NOTIFICATION.—Prior to the Federal Energy Regulatory Commission issuing to any wind turbine project its Exempt-Wholesale Generator Status, Market-Based Rate Authority, or Qualified Facility rate schedule, the wind project shall complete its Local Notification Process.

(b) LOCAL NOTIFICATION PROCESS.—

(1) In this section, the term ''Local Authorities'' means the governing body, and the senior executive of the body, at the lowest level of government that possesses authority under State law to carry out this Act.

(2) Applicant shall notify in writing the Local Authorities on the day of the filing of such Market-Based Rate application or Federal Energy Regulatory Commission Form number 556 (or a successor form) at the Federal Energy Regulatory Commission. Evidence of such notification shall be submitted to the Federal Energy Regulatory Commission.

(3) The Federal Energy Regulatory Commission shall notify in writing the Local Authorities within 10 days of the filing of such Market-Based Rate application or Federal Energy Regulatory Commission Form number 556 (or a successor form) at the Federal Energy Regulatory Commission.

(4) The Federal Energy Regulatory Commission shall not issue to the project Market-Based Rate Authority, Exempt Wholesaler Generator Status, or Qualified Facility rate schedule, until 180 days after the date on which the Federal Energy Regulatory Commission notifies the Local Authorities under paragraph (3).

(c) HIGHLY SCENIC AREA AND FEDERAL LAND.—

(1) A Highly Scenic Area is—

(A) any area listed as an official United Nations Educational, Scientific, and Cultural Organization World Heritage Site, as

supported by the Department of the Interior, the National Park Service, and the International Council on Monuments and Sites;

(B) land designated as a National Park;

(C) a National Lakeshore;

(D) a National Seashore;

(E) a National Wildlife Refuge that is adjacent to an ocean; or

(F) a National Military Park.

(2) A Qualified Wind Project is any wind-turbine project located—

(A)(i) in a Highly Scenic Area; or

(ii) within 20 miles of the boundaries of an area described in subparagraph (A), (B), (C), (D), or (F) of paragraph (1); or

(B) within 20 miles off the coast of a National Wildlife Refuge that is adjacent to an ocean.

(3) Prior to the Federal Energy Regulatory Commission issuing to a Qualified Wind Project its Exempt-Wholesale Generator Status, Market-Based Rate Authority, or Qualified Facility rate schedule, an environmental impact statement shall be conducted and completed by the lead agency in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If no lead agency is designated, the lead agency shall be the Department of the Interior.

(4) The environmental impact statement determination shall be issued within 12 months of the date of application.

(5) Such environmental impact statement review shall include a cumulative impacts analysis addressing visual impacts and avian mortality analysis of a Qualified Wind Project.

(6) A Qualified Wind Project shall not be eligible for any Federal tax subsidy.

(d) EFFECTIVE DATE.—

(1) This section shall expire 10 years after the date of enactment of this Act.

(2) Nothing in this section shall prevent or discourage environmental review of any wind projects or any Qualified Wind Project on a State or local level.

SCENIC SITES PROTECTED BY THE ENVIRONMENTALLY RESPONSIBLE WINDPOWER ACT OF 2005

ALABAMA

National Parks: Little River Canyon National Preserve.

National Military Parks: Horseshoe Bend.

ALASKA

National Parks: Denali National Park & Preserve, Gates of the Arctic National Park & Preserve, Glacier Bay National Park & Preserve, Katmai National Park & Preserve, Kenai Fjords National Park, Kobuk Valley National Park, Lake Clark National Park & Preserve, Wrangell-St, Elias National Park & Preserve.

World Heritage Sites: Glacier Bay National Park & Preserve, Wrangell-St. Elias National Park & Preserve.

Coastal National Wildlife Refuges: Izembek National Wildlife Refuge, Alaska Peninsula National Wildlife Refuge, Becharof National Wildlife Refuge, Kodiak National Wildlife Refuge, Selawik National Wildlife Refuge.

ARIZONA

National Parks: Grand Canyon National Park, Petrified Forest National Park.

World Heritage Sites: Grand Canyon National Park.

ARKANSAS

National Parks: Hot Springs National Park.

National Military Parks: Pea Ridge.

CALIFORNIA

National Parks: Channel Islands National Park, Death Valley National Park, Joshua Tree National Park, Lassen Volcanic National Park, Redwood National and State Parks, Sequoia & Kings Canyon National Parks, Yosemite National Park.

World Heritage Sites: Redwood National Park, Yosemite National Park.

National Seashores: Point Reyes National Seashore.

National Wildlife Refuqes: Castle Rock National Wildlife Refuge, Ellicott Slough National Wildlife Refuge, Farallon National Wildlife Refuge, Guadalupe-Nipomo Dunes National Wildlife Refuge, Humboldt Bay National Wildlife Refuge, Marin Islands National Wildlife Refuge, Salinas River National Wildlife Refuge, San Diego Bay National Wildlife Refuge, San Pablo Bay National Wildlife Refuge, Seal Beach National Wildlife Refuge, Tijuana Slough National Wildlife Refuge.

COLORADO

National Parks: Black Canyon of the Gunnison National Park, Great Sand Dunes National Park & Preserve, Mesa Verde National Park, Rocky Mountain National Park.

World Heritage Sites: Mesa Verde.

CONNECTICUT

Coastal National Wildlife Refuges: Stewart B. McKinney National Wildlife Refuge.

DELAWARE

Coastal National Wildlife Refuges: Bombay Hook National Wildlife Refuge, Prime Hook National Wildlife Refuge.

FLORIDA

National Parks: Biscayne National Park, Dry Tortugas National Park, Everglades National Park.

World Heritage Sites: Everglades National Park.

National Seashores: Canaveral National Seashore, Gulf Islands National Seashore.

Coastal National Wildlife Refuge Sites: Archie Carr National Wildlife Refuge, Arthur R. Marshall Loxahatchee National Wildlife Refuge, Cedar Keys National Wildlife Refuge, Chassahowitzka National Wildlife Refuge, Crocodile Lake National Wildlife Refuge, Crystal River National Wildlife Refuge, Egmont Key National Wildlife Refuge, Great White Heron National Wildlife Refuge, Hobe Sound National Wildlife Refuge, Island Bay National Wildlife Refuge, J. N. Ding Darling National Wildlife Refuge, Key West National Wildlife Refuge, Lower Suwannee National Wildlife Refuge, Matlacha Pass National Wildlife Refuge, Merritt Island National Wildlife Refuge, National Key Deer Refuge National Wildlife Refuge, Passage Key National Wildlife Refuge, Pelican Island National Wildlife Refuge, Pine Island National Wildlife Refuge, Pinellas National Wildlife Refuge, St. Johns National Wildlife Refuge, St. Marks National Wildlife Refuge, St. Vincent National Wildlife Refuge, Ten Thousand Islands National Wildlife Refuge.

GEORGIA

National Seashores: Cumberland Island National Seashore.

Coastal National Wildlife Refuges: Blackbeard Island National Wildlife Refuge, Harris Neck National Wildlife Refuge, Wassaw National Wildlife Refuge, Wolf Island National Wildlife Refuge.

HAWAII

National Parks: Haleakala National Park, Hawaii Volcanoes National Park.

World Heritage Sites: Hawaii Volcanoes National Park.

Coastal National Wildlife Refuges: Oahu Forest National Wildlife Refuge, Hanalei National Wildlife Refuge, Kilauea National Wildlife Refuge, Hakalau National Wildlife Refuge, Kealia Pond National Wildlife Refuge, Pearl Harbor National Wildlife Refuge, Kakahaia National Wildlife Refuge.

IDAHO

National Parks: Yellowstone National Park.

ILLINOIS

World Heritage Sites: Cahokia Mounds State Historic Site.

INDIANA

National Seashores: Indiana Dunes National Lakeshore.

KENTUCKY

National Parks: Mammoth Cave National Park.

World Heritage Sites: Mammoth Cave National Park.

LOUISIANA

Coastal National Heritage Sites: Bayou Teche National Wildlife Refuge, Big Branch National Wildlife Refuge, Breton National Wildlife Refuge, Delta National Wildlife Refuge, Sabine National Wildlife Refuge, Shell Keys National Wildlife Refuge.

MAINE

National Parks: Acadia National Park.

Coastal National Wildlife Refuges: Aroostook National Wildlife Refuge, Cross Island National Wildlife Refuge, Franklin Island National Wildlife Refuge, Moosehorn National Wildlife Refuge, Petit Manan National Wildlife Refuge, Pond Island National Wildlife Refuge, Rachel Carson National Wildlife Refuge, Seal Island National Wildlife Refuge.

MARYLAND

National Seashores: Assateague Island National Seashore.

MASSACHUSETTS

National Seashores: Cape Cod National Seashore.

Coastal National Wildlife Refuges: Mashpee National Wildlife Refuge, Massaspit National Wildlife Refuge, Monormoy National Wildlife Refuge, Nantucket National Wildlife Refuge, Normans Land Island National Wildlife Refuge, Parker River National Wildlife Refuge, Thacher Island National Wildlife Refuge.

MICHIGAN

National Parks: Isle Royale National Park.

National Lakeshores: Pictured Rocks National Lakeshore, Sleeping Bear Dunes National Lakeshore.

MINNESOTA

National Parks: Voyageurs National Park.

MISSISSIPPI

National Seashores: Gulf Islands National Seashore.

National Military Parks: Vicksburg.

Coastal National Wildlife Refuges: Grand Bay National Wildlife Refuge, Mississippi Sandhill Crane National Wildlife Refuge

MONTANA

National Parks: Yellowstone National Park, Glacier National Park.

World Heritage Sites: Yellowstone National Park.

NEVADA

National Parks: Death Valley National Park, Great Basin National Park.

NEW HAMPSHIRE

Coastal National Wildlife Refuges: Great Bay National Wildlife Refuge.

NEW JERSEY

Coastal National Wildlife Refuges: Cape May National Wildlife Refuge, Edwin B. Forsythe National Wildlife Refuge.

NEW MEXICO

National Parks: Carlsbad Caverns National Park.

World Heritage Sites: Chaco Culture National Historical Park, Pueblo de Taos, Carlsbad Caverns National Park.

NEW YORK

World Heritage Sites: Statue of Liberty.

National Seashores: Fire Island National Seashore.

NORTH CAROLINA

National Parks: Great Smoky Mountains National Park.

World Heritage Sites: Great Smoky Mountains National Park.

National Seashores: Cape Hatteras National Seashore, Cape Lookout National Seashore.

National Military Parks: Guilford Courthouse

Coastal National Wildlife Refuges: Alligator River National Wildlife Refuge, Cedar Island National Wildlife Refuge, Currituck National Wildlife Refuge, Mackay Island National Wildlife Refuge, Mattamuskeet National Wildlife Refuge, Pea Island National Wildlife Refuge, Pocosin Lakes National Wildlife Refuge, Swanquarter National Wildlife Refuge.

NORTH DAKOTA

National Parks: Theodore Roosevelt National Park.

OHIO

National Parks: Cuyahoga Valley National Parks.

OREGON

National Parks: Crater Lake National Park.

Coastal National Wildlife Refuges: Bandon Marsh National Wildlife Refuge, Cape Meares National Wildlife Refuge, Nestucca Bay National Wildlife Refuge, Oregon Islands National Wildlife Refuge, Siletz Bay National Wildlife Refuge, Three Arch Rocks National Wildlife Refuge.

PENNSYLVANIA

World Heritage Sites: Independence Hall.

National Military Parks: Gettysburg.

RHODE ISLAND

Coastal National Wildlife Refuges: Block Island National Wildlife Refuge, John H. Chafee National Wildlife Refuge, Ninigret National Wildlife Refuge, Sachuest Point National Wildlife Refuge, Trustom Pond National Wildlife Refuge.

SOUTH CAROLINA

National Parks: Congaree National Park.

National Military Parks: Kings Mountain.

Coastal National Wildlife Refuges: ACE Basin National Wildlife Refuge, Cape Romain National Wildlife Refuge, Pickney Island National Wildlife Refuge, Savannah National Wildlife Refuge, Tybee National Wildlife Refuge, Waccamaw National Wildlife Refuge.

SOUTH DAKOTA

National Parks: Badlands National Park, Wind Cave National Park.

TENNESSEE

National Parks: Great Smoky Mountains National Park.

World Heritage Sites: Great Smoky Mountains National Park.

National Military Parks: Chickamauga and Chattanooga, Shiloh.

TEXAS

National Parks: Big Bend National Park, Guadalupe Mountains National Park.

National Seashores: Padre Island National Seashore.

Coastal National Wildlife Refuges: Anahuac National Wildlife Refuge, Aransas National Wildlife Refuge, Big Boggy National Wildlife Refuge, Brazoria National Wildlife Refuge, Laguna Atascossa National Wildlife Refuge, McFaddin National Wildlife Refuge, San Bernard National Wildlife Refuge, Texas Point National Wildlife Refuge, Trinity River National Wildlife Refuge

UTAH

National Parks: Arches National Park, Bryce Canyon National Park, Canyonlands National Park, Capitol Reef National Park, Zion National Park.

VIRGINIA

National Parks: Shenandoah National Park.

World Heritage Sites: Monticello, University of Virginia Historic District

National Seashores: Assateague Island National Seashore.

National Military Parks: Fredericksburg and Spotsylvania Courthouse Battlefields.

Coastal National Wildlife Refuges: Back Bay National Wildlife Refuge, Chincoteague National Wildlife Refuge, Eastern Shore of Virginia National Wildlife Refuge, Featherstone National Wildlife Refuge, Fisherman Island National Wildlife Refuge, James River National Wildlife Refuge, Mason Neck National Wildlife Refuge, Nansemond National Wildlife Refuge, Occoquah Bay National Wildlife Refuge, Plum Tree Island National Wildlife Refuge, Wallops Island National Wildlife Refuge

WASHINGTON

National Parks: Mount Rainier National Park, North Cascades National Park, Olympic National Park.

World Heritage Sites: Olympic National Park.

Coastal National Wildlife Refuges: Copalis National Wildlife Refuge, Flattery National Wildlife Refuge, Grays Harbor National Wildlife Refuge, Quillayute Needles National Wildlife Refuge, Willapa National Wildlife Refuge.

WISCONSIN

National Lakeshores: Apostle Islands National Lakeshore.

WYOMING

National Parks: Grand Teton National Park, Yellowstone National Park.

World Heritage Sites: Yellowstone National Park.

[From the Chattanooga Times Free Press, May 22, 2005]

BEWARE OF WINDMILLS

It was reported in the classical fictional literature of Miguel de Cervantes, and in the delightful derivative musical play ''Man of La Mancha,'' that Don Quixote tilted at windmills, thinking them to be adversaries.

But in the real-life United States today, some people are promoting the erection of many thousands of windmills as a means of generating electric power, with too few people being aware that these modern windmills would be very real, not imaginary, adversaries.

Sen. Lamar Alexander, R-Tenn., has introduced a bill in Congress designed to avoid having an army of huge windmills slip up on us without sufficient warning.

The senator says an effort is being made to require electric companies to produce 10 percent of their power from ''renewable'' sources. That means wind, hydro, solar, geothermal and biomass power. Sounds good on the surface, doesn't it? The trouble is that there are few opportunities for substantial power generation by these means except by wind. What would that mean?

''The idea of windmills,'' said Sen. Alexander, conjures up pleasant images—of Holland and tulips, of rural America . . . My grandparents had such a windmill at their well pump . . . But the windmills we are talking about today are not your grandmother's windmills.

''Each one is typically 100 yards tall, two stories taller than the Statue of Liberty, taller than a football field is long.

''These windmills are wider than a 747 jumbo jet.

''Their rotor blades turn at 100 miles per hour.

''These towers and their flashing red lights can be seen from more than 25 miles away.

''Their noise can be heard from up to a half-mile away. It is a thumping and swishing sound. It has been described by residents that are unhappy with the noise as sounding like a brick wrapped in a towel tumbling in a clothes drier on a perpetual basis.

''These windmills produce very little power since they only operate when the wind blows enough or doesn't blow too much, so they are usually placed in large wind farms covering huge amounts of land.

''As an example, if the Congress ordered electric companies to build 10 percent of their power from renewable energy—which as we have said, has to be mostly wind—and if we renew the current subsidy each year, by the year 2025, my state of Tennessee would have at least 1,700 windmills, which would cover land almost equal to two times the size of the city of Knoxville.''

Do these revelations by Sen. Alexander, accompanied by the prospect that $3.7 billion of your taxes might be required for subsidies over five years, cause you to want to have 100,000 of these huge, red lighted, noisy, thumping windmills erected throughout the United States, with 1,700 of them in Tennessee—perhaps in your neighborhood?

Talk about ''pollution'' of area, sound and sight!

Surely, non-polluting nuclear power and other energy sources would be better. The windmill subsidies could be used better to promote cleaner, more efficient and cheaper coal, gas and oil technology.

Sen. Alexander said the purpose of his legislation, in which Sen. John Warner, R-Va., has joined, is to be sure that ''local authorities have a chance to consider the impact of such massive new structures before dozens or hundreds of them begin to be built in their communities.''

For that fair warning, we should give thanks. If you have seen windmill farms in California, Texas or Hawaii, you will surely understand why the warning is appropriate.

Don Quixote thought he had problems with windmills, He hadn't seen the kind Sen. Alexander is talking about.

[KnoxNews, June 9, 2005]

WINDMILLS NEED COMMONSENSE APPROACH

U.S. Sen. Lamar Alexander has unleashed a storm of controversy among environmentalists over windmills, but we think he is using a commonsense approach.

Alexander has introduced legislation that would restrict tax credits for new windmills, and he has asked TVA to place a moratorium on new windmills.

Alexander's bill would give local governments veto power over wind farm projects and require environmental impact statements for windmill construction in offshore areas and within 20 miles of certain scenic areas, such as the Great Smoky Mountains National Park, and military bases.

The provision on eliminating tax credits for projects in those restricted areas, however, is what has drawn criticism from environmentalists and windmill manufacturers.

Stephen Smith of the Southern Alliance for Clean Energy said the legislation is ''the most direct assault on wind power we've ever seen by a United States senator.''

Jaime Steve, a lobbyist for the American Wind Energy Association, said wind energy could bring up to 4,500 new jobs and $4.2 billion in investment to the state in the next five or six years.

Alexander released a statement that said his bill would protect scenic areas and give local citizens more control. ''It keeps those 100-yard-tall, monstrous structures away from Signal Mountain, Lookout Mountain,

Roan Mountain, the Tennessee River Gorge, the foothills of the Smokies and other highly scenic areas,'' Alexander said.

''As for jobs,'' he continued, ''every Tennessee job is important, but I fear that hundreds of these giant windmills across Tennessee's ridges could destroy our tourism industry, which could cost us tens of thousands of jobs.''

In remarks on the Senate floor, Alexander said serious questions have been raised about how much relying on wind power will raise the cost of electricity. ''My studies suggest that, at a time when America needs large amounts of low-cost, reliable power, wind produces puny amounts of high-cost unreliable power,'' he said. ''We need lower prices; wind power raises prices.''

About his request to TVA, Alexander said the moratorium should be in effect ''until the new TVA board, Congress and local officials can evaluate the impact on these massive structures on our electric rates, our view of the mountains and our tourism industry.''

TVA Directors Bill Baxter and Skila Harris responded that TVA has no plans to build more wind turbines in the next two years and beyond.

We believe Alexander has raised some serious questions about the effectiveness and efficiency of wind power. While we understand the importance of focusing on new forms of energy to reduce reliance on oil, we agree with Alexander's premise that we must go about it wisely.

''I hope we decide that we need a real national energy policy instead of a national windmill policy,'' Alexander said.

We think that's well said.

By Mr. GREGG:

S. 1209. A bill to establish and strengthen postsecondary programs and courses in the subjects of traditional American history, free institutions, and Western civilization, available to students preparing to teach these subjects, and to other students; to the Committee on Health, Education, Labor, and Pensions.

Mr. GREGG. Mr. President, today I am proud to introduce the Higher Education for Freedom Act. This bill will establish a competitive grant program making funds available to institutions of higher education, centers within such institutions, and associated nonprofit foundations to promote both graduate and undergraduate programs focused on the teaching and study of traditional American history and government, and the history and achievements of Western Civilization. The program will help ensure that more postsecondary students have the opportunity to participate in programs focused on these critical subjects and that prospective teachers of history and government have access to a solid foundation of content knowledge.

Today, more than ever, it is important to preserve and defend our common heritage of freedom and civilization, and to ensure that future generations of Americans understand the importance of traditional American history and the principles of free government upon which this Nation was founded. This knowledge is not only essential to the full participation of our citizenry in America's civic life, but also to the continued success of the American experiment in self-government, which binds together a diverse people into a single Nation with common purposes.

However, college students' lack of historical literacy is quite startling, and too few of our colleges and universities are focused on the task of imparting this fundamental knowledge to the next generation. A survey of students at America's top colleges found that seniors could not identify Valley Forge, words from the Gettysburg Address, or even the basic tenets of the U.S. Constitution. Given high school-level American history questions, 81 percent of the college seniors would have received a D or F, the report found. One college professor informed me that her students did not know which side Lee was on during the Civil War, or whether the Russians were allies or enemies in World War II. A student of hers asked why anyone should care what the Founding Fathers wrote.

As unfortunate as these findings are, they are perhaps not surprising. A survey conducted several years ago found that not one of America's top fifty colleges and universities required its students to take a course in American history. More recently, another report documented the extent to which our top postsecondary institutions have abandoned the traditional core requirements that once gave students a systemic grasp of our nation's ideals, institutions, and origins. Indeed, only about a dozen undergraduate programs at major American colleges and universities have a central focus on American constitutional history and principles.

We are doing our students a disservice if we allow them to graduate from an institution of higher education without a solid understanding of and appreciation for our democratic heritage. We cannot hope to preserve our democracy without taking action to remedy our students' historical illiteracy. As Thomas Jefferson once wrote, ''If a nation expects to be ignorant—and free—in a state of civilization, it expects what never was and never will be.'' I believe the time has come for Congress to do something to promote the teaching and study of traditional American history at the postsecondary level, and I urge my colleagues to support this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1209

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Higher Education for Freedom Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Given the increased threat to American ideals in the trying times in which we live, it is important to preserve and defend our common heritage of freedom and civilization and to ensure that future generations of Americans understand the importance of traditional American history and the principles of free government on which this Nation was founded in order to provide the basic knowledge that is essential to full and informed participation in civic life and to the larger vibrancy of the American experiment in self-government, binding together a diverse people into a single Nation with a common purpose.

(2) However, despite its importance, most of the Nation's colleges and universities no longer require United States history or systematic study of Western civilization and free institutions as a prerequisite to graduation.

(3) In addition, too many of our Nation's elementary school and secondary school history teachers lack the training necessary to effectively teach these subjects, due largely to the inadequacy of their teacher preparation.

(4) Distinguished historians and intellectuals fear that without a common civic memory and a common understanding of the remarkable individuals, events, and ideals that have shaped our Nation and its free institutions, the people in the United States risk losing much of what it means to be an American, as well as the ability to fulfill the fundamental responsibilities of citizens in a democracy.

(b) PURPOSES.—The purposes of this Act are to promote and sustain postsecondary academic centers, institutes, and programs that offer undergraduate and graduate courses, support research, sponsor lectures, seminars, and conferences, and develop teaching materials, for the purpose of developing and imparting a knowledge of traditional American history, the American Founding, and the history and nature of, and threats to, free institutions, or of the nature, history, and achievements of Western civilization, particularly for—

(1) undergraduate students who are enrolled in teacher education programs, who may consider becoming school teachers, or who wish to enhance their civic competence;

(2) elementary school, middle school, and secondary school teachers in need of additional training in order to effectively teach in these subject areas; and

(3) graduate students and postsecondary faculty who wish to teach about these subject areas with greater knowledge and effectiveness.

SEC. 3. DEFINITIONS.

In this Act:

(1) ELIGIBLE INSTITUTION.—The term ''eligible institution'' means—

(A) an institution of higher education;

(B) a specific program within an institution of higher education; and

(C) a non-profit history or academic organization associated with higher education whose mission is consistent with the purposes of this Act.

(2) FREE INSTITUTION.—The term ''free institution'' means an institution that emerged out of Western civilization, such as democracy, constitutional government, individual rights, market economics, religious freedom and tolerance, and freedom of thought and inquiry.

(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(5) TRADITIONAL AMERICAN HISTORY.—The term ''traditional American history'' means—

(A) the significant constitutional, political, intellectual, economic, and foreign policy trends and issues that have shaped the course of American history; and

(B) the key episodes, turning points, and leading figures involved in the constitutional, political, intellectual, diplomatic, and economic history of the United States.

SEC. 4. GRANTS TO ELIGIBLE INSTITUTIONS.

(a) IN GENERAL.—From amounts appropriated to carry out this Act, the Secretary shall award grants, on a competitive basis, to eligible institutions, which grants shall be used for—

(1) history teacher preparation initiatives, that—

(A) stress content mastery in traditional American history and the principles on which the American political system is based, including the history and philosophy of free institutions, and the study of Western civilization; and

(B) provide for grantees to carry out research, planning, and coordination activities devoted to the purposes of this Act; and

(2) strengthening postsecondary programs in fields related to the American founding, free institutions, and Western civilization, particularly through—

(A) the design and implementation of courses, lecture series, and symposia, the development and publication of instructional materials, and the development of new, and supporting of existing, academic centers;

(B) research supporting the development of relevant course materials;

(C) the support of faculty teaching in undergraduate and graduate programs; and

(D) the support of graduate and postgraduate fellowships and courses for scholars related to such fields.

(b) SELECTION CRITERIA.—In selecting eligible institutions for grants under this section for any fiscal year, the Secretary shall establish criteria by regulation, which shall, at a minimum, consider the education value and relevance of the institution's programming to carrying out the purposes of this Act and the expertise of key personnel in the area of traditional American history and the principles on which the American political system is based, including the political and intellectual history and philosophy of free institutions, the American Founding, and other key events that have contributed to American freedom, and the study of Western civilization.

(c) GRANT APPLICATION.—An eligible institution that desires to receive a grant under this Act shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may prescribe by regulation.

(d) GRANT REVIEW.—The Secretary shall establish procedures for reviewing and evaluating grants made under this Act.

(e) GRANT AWARDS.—

(1) MAXIMUM AND MINIMUM GRANTS.—The Secretary shall award each grant under this Act in an amount that is not less than $400,000 and not more than $6,000,000.

(2) EXCEPTION.—A subgrant made by an eligible institution under this Act to another eligible institution shall not be subject to the minimum amount specified in paragraph (1).

(f) MULTIPLE AWARDS.—For the purposes of this Act, the Secretary may award more than 1 grant to an eligible institution.

(g) SUBGRANTS.—An eligible institution may use grant funds provided under this Act to award subgrants to other eligible institutions at the discretion of, and subject to the oversight of, the Secretary.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this Act, there are authorized to be appropriated—

(1) $140,000,000 for fiscal year 2006; and

(2) such sums as may be necessary for each of the succeeding 5 fiscal years.

By Mr. HARKIN (for himself, Mr. LUGAR, Mr. OBAMA, and Mr. COLEMAN):

S. 1210. A bill to enhance the national security of the United States by providing for the research, development, demonstration, administrative support, and market mechanisms for widespread deployment and commercialization of biobased fuels and biobased products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. HARKIN. Mr. President, over the past 100 years, the economy of the United States has become inextricably tied to the supply of petroleum. In the early part of the 20th century, America's abundant sources of petroleum helped drive tremendous improvements in quality of life, offering greater mobility through gasoline-powered transportation, and a whole host of new and innovative products made from plastics and other petroleum-based chemicals.

But as the 20th century wore on, the costs of a petroleum-based economy grew increasingly apparent: pollution of air and water became a growing risk to our health and environment, and a growing dependence on foreign imports became an increasing risk to our economic and national security. Today, nearly two-thirds of the oil we use comes from overseas, much of it from hostile and unstable regimes.

Instability in the oil-producing regions of the world, the growing threat of global warming, and record-high prices for gasoline at the pump all call for a new kind of economy for the 21st century: one based on a resource that is not only abundant, but clean, renewable and home-grown.

Today, biofuels like ethanol and biodiesel are making great inroads in reducing our foreign oil dependence. The biofuels industry will provide nearly 4 billion gallons of clean, domestically-produced fuel alternatives to gasoline and diesel this year. We need to ensure continued growth of renewable fuels, first by supporting a robust Renewable Fuels Standard of at least 8 billion gallons a year by 2012, and then by supporting additional measures to grow the ''bioeconomy.''

That is why I am very proud today to be joined by my colleagues, Senator LUGAR, Senator OBAMA, and Senator COLEMAN, in introducing the National Security and Bioenergy Investment Act of 2005. This important bipartisan legislation provides the research, development, demonstration, and market mechanisms necessary to move this country from an economy based largely on foreign oil, to one increasingly fueled with clean, renewable, domestically-grown biomass. It is an important compliment to a robust RFS, and a vital element of our energy future.

According to the National Academies of Science, this country generates nearly 300 million tons of biomass each year—everything from corn stalks and wheat straw to forest trimmings and even segregated municipal waste. This biomass is currently sent to landfills or left in the fields after harvest in quantities greater than that needed to provide natural cover and nutrient replacement.

The Natural Resources Defense Council estimates that by 2025, an additional 200 million tons of biomass could be generated each year from dedicated biomass crops such as native switchgrass, hybrid poplar and other woody crops, grown throughout the country. These crops require little or no fertilizer or chemical treatment, while helping to enhance soil quality and reduce runoff.

Cellulose from biomass can be converted to ethanol, to provide a clean transportation fuel with potentially near-zero net carbon dioxide and sulfur emissions, and substantially reduced carbon monoxide, particulate and toxic emissions compared to petroleum-based fuel. The Natural Resources Defense Council estimates that by 2050 biomass could supply 50 percent of the nation's transportation fuel, dramatically reducing our dependence on foreign oil.

Other products of the biomass refining process, such as biochemicals and bioplastics, can also complement or replace less environmentally-friendly petroleum-based equivalents. For example, if all of the plastic used in the United States were made from biomass instead of petroleum, the Nation's oil consumption would decrease by 90 to 145 million barrels a year. Biobased plastics can also be composted and converted back to soil instead of being thrown in a landfill.

Biobased chemicals, lubricants and metal-working fluids are all available in the marketplace today, and offer safe, non-toxic alternatives to their petroleum-based counterparts. The National Academies of Science found that biomass could meet all of the Nation's needs for organic chemicals, replacing 700 million barrels of petroleum a year.

But perhaps one of the greatest benefits of biobased fuels and products is to our rural economy. A mature biomass industry would create more than 1 million jobs and generate $5 billion annually in revenue for farmers. This represents a tremendous opportunity to grow and diversify sources of rural income, while reducing our dependence on foreign oil, bolstering national security and protecting the environment.

However, several obstacles still remain. Current Federal programs to develop biomass crops, establish supply chains, and reduce the cost of biofuels production are under-funded and lack appropriate targeting. Potential biomass refinery developers remain reluctant to invest in construction of ''next generation'' plants due to the high level of financial risk. And, according to a recent report from the Government Accountability Office, biobased

purchase requirements and other bioeconomy measures at the U.S. Department of Agriculture have not been given the necessary priority for full implementation.

A wide range of groups, including the Energy Future Coalition, the National Commission on Energy Policy, the Governors' Ethanol Coalition, and the Natural Resources Defense Council, is calling on Congress to invest in the bioeconomy as the best direction for the country's energy future.

The time to act is now.

This legislation implements several critical measures to help ensure the widespread deployment and commercialization of biobased fuels and products over the next 10 years.

The bill substantially updates and improves the Biomass Research and Development Act by refining its objectives, providing greater focus on overcoming remaining technical barriers, and increasing funding. It authorizes $1 billion in research and development over five years to help today's successful biorefineries become the biorefineries of tomorrow, while developing advanced biomass crops, crop production methods, harvesting and transport technology to deliver abundant biomass to the refinery door.

It creates a reverse auction of production incentives to deliver the first billion gallons of cellulosic biofuels at the lowest cost to taxpayers. Each year, cellulosic biofuels refiners will bid for assistance on a per gallon basis. Refiners who request the lowest level of assistance will earn production contracts. As the volume of biofuels production grows, competition will increase, and per gallon incentive rates will decrease. After the first billion gallons of annual production, cellulosic ethanol is expected to be competitive with gasoline without government assistance.

It establishes a new Assistant Secretary position for Energy and Bioproduct Development at USDA to provide the necessary priority and resources for bioenergy and bioproduct programs. It expands the Federal Government biobased product procurement program of the 2002 farm bill to include government contractors. It also extends the program to the U.S. Capitol Complex, and establishes the Capitol as a showcase for biobased products.

It creates grant programs to help small biobased businesses with marketing and certification of biobased products, and funds bioeconomy development associations and Land Grant institutions to support the growth of regional bioeconomies.

The legislation calls on Congress to create tax incentives to encourage investment in production of biobased fuels and products, and it provides for education and outreach to promote producer investment in processing facilities and to heighten consumer awareness of biobased fuels and products.

Together, these measures will send a strong signal to innovators, investors and biobased businesses that Congress is committed to advancing the bioeconomy. With full funding, this bill will deliver the technological advances needed to help make biobased fuels and products cost competitive with petroleum-based equivalents, and it will take a big step toward a future in which our cars run on clean-burning renewable fuels, our plastics turn to compost, and our Nation's farmers fortify our energy security.

The bill has strong support from a broad coalition of agricultural producers, industry, clean energy, environment and national security groups. I have here several letters of endorsement.

I ask unanimous consent that the text of the bill, and the accompanying letters of endorsement, be printed in the RECORD.

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

S. 1210

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Security and Bioenergy Investment Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS.

Congress finds that—

(1) the Governors' Ethanol Coalition, in the report entitled ''Ethanol From Biomass America's 21st Century Transportation Fuel'', found that—

(A) the dependence of the United States on oil is a major risk to national security and economic and environmental health;

(B) the safest and least costly approach to mitigating these risks is to set and achieve aggressive biofuels research, development, production and use goals; and

(C) significant investment in cellulosic biofuels, including a dramatic expansion of existing research programs, production and consumer incentives, and commercialization assistance, is needed;

(2) the National Academy of Sciences has found that there are abundant sources of waste biomass, and approximately 280,000,000 tons of waste biomass generated, in all regions of the United States each year;

(3) the Natural Resources Defense Council has estimated that by 2025, 200,000,000 additional tons of biomass could be harvested each year from dedicated energy crops grown throughout the country, yielding $5,000,000,000 annually in profit for farmers;

(4) the Department of Agriculture has estimated that energy derived from existing biomass supplies could displace 25 percent of current petroleum imports while still meeting agricultural demands;

(5) if all diesel fuel in the United States were blended with a 4-percent blend of biodiesel, crude oil consumption in the United States would be reduced by 300,000,000 barrels each year by 2016;

(6) there is sufficient domestic feedstock for the production of at least 8,000,000,000 annual gallons of renewable fuels, including ethanol and biodiesel, by 2012;

(7) the Natural Resources Defense Council has estimated that biomass could supply 50 percent of current transportation petroleum demand by 2050;

(8) the National Academy of Sciences has estimated that enough agricultural crop residue is produced each year to entirely replace the 700,000,000 barrels of petroleum used in organic chemical production in 2004;

(9) the Biotechnology Industry Organization, in its report entitled ''New Biotechnology Tools for a Cleaner Environment'', found that if all plastics in the United States were made from biomass, oil consumption would decrease by up to 145,000,000 barrels per year;

(10) the National Academy of Sciences has reported that biobased products have the potential to improve the sustainability of natural resources, environmental quality, and national security while competing economically;

(11) the Department of Agriculture has made significant advances in the understanding and use by the United States of biomass as a feedstock for fuels and products;

(12) through participation with the Department of Energy in the Biomass Research and Development Initiative, the Department of Agriculture has also made valuable contributions, through grant-making and other initiatives, to the support of biomass research and development at institutions throughout the United States;

(13) the Government Accountability Office has found that—

(A) actions to implement the requirements of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171; 116 Stat. 134) for purchasing biobased products have been limited; and

(B) greater priority by the Department of Agriculture would promote compliance by other agencies with biobased purchasing requirements;

(14) an Assistant Secretary of the Department of Agriculture for Energy and Biobased Products would provide the priority, staff, and financial resources to fully implement biobased purchasing requirements and other provisions of the energy title of the Farm Security and Rural Investment Act of 2002;

(15) Federal government contractors and the Architect of the Capitol are currently exempt from biobased purchasing requirements of the Farm Security and Rural Investment Act of 2002;

(16) expansion of those biobased purchasing requirements—

(A) to Federal contractors would significantly expand the market for, and advance commercialization of, biobased products; and

(B) to the Architect of the Capitol would, in combination with a program of public education, allow the Capitol Complex to serve as a showcase for the existence, use, and benefits of biobased products;

(17) fuel derived from cellulosic biomass could have near-zero net carbon dioxide and sulfur emissions, and substantially reduced carbon monoxide, particulate and toxic emissions relative to petroleum-based fuels;

(18) the bipartisan National Commission on Energy Policy has predicted that with a dedicated Federal research, development, and demonstration effort, cellulosic ethanol could be less expensive to produce than gasoline by 2015;

(19) the 2004 report of the Rocky Mountain Institute, entitled ''Winning the Oil Endgame'', estimated that a mature biomass industry would create up to 1,045,000 jobs;

(20) the National Academy of Sciences has found that there are significant opportunities to produce biomass ethanol more efficiently;

(21) the National Commission on Energy Policy has found that current Federal programs directed toward reducing the cost of biofuels are under-funded, intermittent, scattered, and poorly targeted;

(22) a report commissioned by the Department of Defense urged the United States to invest in a new large-scale initiative to produce biofuels as an alternative supply source, and as a feedstock for future fuel vehicles;

(23) the Consumer Federation of America has found that the blending of ethanol into conventional gasoline can significantly benefit consumers by lowering prices at the pump;

(24) 45 leading national security, labor, and energy policy experts joined the Energy Future Coalition in supporting a national commitment to cut the oil use of the United States by 25 percent by 2025 through the rapid development and deployment of advanced biomass, alcohol, and other available petroleum fuel alternatives; and

(25) an aggressive effort to advance technology for conversion of biomass to fuel and products is warranted.

SEC. 3. DEFINITIONS.

In this Act:

(1) DEPARTMENT.—The term ''Department'' means the Department of Agriculture.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

TITLE I—BIOMASS RESEARCH AND DEVELOPMENT

SEC. 101. DEFINITIONS.

Section 303 of the Biomass Research and Development Act of 2000 (Public Law 106–224; 7 U.S.C. 8101 note) is amended—

(1) by striking paragraphs (2), (3), and (9);

(2) by redesignating paragraphs (4), (5), (6), (7), and (8) as paragraphs (5), (7), (8), (9), and (10) respectively;

(3) by inserting after paragraph (1) the following:

''(2) BIOBASED FUEL.—The term 'biobased fuel' means any transportation fuel produced from biomass.

''(3) BIOBASED PRODUCT.—The term 'biobased product' means a commercial or industrial product (including chemicals, materials, polymers, and animal feed) produced from biomass, or electric power derived in connection with the conversion of biomass to fuel.

''(4) BIOMASS.—

''(A) IN GENERAL.—The term 'biomass' means—

''(i) organic material from a plant, including grasses and trees, that is planted for the purpose of being used to produce energy, including vegetation produced for harvest on land enrolled in the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) if the harvest is consistent with the integrity of soil and water resources and with other environmental purposes of the conservation reserve program;

''(ii) nonhazardous, lignocellulosic, or hemicellulosic matter derived from—

''(I) the following forest-related resources:

''(aa) pre-commercial thinnings;

''(bb) slash; and

''(cc) brush;

''(II) an agricultural crop, crop byproduct, or agricultural crop residue, including vegetation produced for harvest on land enrolled in the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) if the harvest is consistent with the integrity of soil and water resources and with other environmental purposes of the conservation reserve program; or

''(III) miscellaneous waste, including landscape or right-of-way tree trimmings; and

''(iii) agricultural animal waste.

''(B) EXCLUSION.—The term 'biomass' does not include—

''(i) unsegregated municipal solid waste;

''(ii) incineration of municipal solid waste;

''(iii) recyclable post-consumer waste paper and paper products;

''(iv) painted, treated, or pressurized wood;

''(v) wood contaminated with plastic or metals; or

''(vi) tires.''; and

(4) by inserting after paragraph (5) (as redesignated by paragraph (2)):

''(6) DEMONSTRATION.—The term 'demonstration' means demonstration of technology in a pilot plant or semi-works scale facility.''.

SEC. 102. COOPERATION AND COORDINATION IN BIOMASS RESEARCH AND DEVELOPMENT.

Section 304 of the Biomass Research and Development Act of 2000 (Public Law 106–224; 7 U.S.C. 8101 note) is amended—

(1) in subsections (a) and (d), by striking ''industrial products'' each place it appears and inserting ''fuels and biobased products'';

(2) by striking subsections (b) and (c);

(3) by redesignating subsection (d) as subsection (b); and

(4) in subsection (b)(1)(A) (as redesignated by paragraph (3)), by striking ''an officer of the Department of Agriculture appointed by the President to a position in the Department before the date of the designated, by and with the advice and consent of the Senate'' and inserting: ''the Assistant Secretary of Agriculture for Energy and Biobased Products''.

SEC. 103. BIOMASS RESEARCH AND DEVELOPMENT BOARD.

Section 305 of the Biomass Research and Development Act of 2000 (Public Law 106–224; 7 U.S.C. 8101 note) is amended—

(1) in subsections (a) and (c), by striking ''industrial products'' each place it appears and inserting ''fuels and biobased products'';

(2) in subsection (b)—

(A) in paragraph (1), by striking ''304(d)(1)(B)'' and inserting ''304(b)(1)(B)''; and

(B) in paragraph (2), by striking ''304(d)(1)(A)'' and inserting ''304(b)(1)(A)''; and

(3) in subsection (c)—

(A) in paragraph (1)(B), by striking ''and'' at the end;

(B) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(3) ensure that—

''(A) solicitations are open and competitive with awards made annually; and

''(B) objectives and evaluation criteria of the solicitations are clearly stated and minimally prescriptive, with no areas of special interest; and

''(4) ensure that the panel of scientific and technical peers assembled under section 307(c)(2)(C) to review proposals is composed predominantly of independent experts selected from outside the Departments of Agriculture and Energy.''.

SEC. 104. BIOMASS RESEARCH AND DEVELOPMENT TECHNICAL ADVISORY COMMITTEE.

Section 306 of the Biomass Research and Development Act of 2000 (Public Law 106–224; 7 U.S.C. 8101 note) is amended—

(1) in subsection (b)(1)—

(A) in subparagraph (A), by striking ''biobased industrial products'' and inserting ''biofuels'';

(B) by redesignating subparagraphs (B) through (J) as subparagraphs (C) through (K), respectively;

(C) by inserting after subparagraph (A) the following:

''(B) an individual affiliated with the biobased industrial and commercial products industry;'';

(D) in subparagraph (F) (as redesignated by subparagraph (B)) by striking ''an individual'' and inserting ''2 individuals'';

(E) in subparagraphs (C), (D), (G), and (I) (as redesignated by subparagraph (B)) by striking ''industrial products'' each place it appears and inserting ''fuels and biobased products''; and

(F) in subparagraph (H) (as redesignated by subparagraph (B)), by inserting ''and environmental'' before ''analysis'';

(2) in subsection (c)(2)—

(A) in subparagraph (A), by striking ''goals'' and inserting ''objectives, purposes, and considerations'';

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(C) by inserting after subparagraph (A) the following:

''(B) solicitations are open and competitive with awards made annually and that objectives and evaluation criteria of the solicitations are clearly stated and minimally prescriptive, with no areas of special interest;''; and

(D) in subparagraph (C) (as redesignated by subparagraph (B)) by inserting ''predominantly from outside the Departments of Agriculture and Energy'' after ''technical peers''.

SEC. 105. BIOMASS RESEARCH AND DEVELOPMENT INITIATIVE.

Section 307 of the Biomass Research and Development Act of 2000 (Public Law 106–224; 7 U.S.C. 8101 note) is amended—

(1) in subsection (a), by striking ''research on biobased industrial products'' and inserting ''research on, and development and demonstration of, biobased fuels and biobased products, and the methods, practices and

technologies, including industrial biotechnology, for their production''; and

(2) by striking subsections (b) through (e) and inserting the following:

''(b) AGENCIES.—

''(1) AGRICULTURE.—The Secretary of Agriculture, through the point of contact of the Department of Agriculture and in consultation with the Board, shall provide, or enter into, grants, contracts, and financial assistance under this section through the Cooperative State Research, Education, and Extension Service of the Department of Agriculture.

''(2) ENERGY.—The Secretary of Energy, though the point of contact of the Department of Energy and in consultation with the Board, shall provide, or enter into, grants, contracts, and financial assistance under this section through the appropriate agency, as determined by the Secretary of Energy.

''(c) OBJECTIVES.—The objectives of the Initiative are to develop—

''(1) technologies and processes necessary for abundant commercial production of biobased fuels at prices competitive with fossil fuels;

''(2) high-value biobased products—

''(A) to enhance the economic viability of biobased fuels and power; and

''(B) as substitutes for petroleum-based feedstocks and products; and

''(3) a diversity of sustainable domestic sources of biomass for conversion to biobased fuels and biobased products.

''(d) PURPOSES.—The purposes of the Initiative are—

''(1) to increase the energy security of the United States;

''(2) to create jobs and enhance the economic development of the rural economy;

''(3) to enhance the environment and public health; and

''(4) to diversify markets for raw agricultural and forestry products.

''(e) TECHNICAL AREAS.—To advance the objectives and purposes of the Initiative, the Secretary of Agriculture and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency and heads of other appropriate departments and agencies (referred to in this section as the 'Secretaries'), shall direct research and development toward—

''(1) feedstock production through the development of crops and cropping systems relevant to production of raw materials for conversion to biobased fuels and biobased products, including—

''(A) development of advanced and dedicated crops with desired features, including enhanced productivity, broader site range, low requirements for chemical inputs, and enhanced processing;

''(B) advanced crop production methods to achieve the features described in subparagraph (A);

''(C) feedstock harvest, handling, transport, and storage; and

''(D) strategies for integrating feedstock production into existing managed land;

''(2) overcoming recalcitrance of cellulosic biomass through developing technologies for converting cellulosic biomass into intermediates that can subsequently be converted into biobased fuels and biobased products, including—

''(A) pretreatment in combination with enzymatic or microbial hydrolysis; and

''(B) thermochemical approaches, including gasification and pyrolysis;

''(3) product diversification through technologies relevant to production of a range of biobased products (including chemicals, animal feeds, and cogenerated power) that eventually can increase the feasibility of fuel production in a biorefinery, including—

''(A) catalytic processing, including thermochemical fuel production;

''(B) metabolic engineering, enzyme engineering, and fermentation systems for biological production of desired products or cogeneration of power;

''(C) product recovery;

''(D) power production technologies; and

''(E) integration into existing biomass processing facilities, including starch ethanol plants, paper mills, and power plants; and

''(4) analysis that provides strategic guidance for the application of biomass technologies in accordance with realization of societal benefits in improved sustainability and environmental quality, cost effectiveness, security, and rural economic development, usually featuring system-wide approaches.

''(f) ADDITIONAL CONSIDERATIONS.—Within the technical areas described in subsection (e), and in addition to advancing the purposes described in subsection (d) and the objectives described in subsection (c), the Secretaries shall support research and development—

''(1) to create continuously expanding opportunities for participants in existing biofuels production by seeking synergies and continuity with current technologies and practices, including the use of dried distillers grains as a bridge feedstock;

''(2) to maximize the environmental, economic, and social benefits of production of biobased fuels and biobased products on a large scale through life-cycle economic and environmental analysis and other means; and

''(3) to assess the potential of Federal land and land management programs as feedstock resources for biobased fuels and biobased products, consistent with the integrity of soil and water resources and with other environmental considerations.

''(g) ELIGIBLE ENTITIES.—To be eligible for a grant, contract, or assistance under this section, an applicant shall be—

''(1) an institution of higher education;

''(2) a national laboratory;

''(3) a Federal research agency;

''(4) a State research agency;

''(5) a private sector entity;

''(6) a nonprofit organization; or

''(7) a consortium of 2 of more entities described in paragraphs (1) through (6).

''(h) ADMINISTRATION.—

''(1) IN GENERAL.—After consultation with the Board, the points of contact shall—

''(A) publish annually 1 or more joint requests for proposals for grants, contracts, and assistance under this section;

''(B) establish a priority in grants, contracts, and assistance under this section for research that advances the objectives, purposes, and additional considerations of this title;

''(C) require that grants, contracts, and assistance under this section be awarded competitively, on the basis of merit, after the establishment of procedures that provide for scientific peer review by an independent panel of scientific and technical peers; and

''(D) give some preference to applications that—

''(i) involve a consortia of experts from multiple institutions;

''(ii) encourage the integration of disciplines and application of the best technical resources; and

''(iii) increase the geographic diversity of demonstration projects.

''(2) DISTRIBUTION OF FUNDING BY TECHNICAL AREA.—Of the funds authorized to be appropriated for activities described in this section—

''(A) 20 percent shall be used to carry out activities for feedstock production under subsection (e)(1);

''(B) 45 percent shall be used to carry out activities for overcoming recalcitrance of cellulosic biomass under subsection (e)(2);

''(C) 30 percent shall be used to carry out activities for product diversification under subsection (e)(3); and

''(D) 5 percent shall be used to carry out activities for strategic guidance under subsection (e)(4).

''(3) DISTRIBUTION OF FUNDING WITHIN EACH TECHNICAL AREA.—Within each technical area described in paragraphs (1) through (3) of subsection (e)—

''(A) 15 percent of funds shall be used for applied fundamentals;

''(B) 35 percent of funds shall be used for innovation; and

''(C) 50 percent of funds shall be used for demonstration.

''(4) MATCHING FUNDS.—

''(A) IN GENERAL.—A minimum 20 percent funding match shall be required for demonstration projects under this title.

''(B) NO OTHER REQUIREMENT.—No matching funds shall be required for other activities under this title.

''(5) TECHNOLOGY AND INFORMATION TRANSFER TO AGRICULTURAL USERS.—

''(A) IN GENERAL.—The Administrator of the Cooperative State Research, Education, and Extension Service and the Chief of the Natural Resources Conservation Service shall ensure that applicable research results and technologies from the Initiative are adapted, made available, and disseminated through those services, as appropriate.

''(B) REPORT.—Not later than 2 years after the date of enactment of this paragraph, and every 2 years thereafter, the Administrator of the Cooperative State Research, Education, and Extension Service and the Chief of the Natural Resources Conservation Service shall submit to the committees of Congress with jurisdiction over the Initiative a report describing the activities conducted by the services under this subsection.''.

SEC. 106. REPORTS.

Section 309 of the Biomass Research and Development Act of 2000 (Public Law 106–224; 7 U.S.C. 8101 note) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking ''industrial product'' and inserting ''fuels and biobased products''; and

(B) in paragraph (3), by striking ''industrial products'' each place it appears and inserting ''fuels and biobased products'';

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following:

''(b) ASSESSMENT REPORT AND STRATEGIC PLAN.—Not later than 1 year after the date of enactment of the National Security and Bioenergy Investment Act of 2005, the Secretary and the Secretary of Energy shall jointly submit to Congress a report that—

''(1) describes the status and progress of current research and development efforts in both the Federal Government and private sector in achieving the objectives, purposes, and considerations of this title, specifically addressing each of the technical areas identified in section 307(e);

''(2) describes the actions taken to implement the improvements directed by this title; and

''(3) outlines a strategic plan for achieving the objectives, purposes, and considerations of this title.''; and

(4) in subsection (c) (as redesignated by paragraph (2))—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking ''purposes described in section 307(b)'' and inserting ''objectives, purposes, and additional considerations described in subsections (c) through (f) of section 307'';

(ii) in subparagraph (B), by striking ''and'' at the end;

(iii) by redesignating subparagraph (C) as subparagraph (D); and

(iv) by inserting after subparagraph (B) the following:

''(C) achieves the distribution of funds described in paragraphs (2) and (3) of section 307(h); and''; and

(B) in paragraph (2), by striking ''industrial products'' and inserting ''fuels and biobased products''.

SEC. 107. FUNDING.

(a) FUNDING.—Section 310(a)(2) of the Biomass Research and Development Act of 2000 (Public Law 106–224; 7 U.S.C. 8101 note) is amended by striking ''$14,000,000 for each of fiscal years 2003 through 2007'' and inserting ''$200,000,000 for each of fiscal years 2006 through 2010''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 310(b) of the Biomass Research and Development Act of 2000 (Public Law 106–224; 7 U.S.C. 8101 note) is amended by striking ''title $54,000,000 for each of fiscal years 2002 through 2007'' and inserting''title $200,000,000 for fiscal year 2011 and each fiscal year thereafter''.

SEC. 108. TERMINATION OF AUTHORITY.

The Biomass Research and Development Act of 2000 (Public Law 106–224; 7 U.S.C. 8101 note) is amended by striking section 311.

SEC. 109. BIOMASS-DERIVED HYDROGEN.

(a) IN GENERAL.—The Secretary shall conduct a research, development, and demonstration program focused on the economic production and use of hydrogen from biofuels, with emphasis on the rural transportation and rural electrical generation sectors.

(b) TRANSPORTATION SECTOR OBJECTIVES.—The objectives of the program in the transportation sector shall be to—

(1) conduct research, and to develop and test processes and equipment, to produce low-cost liquid biobased fuels that can be transported to distant fueling stations for the production of hydrogen or for direct use in conventional internal combustion engine vehicles;

(2) demonstrate the cost-effective production of hydrogen from liquid biobased fuels at the local fueling station, to eliminate the costs of transporting hydrogen long distances or building hydrogen pipeline networks;

(3) demonstrate the use of hydrogen derived from liquid biobased fuels in fuel cell vehicles, or, as an interim cost-reduction option, in internal combustion engine hybrid electric vehicles, to demonstrate sustainable transportation with significantly reduced local air pollution, greenhouse gas emissions, and dependence on imported fossil fuels;

(4) evaluate the economic return to agricultural producers producing feedstocks for liquid biobased fuels compared to agricultural producer returns as of the date of enactment of this Act;

(5) evaluate the crop yield and long-term soil sustainability of growing and harvesting feedstocks for liquid biobased fuels; and

(6) evaluate the fuel costs to fuel cell car owners (or hybrid electric car owners running on hydrogen) per mile driven compared to burning gasoline in conventional vehicles.

(c) ELECTRICAL GENERATION SECTOR OBJECTIVES.—The objectives of the program in the rural electrical generation sector shall be to—

(1) design, develop, and test low-cost gasification equipment to convert biomass to hydrogen at regional rural cooperatives, or at businesses owned by farmers, close to agricultural operations to minimize the cost of biomass transportation to large central gasification plants;

(2) demonstrate low-cost electrical generation at such rural cooperatives or farmer-owned businesses, using renewable hydrogen derived from biomass in either fuel cell generators, or, as an interim cost reduction option, in conventional internal combustion engine gensets;

(3) determine the economic return to cooperatives or other businesses owned by farmers of producing hydrogen from biomass and selling electricity compared to agricultural economic returns from producing and selling conventional crops alone;

(4) evaluate the crop yield and long-term soil sustainability of growing and harvesting of feedstocks for biomass gasification, and

(5) demonstrate the use of a portion of the biomass-derived hydrogen in various agricultural vehicles to reduce—

(A) dependence on imported fossil fuel; and

(B) environmental impacts.

(d) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2006 through 2010.

TITLE II—PRODUCTION INCENTIVES

SEC. 201. PRODUCTION INCENTIVES.

(a) PURPOSE.—The purpose of this section is to—

(1) accelerate deployment and commercialization of biofuels;

(2) deliver the first 1,000,000,000 gallons of cellulosic biofuels by 2015;

(3) ensure biofuels produced after 2015 are cost competitive with gasoline and diesel; and

(4) ensure that small feedstock producers and rural small businesses are full participants in the development of the cellulosic biofuels industry.

(b) DEFINITIONS.—In this section:

(1) CELLULOSIC BIOFUELS.—The term ''cellulosic biofuels'' means any fuel that is produced from cellulosic feedstocks.

(2) ELIGIBLE ENTITY.—The term ''eligible entity'' means a producer of fuel from cellulosic biofuels the production facility of which—

(A) is located in the United States;

(B) meets all applicable Federal and State permitting requirements;

(C) is to begin production of cellulosic biofuels not later than 3 years after the date of the reverse auction in which the producer participates; and

(D) meets any financial criteria established by the Secretary.

(c) PROGRAM.—

(1) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of Energy, the Secretary of Defense, and the Administrator of the Environmental Protection Agency, shall establish an incentive program for the production of cellulosic biofuels.

(2) BASIS OF INCENTIVES.—Under the program, the Secretary shall award production incentives on a per gallon basis of cellulosic biofuels from eligible entities, through—

(A) set payments per gallon of cellulosic biofuels produced in an amount determined by the Secretary, until initiation of the first reverse auction; and

(B) reverse auction thereafter.

(3) FIRST REVERSE AUCTION.—The first reverse auction shall be held on the earlier of—

(A) not later than 1 year after the first year of annual production in the United States of 100,000,000 gallons of cellulosic biofuels, as determined by the Secretary; or

(B) not later than 3 years after the date of enactment of this Act.

(4) REVERSE AUCTION PROCEDURE.—

(A) IN GENERAL.—On initiation of the first reverse auction, and each year thereafter until the earlier of the first year of annual production in the United States of 1,000,000,000 gallons of cellulosic biofuels, as determined by the Secretary, or 10 years after the date of enactment of this Act, the Secretary shall conduct a reverse auction at which—

(i) the Secretary shall solicit bids from eligible entities;

(ii) eligible entities shall submit—

(I) a desired level of production incentive on a per gallon basis; and

(II) an estimated annual production amount in gallons; and

(iii) the Secretary shall issue awards for the production amount submitted, beginning with the eligible entity submitting the bid for the lowest level of production incentive on a per gallon basis, until the amount of funds available for the reverse auction is committed.

(B) AMOUNT OF INCENTIVE RECEIVED.—An eligible entity selected by the Secretary through a reverse auction shall receive the amount of performance incentive requested in the auction for each gallon produced and sold by the entity during the first 6 years of operation.

(d) LIMITATIONS.—Awards under this section shall be limited to—

(1) a per gallon amount determined by the Secretary during the first 4 years of the program;

(2) a declining per gallon cap over the remaining lifetime of the program, to be established by the Secretary so that cellulosic biofuels produced after the first year of annual cellulosic biofuels production in the United States in excess of 1,000,000,000 gallons are cost competitive with gasoline and diesel;

(3) not more than 25 percent of the funds committed within each reverse auction to any 1 project;

(4) not more than $100,000,000 in any 1 year; and

(5) not more than $1,000,000,000 over the lifetime of the program.

(e) PRIORITY.—In selecting a project under the program, the Secretary shall give priority to projects that—

(1) demonstrate outstanding potential for local and regional economic development;

(2) include agricultural producers or cooperatives of agricultural producers as equity partners in the ventures; and

(3) have a strategic agreement in place to fairly reward feedstock suppliers.

(f) FUNDING.—

(1) IN GENERAL.—The Secretary shall use to carry out this title $250,000,000 of funds of the Commodity Credit Corporation, to remain available until expended.

(2) AUTHORIZATIONS OF APPROPRIATIONS.—In addition to amounts made available under paragraph (1), there are authorized to be appropriated such sums as are necessary to carry out this section.

TITLE III—ASSISTANT SECRETARY OF AGRICULTURE FOR ENERGY AND BIOBASED PRODUCTS

SEC. 301. ASSISTANT SECRETARY OF AGRICULTURE FOR ENERGY AND BIOBASED PRODUCTS.

(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish in the Department a position of Assistant Secretary of Agriculture for Energy and Biobased Products (referred to in this section as the ''Assistant Secretary'').

(b) RESPONSIBILITIES.—The Assistant Secretary shall be responsible for—

(1) the energy programs established under title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101 et seq.); and

(2) all other programs and initiatives that the Secretary considers appropriate.

(c) CONFIRMATION REQUIREMENT.—The Assistant Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(d) PERSONNEL.—The Secretary, acting through the Assistant Secretary, may transfer or assign work to personnel, or assign staff hours, on a permanent or a part-time basis, as needed, to the Office of the Assistant Secretary to carry out the functions and duties of the office.

(e) BUDGET.—The Secretary shall establish a budget for the office of the Assistant Secretary.

TITLE IV—PROCUREMENT OF BIOBASED PRODUCTS

SEC. 401. FEDERAL PROCUREMENT.

(a) DEFINITION OF PROCURING AGENCY.—Section 9001 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101) is amended—

(1) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively; and

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

''(4) PROCURING AGENCY.—The term 'procuring agency' means—

''(A) any Federal agency that is using Federal funds for procurement; or

''(B) any person contracting with any Federal agency with respect to work performed under the contract.''.

(b) PROCUREMENT.—Section 9002 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8102) is amended—

(1) by striking ''Federal agency'' each place it appears (other than in subsections (f) and (g)) and inserting ''procuring agency'';

(2) in subsection (c)(2)—

(A) by striking ''(2)'' and all that follows through ''Notwithstanding'' and inserting the following:

''(2) FLEXIBILITY.—Notwithstanding'';

(B) by striking ''an agency'' and inserting ''a procuring agency''; and

(C) by striking ''the agency'' and inserting ''the procuring agency'';

(3) in subsection (d), by striking ''procured by Federal agencies'' and inserting ''procured by procuring agencies''; and

(4) in subsection (f), by striking ''Federal agencies'' and inserting ''procuring agencies'' .

SEC. 402. CAPITOL COMPLEX PROCUREMENT.

Section 9002 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8102) (as amended by section 401(b)) is amended—

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following:

''(j) INCLUSION.—Not later than 90 days after the date of enactment of the National Security and Bioenergy Investment Act of 2005, the Architect of the Capitol, the Sergeant of Arms of the Senate, and the Chief Administrative Officer of the House of Representatives shall issue regulations that apply the requirements of this section to procurement for the Capitol Complex.''.

SEC. 403. EDUCATION .

(a) IN GENERAL.—The Architect of the Capitol shall establish in the Capitol Complex a program of public education regarding use by the Architect of the Capitol of biobased products.

(b) PURPOSES.—The purposes of the program shall be—

(1) to establish the Capitol Complex as a showcase for the existence and benefits of biobased products; and

(2) to provide access to further information on biobased products to occupants and visitors.

SEC. 404. REGULATIONS.

Requirements issued under the amendment made by section 402 shall be made in accordance with regulations issued by the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives.

TITLE V—BIOECONOMY GRANTS AND TAX INCENTIVES

SEC. 501. SMALL BUSINESS BIOPRODUCT MARKETING AND CERTIFICATION GRANTS.

(a) IN GENERAL.—Using amounts made available under subsection (g), the Secretary shall make available on a competitive basis grants to eligible entities described in subsection (b) for the biobased product marketing and certification purposes described in subsection (c).

(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section is any manufacturer of biobased products that—

(1) has fewer than 50 employees;

(2) proposes to use the grant for the biobased product marketing and certification purposes described in subsection (c); and

(3) has not previously received a grant under this section.

(c) BIOBASED PRODUCT MARKETING AND CERTIFICATION GRANT PURPOSES.—A grant made under this section shall be used—

(1) to plan activities and working capital for marketing of biobased products; and

(2) to provide private sector cost sharing for the certification of biobased products.

(d) MATCHING FUNDS.—

(1) IN GENERAL.—Grant recipients shall provide matching non-Federal funds equal to the amount of the grant received.

(2) EXPENDITURE.—Matching funds shall be expended in advance of grant funding, so that for every dollar of grant that is advanced, an equal amount of matching funds shall have been funded prior to submitting the request for reimbursement.

(e) AMOUNT.—A grant made under this section shall not exceed $100,000.

(f) ADMINISTRATION.—The Secretary shall establish such administrative requirements for grants under this section, including requirements for applications for the grants, as the Secretary considers appropriate.

(g) AUTHORIZATIONS OF APPROPRIATIONS.—There are authorized to be appropriated to make grants under this section—

(1) $1,000,000 for fiscal year 2006; and

(2) such sums as are necessary for fiscal year 2007 and each subsequent fiscal year.

SEC. 502. REGIONAL BIOECONOMY DEVELOPMENT GRANTS.

(a) IN GENERAL.—Using amounts made available under subsection (g), the Secretary shall make available on a competitive basis grants to eligible entities described in subsection (b) for the purposes described in subsection (c).

(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section is any regional bioeconomy development association, agricultural or energy trade association, or Land Grant institution that—

(1) proposes to use the grant for the purposes described in subsection (c); and

(2) has not previously received a grant under this section.

(c) REGIONAL BIOECONOMY DEVELOPMENT ASSOCIATION GRANT PURPOSES.—A grant made under this section shall be used to support and promote the growth and development of the bioeconomy within the region served by the eligible entity, through coordination, education, outreach, and other endeavors by the eligible entity.

(d) MATCHING FUNDS.—

(1) IN GENERAL.—Grant recipients shall provide matching non-Federal funds equal to the amount of the grant received.

(2) EXPENDITURE.—Matching funds shall be expended in advance of grant funding, so that for every dollar of grant that is advanced, an equal amount of matching funds shall have been funded prior to submitting the request for reimbursement.

(e) ADMINISTRATION.—The Secretary shall establish such administrative requirements for grants under this section, including requirements for applications for the grants, as the Secretary considers appropriate.

(f) AMOUNT.—A grant made under this section shall not exceed $500,000.

(g) AUTHORIZATIONS OF APPROPRIATIONS.—There are authorized to be appropriated to make grants under this section—

(1) $1,000,000 for fiscal year 2006; and

(2) such sums as are necessary for fiscal year 2007 and each subsequent fiscal year.

SEC. 503. PREPROCESSING AND HARVESTING DEMONSTRATION GRANTS.

(a) IN GENERAL.—The Secretary shall make grants available on a competitive basis to enterprises owned by agricultural producers, for the purposes of demonstrating cost-effective, cellulosic biomass innovations in—

(1) preprocessing of feedstocks, including cleaning, separating and sorting, mixing or blending, and chemical or biochemical treatments, to add value and lower the cost of feedstock processing at a biorefinery; or

(2) 1-pass or other efficient, multiple crop harvesting techniques.

(b) LIMITATIONS ON GRANTS.—

(1) NUMBER OF GRANTS.—Not more than 5 demonstration projects per fiscal year shall be funded under this section.

(2) NON-FEDERAL COST SHARE.—The non-Federal cost share of a project under this section shall be not less than 20 percent, as determined by the Secretary.

(c) CONDITION OF GRANT.—To be eligible for a grant for a project under this section, a recipient of a grant or a participating entity shall agree to use the material harvested under the project—

(1) to produce ethanol; or

(2) for another energy purpose, such as the generation of heat or electricity.

(d) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2006 through 2010.

SEC. 504. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should amend the Federal tax code to encourage investment in, and production and use of, biobased fuels and biobased products through—

(1) an investment tax credit for the construction or modification of facilities for the production of fuels from cellulose biomass, to drive private capital towards new biorefinery projects in a manner that allows participation by smaller farms and cooperatives; and

(2) an investment tax credit to small manufacturers of biobased products to lower the capital costs of starting and maintaining a biobased business.

TITLE VI—OTHER PROVISIONS

SEC. 601. EDUCATION AND OUTREACH.

(a) IN GENERAL.—The Secretary shall establish, within the Department or through an independent contracting entity, a program of education and outreach on biobased fuels and biobased products consisting of—

(1) training and technical assistance programs for feedstock producers to promote producer ownership, investment, and participation in the operation of processing facilities; and

(2) public education and outreach to familiarize consumers with the biobased fuels and biobased products.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this title $1,000,000 for each of fiscal years 2006 through 2010.

SEC. 602. REPORTS.

(a) PROGRESS REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on progress in establishing the Office of the Assistant Secretary of Agriculture for Energy and Biobased Products under title I.

(b) BIOBASED PRODUCT POTENTIAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that—

(1) describes the economic potential for the United States of the widespread production and use of commercial and industrial biobased products through calendar year 2025; and

(2) as the maximum extent practicable, identifies the economic potential by product area.

(c) ANALYSIS OF ECONOMIC INDICATORS.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Secretary shall submit to Congress an analysis of economic indicators of the biobased economy during the 2-year period preceding the analysis.

JUNE 9, 2005.

HON. TOM HARKIN,
U.S. Senate,
Washington, DC.
HON. RICHARD LUGAR,
U.S. Senate,
Washington, DC.

Re the National Security and Bioenergy Investment Act of 2005.

DEAR SENATORS HARKIN AND LUGAR: The National Corn Growers Association (NCGA), the American Soybean Association (ASA), and the Renewable Fuels Association are writing to express our support for the National Security and Bioenergy Investment Act of 2005. In particular, we strongly support the increased procurement of biobased products by Federal agencies and all Federal government contractors. Biobased products represent a large potential growth market for corn and soybean growers in areas such as plastics, solvents, packaging and other consumer goods to provide markets for U.S.-grown crops. The biobased product industry has already started to grow, bringing new products to consumers, new markets to growers and new investments to our communities.

The procurement of biobased products promotes energy and environmental security. Products made from corn and soybeans could replace a variety of items currently produced from petroleum, and aid in reducing dependence on imported oil. Already the production of ethanol and biodiesel reduces imports by more than 140 million barrels of oil. The production of biobased products generates less greenhouse gas than traditional petroleum-based items. There are also tremendous opportunities for grower-owned processing facilities and rural American and agriculture as a whole. New jobs and investments will be brought into rural communities, as new processing and manufacturing facilities move into those communities to be near renewable feed stocks.

NCGA, ASA and RFA applaud your continued efforts to promote the use of biobased products that will encourage the development of new markets for corn and soybeans and ultimately help to revitalize rural economies and the agriculture industry as a whole. We have been avid supporters of the biobased products industry, and we look forward to working with you as you continue to provide vision and direction for this emerging industry.

Sincerely,

LEON CORZINE,
President, National Corn Growers Association.
NEAL BREDEHOEFT,
President, American Soybean Association.
BOB DINNEEN,
President, Renewable Fuels Association.

GOVERNORS' ETHANOL COALITION,
Lincoln, NE, June 9, 2005.

Hon. TOM HARKIN,
Hart Senate Office Building,
Washington, DC.
Hon. BARACK OBAMA,
Hart Senate Office Building,
Washington, DC.
Hon. RICHARD LUGAR,
Hart Senate Office Building,
Washington, DC.
Hon. NORM COLEMAN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATORS: On behalf of the thirty members of the Governors' Ethanol Coalition, we strongly support and endorse the National Security and Bioenergy Investment Act of 2005, as well as your efforts to expand development of other biofuels and co-products. The Governors' Ethanol Coalition is pleased that this bill embodies the recommendations developed by the Coalition in Ethanol From Biomass, America's 21st Century Transportation Fuel. When signed into law, this act will catalyze needed research, production, and use of biofuels and bio-based products, thereby enhancing our economic, environmental, and national security.

The Coalition believes that the nation's dependency on imported oil presents a huge risk to this country's future. The combination of political tensions in major oil-producing nations with growing oil demand from China and India is seriously threatening our national security. Moreover, as we import greater amounts of oil each year, we are draining more and more of the wealth from our states.

The key provisions contained in your bill bring focus and resources to biomass-derived ethanol research and commercialization efforts. The result, over time, will be the replacement of significant amounts of imported oil with domestically produced fuels—improving our rural economies, cleaning our air, and contributing to our national security. Of particular importance is the bill's aim to broaden ethanol production to include all regions of the nation so that many more states will reap the benefits of biofuels.

Again, thank you for inclusion of the Coalition's recommendations in this landmark legislation. Please let us know how the Coalition can help with the passage of this very important legislation. The continued expansion of ethanol production and use, particularly biomass-derived fuels, and the accompanying economic growth and environmental benefits for our states is essential to the nation's long-term economic vitality and national security.

Sincerely,

TIM PAWLENTY,
Chair, Governor of Minnesota.
KATHLEEN SEBELIUS,
Vice Chair, Governor of Kansas.

ENERGY FUTURE[SM] COALITION,
Washington, DC, June 8, 2005.

Hon. TOM HARKIN,
Hon. RICHARD G. LUGAR,
U.S. Senate,
Washington, DC.

DEAR SENATORS HARKIN AND LUGAR: On behalf of the Energy Future Coalition, I am writing to commend your leadership and vision in drafting the National Security and Bioenergy Investment Act of 2005.

In our judgment, America's growing dependence on foreign oil endangers our national and economic security. We believe the Federal government should undertake a major new initiative to curtail U.S. oil consumption through improved efficiency and the rapid development and deployment of advanced biomass, alcohol and other available petroleum fuel alternatives.

With such a push, we believe domestic biofuels can cut the nation's oil use by 25 percent by 2025, and substantial further reductions are possible through efficiency gains from advanced technologies. That is an ambitious goal, but it is also an extraordinary opportunity for American leadership, innovation, job creation, and economic growth.

You took an important step forward by introducing S. 650, the Fuels Security Act, incorporated into the Senate energy bill during Committee markup. This legislation is another important step, authorizing the additional research and development and federal incentives needed to accelerate the adoption of biobased fuels and coproducts. We are pleased to support it.

Sincerely,

REID DETCHON.

BIOTECHNOLOGY INDUSTRY ORGANIZATION,
Washington, DC, June 8, 2005.

Hon. TOM HARKIN,
Ranking Democratic Member.
Hon. RICHARD LUGAR,
Member, U.S. Senate Committee on Agriculture, Nutrition and Forestry, Russell Senate Office Building, Washington, DC.

DEAR SENATORS HARKIN AND LUGAR: The Biotechnology Industry Organization (BIO) Industrial and Environmental Section fully supports the National Security and Bioenergy Investment Act of 2005. We greatly appreciate your vision and initiative to expand the Biomass Research and Development Act and to create new incentives to produce biofuels and biobased products.

America's growing dependence on foreign energy is eroding our national security. We must take steps to drastically increase production of domestic energy. As an active participant in the Energy Future Coalition, BIO believes this country needs a major new initiative to more aggressively research, develop and deploy advanced biofuels technologies. With sufficient government support, we can meet up to 25% of our transportation fuel needs by converting farm crops and crop residues to transportation fuel.

The National Security and Bioenergy Investment Act of 2005 will boost the use of industrial biotechnology to produce fuels and biobased products from renewable agricultural feedstocks. With the use of new biotech tools, we can now utilize millions of tons of crop residues, such as corn stover and wheat straw, to produce sugars that can then be converted to ethanol, chemicals and biobased plastics. These biotech tools can only be rapidly deployed if federal policy makers take steps to help our innovative companies get over the initial hurdles they face during

the commercialization phase of bioenergy production and your bill will help get that job done.

We are pleased to endorse this visionary legislation.

Sincerely,

BRENT ERICKSON,
Executive Vice President, Biotechnology Industry Organization.

NATURAL RESOURCES DEFENSE COUNCIL,
Washington, DC, June 7, 2005.

DEAR SENATORS HARKIN AND LUGAR: The Natural Resources Defense Council strongly supports the National Security and Bioenergy Investment Act of 2005, which you introduced today. This important bill would expand and refine research, development, demonstration and deployment efforts for the production of energy from crops grown by farmers here in America. The bill would also expand and improve the Department of Agriculture's efforts to promote a biobased economy, federal bio-energy and bio-product purchasing requirements, and federal educational efforts.

The Research and Development (R&D) title of this bill continues your tradition of leadership in this area by updating the Biomass Research and Development Act of 2000, which you also crafted. This title will not only extend the provisions of the original bill and greatly increase the funding for these provisions, it will also refine the direction of this funding. Taken together, these changes maximize the impacts of R&D on the greatest challenges facing cellulosic biofuels today.

Your bill also creates extremely important production incentives for the first one billion gallons of cellulosic biofuels. The production incentives approach taken by the bill—a combination of fixed incentives per gallon at first, switching over to a reverse auction—will maximize the development of cellulosic biofuels production while minimizing the cost to taxpayers.

In addition, the bill creates an Assistant Secretary of Agriculture for Energy and Biobased Products. Coupled with the bill's development grants, tax incentives, biobased product procurement provisions, and educational program, the bill would make a huge contribution to developing a sustainable biobased economy, reducing our oil dependence and improving our national security.

The technologies advanced by this bill will undoubtedly make important contributions to reducing our global warming pollution and the air and water pollution that comes from our dependence on fossil fuels. We are concerned, however, that the eligibility provisions for forest biomass do not exclude sensitive areas that need protecting, including roadless areas, old growth forests, and other endangered forests, and do not restrict eligibility to renewable sources or prohibit possible conversion of native forests to plantations. We know that you do not want to see this admirable legislation applied in ways that exploit these features, and will be happy to work with you in the future to take any steps needed if abuses arise.

Sincerely,

KAREN WAYLAND,
Legislative Director.

ENVIRONMENTAL LAW AND POLICY CENTER,
Chicago, IL, June 8, 2005.

Hon. TOM HARKIN,
Hon. RICHARD G. LUGAR,
U.S. Senate,
Washington, DC.

DEAR SENATORS HARKIN AND LUGAR: The Environmental Law and Policy Center (''ELPC'') is pleased to support the National Security and Bioenergy Investment Act of 2005, and we commend you for your leadership and vision in introducing this legislation. This bill would accelerate research, development, demonstration and production efforts for energy from farm crops in the United States, especially cellulosic ethanol. It also will expand and prioritize the United States Department of Agriculture's leadership responsibilities to promote clean and sustainable energy development, and it will increase procurement of biobased products.

By significantly expanding the development and production of clean energy ''cash crops,'' this legislation will improve our environmental quality, stimulate significant rural economic development, and strengthen our national energy security. ELPC also appreciates that this legislation reflects your longstanding support for farm-based sustainable energy programs. ELPC strongly supported your successful efforts to create the new Energy Title in the 2002 Farm Bill, which established groundbreaking new federal incentives for renewable energy and energy efficiency, while renewing existing programs such as the Biomass Research and Development Act of 2000.

The National Security and Bioenergy Investment Act of 2005 is a natural complement to the 2002 Farm Bill Energy Title programs, and it will help to strengthen support for the right bioenergy production programs in the 2007 Farm Bill. Accordingly, ELPC is pleased to support this legislation.

Very truly yours,

HOWARD A. LEARNER,
Executive Director.

INSTITUTE FOR LOCAL SELF-RELIANCE,
Washington, DC, June 6, 2005.

Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR TOM HARKIN: Congratulations on your bill, National Security and Bioenergy Investment Act of 2005. It is a breakthrough piece of legislation. Your well-conceived bill, combining needed executive branch changes, welcome increases in research and development funding and innovative commercialization techniques, can move the use of plants as a fuel and industrial material from the margins of the economy to the mainstream. I urge everyone with an interest in our environmental, agricultural and economic future to support this bill.

Sincerely,

DAVID MORRIS,
Vice President.

By Mr. BINGAMAN:

S. 1211. A bill to establish an Office of Foreign Science and Technology Assessment to enable the United States to effectively analyze trends in foreign science and technology, and for other purposes; to the Committee on foreign Relations.

Mr. BINGAMAN. Mr. President—I rise today to introduce a bill that would establish a capability within the State Department Science Advisor's Office to assess science and technology outside the United States.

Over the past two years I have traveled to Taiwan, China and India to better understand why these developing countries' economies were growing so rapidly. I learned that in all cases the primary reason for their robust growth was the emergence of a well-trained science and engineering workforce that tied directly into their highly competitive innovation economies.

For instance, Taiwan now leads the world in general purpose foundry computer chip facilities, controlling about 70 percent of the world market. A recent Defense Science Board Report entitled ''High Performance Microchip Supply'' notes that by the end of 2005 there will be 59 300mm chip fabrication plants with only 16 of these located in the United States. The number of U.S. plants has remained constant for the past two years, so as the number of Asian foundries has risen, the share of these advanced chip making facilities has declined from 30 to 20 percent. This report also notes that capital expenditures in the U.S. chip industry has fallen from a high of 42 percent in 2001 to 33 percent in 2004. Conversely, Taiwan's investment has increased from 15 percent in 2002 to 20 percent of the world's capital expenditure in chip facilities and now leads Korea, Japan, and Europe.

There is a good explanation as to why countries such as Taiwan are rapidly rising in the high-technology world. Since 1984 Taiwan has made steady increases in their investments in the building of science based research parks. Hsinchu, their flagship science park, now has over 324 high technology companies, generating over $22 billion annually in gross revenues, and employing a high technology work force exceeding 100,000. This science park is bounded by two universities and contains six national laboratories. Taiwan is now building science parks in the middle and south of the island to concentrate on other fields such as nanoscience, optoelectronics, and biotechnology. These parks are the result of a number of carefully crafted government policies and incentives dealing with taxes, real estate, and fundamental research. In the area of technology transfer, the Taiwan government helped set up the world famous Industrial Technology Research Institute (ITRI) which has over 5,000 scientists working to spin out laboratory ideas across the ''valley of death'' into new industries. Remarkably, the two chip foundry companies which now control 70 percent of the world's foundry market were launched from ITRI. As a result of this rapid economic growth, Taiwan's technical universities are now world class with their own excellent graduate programs. The reason they are side-by-side with these large science parks is to supply a steady stream of talented researchers.

Recently, our National Academy of Sciences noted in its report, ''International Graduate Students and Postdoctoral Scholars,'' that Taiwan's domestic economic growth has led to fewer Taiwanese students applying to U.S. graduate schools. For the past two decades, Taiwan's students were the core supply of talent in our innovative science and engineering graduate school programs. Of equal concern, the successful Taiwanese scholars who attended graduate school in the United States 20 or 30 years ago are now returning home and giving back their

professional wisdom to advance on their birth country's high-technology leadership.

This same story holds true for India. My visit there this January yielded similar observations on their rapidly developing high technology sector. Since 1990, India has invested in the development of software and technology parks and currently has over 40 spread throughout the country. These parks were responsible for much of the high technology development in software and biotechnology. Indeed, multinational companies such as Intel, Microsoft and GE have built large research centers there to tap into the intellectual power educated at the Indian Institutes of Technology and the Indian Institute of Science. GE's Jack Welch R&D Center in Bangalore has 2,300 Ph.D.'s conducting research in all aspects of their product lines. India's GE center now directs their plastics plant in Indiana on how to operate more efficiently in real time over the internet. Intel's research center has 2,000 product engineers designing the chips Americans will use in our computers and home entertainment centers next holiday season. The chips designed at Intel's Bangalore center are fabricated at their plant in Albuquerque. The tables have turned rather dramatically. We used to design the chips here and then they were manufactured overseas.

When I visited Infosys, one of India's largest software companies, I was advised that in 2004 they received 1.2 million on-line employment applications, gave a standardized test to 300,000 job seekers interviewed 30,000, and then hired 10,000. They expect to repeat this same process again this year, which illustrates the deep pool of well trained talent that India has available. A number of the India's leading biotech entrepreneurs I visited with told me they weren't so much afraid of losing talent to the U.S. as they were to Singapore, with its burgeoning government investments in biotechnology.

Similar to Taiwan, the National Academy report also documents a rapid drop in Indian student applications to U.S. graduate schools. India's rapidly developing economy encourages the best and brightest students to stay home and study in India rather than consider U.S. graduate schools. For the past 20 years, we have relied on this influx of the cream of the academic crop I from India and Taiwan to form the high-tech startup companies of Silicon Valley.

The stark question before us—whether it involves India, Taiwan, China, or Singapore is: are we missing the bigger picture? By the time we realize we have a problem in innovation and our investments in science and engineering investments, will it be too late? Will these Pacific Rim countries have climbed past us up the value chain, and will they be able to produce equally innovative high technology product at far cheaper costs?

The bill I am introducing today, may be small, but the consequences are enormous. This measure proposes to authorize a capability in the office of the Science Advisor to the Secretary of State to conduct assessments of the science and technology capabilities in other countries such as India, China and Taiwan.

The director of this office will report to the Secretary of State's Science Advisor. The office will to the maximum extent possible utilize firms that can conduct science and technology assessments in the country of interest to minimize and augment the federal staff. That is why I have proposed giving the office generous contracting authorities with respect to soliciting contracts and disbursing funds so that it may move quickly to gather information on certain topics so that we as a nation are not caught by surprise by an advance in a high technology area.

Additionally, this legislation authorizes a Foreign Science and Technology Assessment Panel whose purpose is to look over the horizon and choose topics and technologies to assess, as well as to evaluate the timeliness and quality of the reports generated. These reports are to be publicly available, benefiting not only our government by ensuring the nation's leadership in science and engineering, but also our private sector, especially those high technology firms that must successfully compete in a fierce global market. The panel members, to be selected by the Secretary of State in consultation with the Director of the Office of Science and Technology Policy, will be distinguished leaders who have expert knowledge about our competitors' capabilities in science and technology.

High technology moves at a rapid rate, and every sign I picked up from my science and technology trips to China, India, Taiwan and Japan indicates to me that our government seems to be asleep at the switch here at home with regard to understanding how quickly these countries are moving up the value chain from simple manufacturing to sustained efforts in science and engineering that matches if not exceeds us in the innovation cycle. This bill, while a small step forward, will serve to ensure that we constantly assess where other countries are in that value chain and to make sure we are doing everything possible to maintain our leadership in fields of high technology.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1211

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Foreign Science and Technology Assessment Act of 2005''.

SEC. 2. OFFICE OF FOREIGN SCIENCE AND TECHNOLOGY ASSESSMENT.

(a) ESTABLISHMENT.—There is established within the Department of State an Office of Foreign Science and Technology Assessment.

(b) DIRECTOR.—The head of the Office shall be a Director, who shall be the Science Advisor to the Secretary of State.

(c) PURPOSE.—The purpose of the Office shall be to assess foreign science and technologies that have the capability to cause a loss of high technology industrial leadership in the United States.

(d) OPERATION.—In preparing an assessment of science and technology for a foreign country, the Director shall utilize, to the extent feasible, United States entities capable of operating effectively within such foreign country.

(e) AVAILABILITY OF ASSESSMENTS.—The Director shall make each assessment of foreign science and technology prepared by the Office available to the public in a timely manner.

(f) AUTHORITIES.—In order to gain access to technical knowledge, skills, and expertise necessary to prepare an assessment of foreign science and technology, the Secretary of State may utilize individuals and enter into contracts or other arrangements to acquire needed expertise with any agency or instrumentality of the United States, with any State, territory, possession, or any political subdivision thereof, or with any person, firm, association, corporation, or educational institution, with or without reimbursement, and without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) or section 3324 of title 31, United States Code.

SEC. 3. FOREIGN SCIENCE AND TECHNOLOGY ASSESSMENT PANEL.

(a) ESTABLISHMENT.—The Secretary of State shall establish a Foreign Science and Technology Assessment Panel.

(b) PURPOSE.—The purpose of the Panel shall be to provide advice on assessments performed by the Office of Foreign Science and Technology Assessment, including review of foreign science and technology assessment reports, methodologies, subjects of study, and the means of improving the quality and timeliness of the Office.

(c) MEMBERSHIP.—The Panel shall consist of 5 members who, by reason of professional background and experience, are specially qualified to provide advice on the activities of science and technology in foreign countries as such activities apply to the United States.

(d) APPOINTMENT.—The Secretary of State, in consultation with the Director of the Office of Science and Technology Policy in the Executive Office of the President, shall appoint the panel members.

(e) TERM.—A member shall be appointed to the Panel for a term of 3 years.

(f) AUTHORITY TO ACCEPT SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary of State may accept and employ voluntary and uncompensated services (except for reimbursement of travel expenses) for the purposes of the Panel. An individual providing such a voluntary and uncompensated service may not be considered a Federal employee, except for purposes of chapter 81 of title 5, United States Code, with respect to job-incurred disability and title 28, United States Code, with respect to tort claims.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

By Ms. STABENOW (for herself and Mr. LEVIN):

S. 1212. A bill to require the Commandant of the Coast Guard to convey the Coast Guard Cutter *Mackinaw*, upon its scheduled decommissioning, to the City and County of Cheboygan, Michigan, to use for purposes of a museum; to the Committee on Commerce, Science, and Transportation.

Ms. STABENOW. Mr. President, I rise today to introduce legislation that will convey the United States Coast Guard Cutter *Mackinaw* to the City and County of Cheboygan for use as a museum.

The United States Coast Guard Cutter *Mackinaw*, or the ''Big Mac'' as she is affectionately called, was commissioned on December 20, 1944. Congress commissioned her construction during World War II to keep the shipping lanes open during winter months to maintain the production of steel. The *Mackinaw* has provided 60 years of outstanding service to the communities and commercial enterprises of the Great Lakes.

The *Mackinaw* was a state of the art ice breaker ideally suited for the Great Lakes because of her shallower draft, wider beam, and longer length than the polar ice breakers that her design was based on. These attributes enable the *Mackinaw* to break a 70 foot wide channel through 4 feet of solid blue ice to accommodate the largest of the Great Lakes ore carriers. She has also plowed through a remarkable 37 feet of broken ice.

The *Mackinaw* breaks ice for 12 of the 42 weeks of the Great Lakes shipping season. Typically, the *Mackinaw* begins her ice breaking season in the first week of March in the Straights of Mackinac and works her way up through the Soo Locks, to Whitefish Bay and areas of the St. Mary's River before heading to Lake Superior. During her lifetime, the *Mackinaw* has enabled the shipping season to start sooner and last longer to enable the annual delivery of 15 tons of iron ore and other materials. Later in the year the *Mackinaw* works in the lower Lakes' areas where she serves as a buoy tender, carries fuel and supplies to light stations, serves as a training ship, and assists vessels in distress when necessary.

The *Mackinaw* has been stationed in Cheboygan since she began operations in the end of December 1944. She will serve through the winter of 2005 and 2006 and then be decommissioned by the Coast Guard. The *Mackinaw* will be a great local attraction, encourage tourism, build jobs and aid the local economy.

The City of Cheboygan and the surrounding community are committed to transforming this historic landmark into a museum after she has been decommissioned. I am hopeful that she will be maintained for the public for years to come. While her age has made her expensive to maintain, the *Mackinaw* can still teach our children and visitors of Michigan's Great Lakes heritage.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1212

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONVEYANCE OF DECOMMISSIONED COAST GUARD CUTTER MACKINAW.

(a) IN GENERAL.—Upon the scheduled decommissioning of the Coast Guard Cutter MACKINAW, the Commandant of the Coast Guard shall convey all right, title, and interest of the United States in and to that vessel to the City and County of Cheboygan, Michigan, without consideration, if—

(1) the recipient agrees—

(A) to use the vessel for purposes of a museum;

(B) not to use the vessel for commercial transportation purposes;

(C) to make the vessel available to the United States Government if needed for use by the Commandant in time of war or a national emergency; and

(D) to hold the Government harmless for any claims arising from exposure to hazardous materials, including asbestos and polychlorinated biphenyls (PCBs), after conveyance of the vessel, except for claims arising from the use by the Government under subparagraph (C);

(2) the recipient has funds available that will be committed to operate and maintain the vessel conveyed in good working condition, in the form of cash, liquid assets, or a written loan commitment, and in an amount of at least $700,000; and

(3) the recipient agrees to any other conditions the Commandant considers appropriate.

(b) MAINTENANCE AND DELIVERY OF VESSEL.—Prior to conveyance of the vessel under this section, the Commandant shall, to the extent practical, and subject to other Coast Guard mission requirements, make every effort to maintain the integrity of the vessel and its equipment until the time of delivery. If a conveyance is made under this section, the Commandant shall deliver the vessel at the place where the vessel is located, in its present condition, and without cost to the Government. The conveyance of the vessel under this section shall not be considered a distribution in commerce for purposes of section 6(e) of Public Law 94–469 (15 U.S.C. 2605(e)).

(c) OTHER EXCESS EQUIPMENT.—The Commandant may convey to the recipient any excess equipment or parts from other decommissioned Coast Guard vessels for use to enhance the vessel's operability and function for purposes of a museum.

By Ms. STABENOW (for herself and Mr. SMITH):

S. 1213. A bill to amend the Internal Revenue Code of 1986 to allow a refundable credit against income tax for the purchase of a principal residence by a first-time homebuyer; to the Committee on Finance.

Ms. STABENOW. Mr. President, I believe ''home'' is one of the warmest words in the English language. At the end of a long day, I think the favorite phrase of every hardworking man and woman in this country is: ''Well, I'll see you tomorrow. I'm going home now.''

And, that is why I rise today to introduce the First Time Homebuyers' Tax Credit Act of 2005.

The bill I am introducing will spread that warmth by opening the door to homeownership to millions of hard-working families, helping them cover the initial down payment and closing costs.

This initiative is in keeping with our longstanding national policy of encouraging homeownership.

Owning a home has always been a fundamental part of the American dream.

We, in Congress, have long recognized the social and economic value in high rates of homeownership through laws that we have enacted, such as the mortgage interest tax deduction and the capital gains exclusion on the sale of a home.

Over the life of a loan, the mortgage interest tax deduction can save homeowners thousands of dollars that they could use for other necessary family expenses such as education or health care.

These benefits, however, are only available to individuals who own their own home.

It is important also to note that owning a home is a principle and reliable source of savings as homeowners build equity over the years and their homes appreciate.

For many people, it is home equity—not stocks—that help them through the retirement years.

In addition, owning a home insulates people from spikes in housing costs.

Indeed, while rents may go up, the costs of a fixed monthly mortgage payment, in relative terms, will go down over the course of the mortgage.

Clearly, one of the biggest barriers to homeownership for working families is the cost of a down payment and the costs associated with closing a mortgage.

According to the Mortgage Bankers Association, typical closing costs on an average sized loan of $200,000 can approach approximately $6,000.

Even with mortgage products that allow a down payment of 3 percent of the value of a home, total costs can quickly approach $9,000.

This is an impossible amount to save for those who are working hard to make ends meet. The problem is only getting worse as home values climb faster than families can save for a down payment.

To address this problem, I am introducing the First Time Homebuyers' Tax Credit Act of 2005.

My bill authorizes a one-time tax credit of up to $3,000 for individuals and $6,000 for married couples.

This credit is similar to the existing mortgage interest tax deduction in that it creates incentives for people to buy a home.

To be eligible for the credit, taxpayers must be first-time homebuyers who were within the 25 percent bracket or lower in the year before they purchase their home. That is $71,950 for single filers, $102,800 for heads of household, and $119,950 for joint returns. There is a dollar-for-dollar phase-out beyond the cap.

Normally, tax credits like this are an after-the-fact benefit. They do little to get people actually into a home.

What is particularly innovative and beneficial about the tax credit in this bill, however, is that, for the first time, the taxpayer can either claim the credit in the year after he or she buys a first home or the taxpayer can transfer the credit directly to a lender at closing.

The transferred credit would go toward helping with the down payment or closing costs. This is cash at the table.

As mandated in the bill, the eligible homebuyer would have the money for the lender from the Treasury within 30 days of application.

I am happy to say that this legislation has had strong support. When this bill was first introduced in 2003 it garnered the support of: The American Bankers Association, America's Community Bankers, the Housing Partnership Network, the National Housing Conference, the National Congress for Community Economic Development, the National Council of La Raza, the National Association of Affordable Housing Lenders, the Manufactured Housing Institute, Fannie Mae, Freddie Mac, National Community Reinvestment Coalition, Standard Federal Bank, Habitat for Humanity, and, the National American Indian Housing Council.

Clearly, the breadth and diversity of support is strong for this legislation.

This is a bold and aggressive effort to reach out to a large number of working families to help them get into this first home.

The Joint Committee on Taxation has estimated that more than fifteen million working people would get into their first home over the next seven years because of this new tax credit.

We are working to send a message to people all over the country that if you are working hard to save up enough to get into that first home, the Federal government will make a strategic investment in your family—it will offer a hand up.

This is not unlike what we already do through the mortgage interest tax deduction for millions of people who are fortunate enough to already own their own home.

We certainly won't do all the hard work for you. You must be frugal and save and do most of the work yourself, but we, in Congress, understand that it is good for America to enhance homeownership.

We also understand that this sort of investment in working families stimulates the economy.

No one can deny that when the First Time Homebuyers' Tax Credit is enacted and used by millions of people, every single time the credit is used, it will be stimulative. Why?

Because it means someone bought a house. And that generates economic activity for multiple small business people. House appraisers and Inspectors. Realtors. Lenders. Title insurers. And so on. And there is a ripple of economic activity by the new homeowners as they fix up their new homes and get settled in.

Housing has been such a bright light in the sluggish economy we've faced for the last several years. My bill is designed to ensure that the housing sector remains a strong component of our economy.

Finally, let me close by emphasizing how happy and proud I am that this tax legislation is bipartisan. In a closely divided Senate, and a closely divided Congress, it is so important to work across the aisle and Senator SMITH, who is a real champion for good housing policy, is someone I want to work closely with on this bill and other important housing legislation. He understands how housing tax benefits help build strong communities and provide economic security for millions of families.

I am committed to seeing this legislation passed. And, I welcome the chance to work with all of my colleagues to see the dream of homeownership expanded to all people.

Home. Sentimentally, it is one of the warmest words in the English language. Economically, it's the key word in bringing millions of families in from the cold and letting them begin building wealth for themselves and their family.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 1213

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''First-Time Homebuyers' Tax Credit Act of 2005''.

SEC. 2. REFUNDABLE CREDIT FOR FIRST-TIME HOMEBUYERS.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

''SEC. 36. PURCHASE OF PRINCIPAL RESIDENCE BY FIRST-TIME HOMEBUYER.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual who is a first-time homebuyer of a principal residence in the United States during any taxable year, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 10 percent of the purchase price of the residence.

''(b) LIMITATIONS.—

''(1) MAXIMUM DOLLAR AMOUNT.—

''(A) IN GENERAL.—The credit allowed under subsection (a) shall not exceed the excess (if any) of—

''(i) $3,000 (2 times such amount in the case of a joint return), over

''(ii) the credit transfer amount determined under subsection (c) with respect to the purchase to which subsection (a) applies.

''(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning after December 31, 2005, the $3,000 amount under subparagraph (A) shall be increased by an amount equal to $3,000, multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins by substituting '2004' for '1992' in subparagraph (B) thereof. If the $3,000 amount as adjusted under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

''(2) TAXABLE INCOME LIMITATION.—

''(A) IN GENERAL.—If the taxable income of the taxpayer for any taxable year exceeds the maximum taxable income in the table under subsection (a), (b), (c), or (d) of section 1, whichever is applicable, to which the 25 percent rate applies, the dollar amounts in effect under paragraph (1)(A)(i) for such taxpayer for the following taxable year shall be reduced (but not below zero) by the amount of the excess.

''(B) CHANGE IN RETURN STATUS.—In the case of married individuals filing a joint return for any taxable year who did not file such a joint return for the preceding taxable year, subparagraph (A) shall be applied by reference to the highest taxable income of either such individual for the preceding taxable year.

''(c) TRANSFER OF CREDIT.—

''(1) IN GENERAL.—A taxpayer may transfer all or a portion of the credit allowable under subsection (a) to 1 or more persons as payment of any liability of the taxpayer arising out of—

''(A) the downpayment of any portion of the purchase price of the principal residence, and

''(B) closing costs in connection with the purchase (including any points or other fees incurred in financing the purchase).

''(2) CREDIT TRANSFER MECHANISM.—

''(A) IN GENERAL.—Not less than 180 days after the date of the enactment of this section, the Secretary shall establish and implement a credit transfer mechanism for purposes of paragraph (1). Such mechanism shall require the Secretary to—

''(i) certify that the taxpayer is eligible to receive the credit provided by this section with respect to the purchase of a principal residence and that the transferee is eligible to receive the credit transfer,

''(ii) certify that the taxpayer has not received the credit provided by this section with respect to the purchase of any other principal residence,

''(iii) certify the credit transfer amount which will be paid to the transferee, and

''(iv) require any transferee that directly receives the credit transfer amount from the Secretary to notify the taxpayer within 14 days of the receipt of such amount.

Any check, certificate, or voucher issued by the Secretary pursuant to this paragraph shall include the taxpayer identification number of the taxpayer and the address of the principal residence being purchased.

''(B) TIMELY RECEIPT.—The Secretary shall issue the credit transfer amount not less than 30 days after the date of the receipt of an application for a credit transfer.

''(3) PAYMENT OF INTEREST.—

''(A) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary shall pay interest on any amount which is not paid to a person during the 30-day period described in paragraph (2)(B).

''(B) AMOUNT OF INTEREST.—Interest under subparagraph (A) shall be allowed and paid—

''(i) from the day after the 30-day period described in paragraph (2)(B) to the date payment is made, and

''(ii) at the overpayment rate established under section 6621.

''(C) EXCEPTION.—This paragraph shall not apply to failures to make payments as a result of any natural disaster or other circumstance beyond the control of the Secretary.

''(4) EFFECT ON LEGAL RIGHTS AND OBLIGATIONS.—Nothing in this subsection shall be construed to—

''(A) require a lender to complete a loan transaction before the credit transfer amount has been transferred to the lender, or

''(B) prevent a lender from altering the terms of a loan (including the rate, points, fees, and other costs) due to changes in market conditions or other factors during the period of time between the application by the taxpayer for a credit transfer and the receipt by the lender of the credit transfer amount.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) FIRST-TIME HOMEBUYER.—

''(A) IN GENERAL.—The term 'first-time homebuyer' has the same meaning as when used in section 72(t)(8)(D)(i).

''(B) ONE-TIME ONLY.—If an individual is treated as a first-time homebuyer with respect to any principal residence, such individual may not be treated as a first-time homebuyer with respect to any other principal residence.

''(C) MARRIED INDIVIDUALS FILING JOINTLY.—In the case of married individuals who file a joint return, the credit under this section is allowable only if both individuals are first-time homebuyers.

''(D) OTHER TAXPAYERS.—If 2 or more individuals who are not married purchase a principal residence—

''(i) the credit under this section is allowable only if each of the individuals is a first-time homebuyer, and

''(ii) the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed the amount in effect under subsection (b)(1)(A) for individuals filing joint returns.

''(2) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 121. Except as provided in regulations, an interest in a partnership, S corporation, or trust which owns an interest in a residence shall not be treated as an interest in a residence for purposes of this paragraph.

''(3) PURCHASE.—

''(A) IN GENERAL.—The term 'purchase' means any acquisition, but only if—

''(i) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267 (b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only the individual's spouse, ancestors, and lineal descendants), and

''(ii) the basis of the property in the hands of the person acquiring it is not determined—

''(I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

''(II) under section 1014(a) (relating to property acquired from a decedent).

''(B) CONSTRUCTION.—A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer.

''(4) PURCHASE PRICE.—The term 'purchase price' means the adjusted basis of the principal residence on the date of acquisition (within the meaning of section 72(t)(8)(D)(iii)).

''(e) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under subsection (a) for any expense for which a deduction or credit is allowed under any other provision of this chapter.

''(f) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to the purchase of any residence, the basis of such residence shall be reduced by the amount of the credit so allowed.

''(g) PROPERTY TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—The provisions of this section apply to a principal residence if—

''(A) the taxpayer purchases the residence on or after January 1, 2005, and before January 1, 2010, or

''(B) the taxpayer enters into, on or after January 1, 2005, and before January 1, 2010, a binding contract to purchase the residence, and purchases and occupies the residence before July 1, 2011.''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 1016 of the Internal Revenue Code of 1986 (relating to general rule for adjustments to basis) is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', and'', and by adding at the end the following new paragraph:

''(32) in the case of a residence with respect to which a credit was allowed under section 36, to the extent provided in section 36(f).''.

(2) Section 1324(b)(2) of title 31, United States Code, is amended by striking ''or'' before ''enacted'' and by inserting before the period at the end '', or from section 36 of such Code''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 36 and inserting the following new items:

''Sec. 36. Purchase of principal residence by first-time homebuyer.
''Sec. 37. Overpayments of tax.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

Mr. SMITH. Mr. President, today I introduce important legislation to enable more Americans to realize the dream of homeownership. The First-Time Homebuyers' Tax Credit Act that Senator STABENOW and I are introducing would give a one-time tax credit that will help more Americans to become homeowners.

Homeownership brings safety and stability to families and their communities. People who own their homes have the security of knowing that they have a reliable investment, and they are protected from spikes in housing costs. Yet despite these advantages, barriers exist for many who are looking to make the leap to homeownership.

Even for families and individuals who can make monthly mortgage payments, down payment and closing costs can prove too great a burden. Based on information from the Mortgage Bankers Association, the average loan of $175,000 would incur closing costs of approximately $4,000. Combined with even a modest down-payment of as little as 3 percent of a home's value, total costs can quickly approach $9,000 or more.

To help Americans achieve the dream of private homeownership, the First-Time Homebuyer Bill would provide a tax credit of up to $3,000 to individuals and up to $6,000 for families falling within or below the 27 percent tax bracket.

The bill would allow first-time homebuyers to claim the credit on their tax return or transfer the credit directly to the lender at closing, providing an immediate benefit to potential homeowners. This credit is similar to the Washington DC Homebuyers' Tax Credit.

While Congress has enacted legislation to increase incentives for homeownership in the past, including the mortgage interest tax deduction, these benefits are available only to those who already own a home. In contrast, the First Time Homebuyer Bill will help increase homeownership among those who are working towards their first home purchase.

I thank you for the opportunity to speak today, and I urge my colleagues to support this important legislation.

By Ms. SNOWE (for himself, Mr. REID, Mr. WARNER, Mr. LEAHY, Mr. CHAFEE, Mrs. MURRAY, Mr. KENNEDY, Mr. AKAKA, Mr. DURBIN, Ms. CANTWELL, and Mr. LAUTENBERG):

S. 1214. A bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans; to the Committee on Health, Education, Labor, and Pensions.

Ms. SNOWE. Mr. President, this year well over 6 million pregnancies will occur in America. The challenge of raising healthy children and preparing them for a changing world is a staggering one indeed. This is even more so when so frequently both parents are working. So it is tragic that half of all pregnancies today are unplanned. In too many cases, this means that the necessary financial, emotional and other resources for parenting are simply not present. I think we certainly share a broad consensus that every child should be wanted, and that parents should have the resources to ensure their child's health and success.

This week we have commemorated the 40th anniversary of a landmark Supreme Court decision, that of Griswold v. Connecticut, in which the right of married couples to contraceptives and family planning counseling was recognized. Yet less than a decade ago, when we examined the state of contraceptive coverage by insurance plans, it certainly was discouraging. While many health plans included coverage for prescription drugs, nearly half did not cover even oral contraceptives. Needless to say, many other contraceptive options for women, such as the diaphragm, implants, and injectable methods were covered even less frequently. This is disturbing, as contraception is so vital to a woman's health. Most women will spend just a few years attempting to conceive, with the average woman desiring two children. That

leaves about 30 years in which women need access to safe, affordable contraceptives.

The benefits of contraception should be obvious. The maternal death rate in the U.S. is only one third what it was back in 1965 before Griswold. The same is true for infant survival. Family planning preserves a woman's health, and allows couples to ensure that they have the means to give every child the attention, support, and resources they need.

So today I am joining again with Senator REID to introduce legislation to ensure broader access to contraception—to ensure that the promise of Griswold v. Connecticut is fully realized. I thank him for his ongoing leadership on this issue. We both agree that contraception coverage is essential to reducing unwanted pregnancies and to ensuring that every couple can employ family planning. The Equity in Prescription Insurance and Contraceptive Coverage Act, which we again introduce today, will assure that for those plans which provide prescription drug coverage, contraceptive coverage is not excluded. It further ensures that contraceptive services are provided equitably with other outpatient services.

Such coverage is just what the Institute of Medicine called for back in 1995, when the Institute reported that a lack of coverage was a major contributor to unwanted pregnancy. Expanding the proportion of health plans which cover contraception is one of the Surgeon General's objectives for the Healthy People 2010 plan. We can certainly achieve that objective and ensure that in 2010, unwanted pregnancies are exceedingly rare.

Some may argue that such a mandate creates yet more costs for providers, but the evidence fails to support that notion. We have seen that for every dollar in public funds which is invested in family planning, three dollars is saved in Medicaid costs for pregnancy-related health care and medical care for newborns. Indeed after we acted in 1998 to assure coverage to women in the Federal Employees Health Benefits Program, the Office of Personnel Management concluded in 2001 that there was no cost increase due to coverage.

Many health providers have come to the same conclusion. I note that approximately 90 percent of plans now cover the leading methods of reversible contraception. So we have come a long way.

There should be no mistake—this issue boils down the principles of basic fairness—fairness for half this Nation's population, fairness in how we view and treat a woman's reproductive health versus every other kind of health care need that can be addressed with prescription drugs. The facts are not in dispute B the lack of equitable coverage of prescription contraceptives has a very real impact on the lives of America's women and, therefore, our society as a whole. This is not overstatement, this is reality.

All we are saying is that if an employer provides insurance coverage for all other prescription drugs, they must also provide coverage for FDA-approved prescription contraceptives—it is that simple, it is that fair, and it builds on existing law and jurisprudence.

The approach we are taking today has already been endorsed by a total of 29 States—including my home State of Maine—that have passed similar laws since 1998. This is real progress but this piecemeal approach to fairness leaves many American women at the mercy of geography when it comes to the coverage they deserve.

But fairness is not the only issue. We believe that EPICC not only makes sense in terms of the cost of contraceptives for women, but also as a means bridging the pro-choice pro-life chasm by helping prevent unintended pregnancies and thereby also preventing abortions. The fact of the matter is, we know that there are over three million unintended pregnancies every year in the United States. We also know that almost half of those pregnancies result from women who do not use contraceptives. Most of the other half involved inconsistent or incorrect use of contraceptives—and in many of these cases, the women would benefit from counseling or provision of a contraceptive which is more appropriate to their circumstances.

Surveys consistently demonstrate that almost nine out of ten Americans support contraception access and over 75 percent support laws requiring health insurance plans to cover methods of contraception such as birth control pills.

The question before us is, if EPICC-style coverage is good enough for 9 million Federal employees and their dependents, if it is good enough for every Member of Congress and every Senator, why is not it good enough for the American people?

Women should have control over their reproductive health. It is the best interests of their overall health, their children and their future children's health—and when we have fewer unintended pregnancies, we will reduce the number of abortions. We need to finally fix this inequity in prescription drug coverage and make certain that all American women have access to this most basic health need. I thank all of those who have supported us in this effort, and call upon each of my colleagues to join us to ensure that more couples have access to family planning to reduce unwanted pregnancies, and to assure the health and security of American families.

Mr. REID. Mr. President, this week marks the fortieth anniversary of the U.S. Supreme Court decision in Griswold v. Connecticut that struck down a Connecticut law that had made the use of birth control by married couples illegal. This decision laid the groundwork for widespread access to birth control for all American women.

In the 40 years since this landmark decision, increased access to birth control has contributed to a dramatic improvement in maternal and infant health and has drastically reduced the infant death rate in our country.

In spite of these advances, we still have a long way to go. The United States has among the highest rates of unintended pregnancies of all industrialized nations. Half of all pregnancies in the United States are unintended, and nearly half of those end in abortion.

Making contraception more accessible and affordable is one crucial step toward reducing unintended pregnancies, reducing abortions and improving women's health.

We cannot allow the pendulum to swing backwards. That is why Senator SNOWE and I are reintroducing the Equity in Prescription and Contraception Coverage Act of 2005, EPICC. Over the last 8 years, Senator SNOWE and I have joined together to advance this important legislation.

The EPICC legislation is also a critical component of the Prevention First Act, S. 20. This legislation includes a number of provisions that will improve women's health, reduce the rate of unintended pregnancy and reduce abortions.

The legislation we are introducing today proves we can find not only common ground, but also a commonsense solution to these important challenges.

By making sure women can afford their prescription contraceptives, our bill will help to reduce the staggering rates of unintended pregnancy in the United States, and reduce abortions.

It is a national tragedy that half of all pregnancies nationwide are unintended, and that half of those will end in abortions. It is a tragedy, but it doesn't have to be. If we work together, we can prevent these unintended pregnancies and abortions.

One of the most important steps we can take to prevent unintended pregnancies, and to reduce abortions, is to make sure American women have access to affordable, effective contraception.

There are a number of safe and effective contraceptives available by prescription. Used properly, they greatly reduce the rate of unintended pregnancies.

However, many women simply can't afford these prescriptions, and their insurance doesn't pay for them, even though it covers other prescriptions.

This is not fair. We know women on average earn less than men, yet they must pay far more than men for health-related expenses.

According to the Women's Research and Education Institute, women of reproductive age pay 68 percent more in out-of-pocket medical expenses than men, largely due to their reproductive health-care needs.

Because many women can't afford the prescription contraceptives they would like to use, many do without

them, and the result, all too often, is unintended pregnancy and abortion.

This isn't an isolated problem. The fact is, a majority of women in this country are covered by health insurance plans that do not provide coverage for prescription contraceptives

This is unfair to women. It is bad policy that causes additional unintended pregnancies, and adversely affects women's health.

Senator SNOWE and I first introduced our legislation in 1997. Since then, the Viagra pill went on the market, and one month later it was covered by most insurance policies.

Birth control pills have been on the market since 1960, and today, 45 years later, they are covered by only one-third of health insurance policies.

So, today we find ourselves in the inexplicable situation where most insurance policies pay for Viagra, but not for prescription contraceptives that prevent unintentional pregnancies and abortions.

This isn't fair, and it isn't even cost-effective, because most insurance policies do cover sterilization and abortion procedures. In other words, they won't pay for the pills that could prevent an abortion, but they will pay for the procedure itself, which is much more costly.

The Federal Employee Health Benefits Program, which has provided contraceptive coverage for several years, shows that adding such coverage does not make the plan more expensive.

In December 2000, the U.S. Equal Employment Opportunity Commission, EEOC ruled that an employer's failure to include insurance coverage for prescription contraceptives, when other prescription drugs and devices are covered, constitutes unlawful sex discrimination under Title VII of the Civil Rights Act of 1964.

On June 12, 2001, a Federal district court in Seattle made the same finding in the case of Erickson vs. Bartell Drug Company.

These decisions confirm what we have known all along: contraceptive coverage is a matter of equity and fairness for women.

We are not asking for special treatment of contraceptives, only equitable treatment within the context of an existing prescription drug benefit.

This legislation is right because it is fair to women.

It is right because it is more cost-effective than other services, including abortions, sterilizations and tubal ligations, costly procedures that most insurance companies routinely cover.

And it is right because it will prevent unintended pregnancies and reduce abortions, goals we all share.

This is common sense, common-ground legislation, and it is long overdue.

By Mr. GREGG (for himself, Ms. MIKULSKI, Mr. SARBANES, Mr. BIDEN, Mr. CORZINE, Ms. SNOWE, Mr. REED, Ms. CANTWELL, Mrs. MURRAY, Mr. COCHRAN, Mr. KERRY, Mr. INOUYE, and Mrs. FEINSTEIN):

S. 1215. A bill to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development; to the Committee on Commerce, Science, and Transportation.

Mr. GREGG. Mr. President, I rise today along with Senator MIKULSKI to introduce the Coastal and Estuarine Land Protection Act. We are introducing this much needed coastal protection act along with Senators SARBANES, BIDEN, CORZINE, SNOWE, REED, CANTWELL, MURRAY, COCHRAN, KERRY, WYDEN, and INOUYE. In addition, this legislation is supported by the Trust for Public Land, Coastal States Organization, International Association of Fish and Wildlife Agencies, Association of National Estuary Programs, the Land Trust Alliance, Society for the Protection of New Hampshire Forests, The Conservation Fund, NH Audubon, Restore America's Estuaries, and National Estuarine Research Reserve Association.

The Coastal and Estuarine Land Protection Act promotes coordinated land acquisition and protection efforts in coastal and estuarine areas by fostering partnerships between non-governmental organizations and Federal, State, and local governments. As clearly outlined by the U.S. Commission of Ocean Policy, these efforts are urgently needed. With Americans rapidly moving to the coast, pressures to develop critical coastal ecosystems are increasing. There are fewer and fewer undeveloped and pristine areas left in the Nation's coastal and estuarine watersheds. These areas provide important nursery habitat for two-thirds of the Nation's commercial fish and shellfish, provide nesting and foraging habitat for coastal birds, harbor significant natural plant communities, and serve to facilitate coastal flood control and pollutant filtration.

The Coastal and Estuarine Land Protection Act pairs willing sellers through community-based initiatives with sources of Federal funds to enhance environmental protection. Lands can be acquired in full or through easements, and none of the lands purchased through this program would be held by the Federal Government. This bill puts land conservation initiatives in the hands of State and local communities. This new program, authorized through the National Oceanic and Atmospheric Administration at $60,000,000 per year, would provide Federal matching funds to States with approved coastal management programs or to National Estuarine Research Reserves through a competitive grant process. Federal matching funds may not exceed 75 percent of the cost of a project under this program, and non-Federal sources may count in-kind support toward their portion of the cost share.

This coastal land protection program provides much need support for local coastal conservation initiatives throughout the country. For instance, I have worked hard to secure significant funds for the Great Bay estuary in New Hampshire. This estuary is the jewel of the seacoast region, and is home to a wide variety of plants and animal species that are particularly threatened by encroaching development and environmental pollutants. By working with local communities to purchase lands or easements on these valuable parcels of land, New Hampshire has been able to successfully conserve the natural and scenic heritage of this vital estuary.

Programs such as the Coastal and Estuarine Land Protection program will further enable other States to participate in these community-based conservation efforts in coastal areas. This program was modeled after the U.S. Department of Agriculture's successful Forest Legacy Program, which has conserved millions of acres of productive and ecologically significant forest land around the county.

I welcome the opportunity to offer this important legislation, with my good friend from Maryland, Senator MIKULSKI. I am thankful for her leadership on this issue, and look forward to working with her to make the vision for this legislation a reality, and to successfully conserve our coastal lands for their ecological, historical, recreational, and aesthetic values.

By Mr. CORZINE:

S. 1216. A bill to require financial institutions and financial service providers to notify customers of the unauthorized use of personal financial information, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CORZINE. Mr. President, identity theft is a serious and growing concern facing our Nation's consumers. According to the Federal Trade Commission, nearly 10 million Americans were the victims of identity theft in 2003, three times the number of victims just 3 years earlier. Research shows that there are more than 13 identity thefts every minute.

According to the Identity Theft Resource Center, identity theft victims spend on average nearly 600 hours recovering from the crime. Additional research indicates the costs of lost wages and income as a result of the crime can soar as high as $16,000 per incident. No one wants to suffer this kind of hardship.

Events this week have further served to highlight how serious the problem has become. The announcement by Citigroup that a box of computer tapes containing information on 3.9 million customers was lost by United Parcel Service in my own State of New Jersey while in transit to a credit reporting agency is the latest in a line of recent, high profile incidents. In fact, I myself was a victim of a similar recent loss of computer tapes by Bank of America.

In both of these cases, Citigroup and Bank of America acted responsibly and

notified possible victims in a prompt and timely manner. But this is not always the case.

At the very least, consumers deserve to be made aware when their personal information has been compromised. Right now, they must hope that the laws of a few individual States, such as California, apply to their case, or that victimized institutions will act responsibly on their own.

The legislation I am introducing today, the Financial Privacy Breach Notification Act of 2005, would protect consumers by requiring prompt notification by any financial institution or affiliated data broker in all cases, subject, of course, to the concerns of law enforcement agencies. It would also require automatic inclusion of fraud alerts in victim's credit files to minimize the damage done.

Notification by itself won't solve everything, but it is an important first step that requires immediate attention. I intend to introduce more comprehensive legislation in the very near future to further protect consumers against the growing threat of identity theft, but requiring notification in a uniform fashion is an important and urgently needed first step.

It is imperative that we take action to combat the growing threat of identity theft. This crime harms individuals and families, and drags down our economy in the form of lost productivity and capital. We can do more and we must do more.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1216

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Financial Privacy Breach Notification Act of 2005''.

SEC. 2. TIMELY NOTIFICATION OF UNAUTHORIZED ACCESS TO PERSONAL FINANCIAL INFORMATION.

Subtitle B of title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6821 et seq.) is amended—

(1) by redesignating sections 526 and 527 as sections 528 and 529, respectively; and

(2) by inserting after section 525 the following:

''SEC. 526. NOTIFICATION TO CUSTOMERS OF UNAUTHORIZED ACCESS TO PERSONAL FINANCIAL INFORMATION.

''(a) DEFINITIONS.—In this section:

''(1) BREACH.—The term 'breach'—

''(A) means the unauthorized acquisition, or loss, of computerized data or paper records which compromises the security, confidentiality, or integrity of personal financial information maintained by or on behalf of a financial institution; and

''(B) does not include a good faith acquisition of personal financial information by an employee or agent of a financial institution for a business purpose of the institution, if the personal financial information is not subject to further unauthorized disclosure.

''(2) PERSONAL FINANCIAL INFORMATION.—The term 'personal financial information' means the last name of an individual in combination with any 1 or more of the following data elements, when either the name or the data elements are not encrypted:

''(A) Social security number.

''(B) Driver's license number or State identification number.

''(C) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to the financial account of an individual.

''(b) NOTIFICATION TO CUSTOMERS RELATING TO UNAUTHORIZED ACCESS OF PERSONAL FINANCIAL INFORMATION.—

''(1) FINANCIAL INSTITUTION REQUIREMENT.—In any case in which there has been a breach of personal financial information at a financial institution, or such a breach is reasonably believed to have occurred, the financial institution shall promptly notify—

''(A) each customer affected by the violation or suspected violation;

''(B) each consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a); and

''(C) appropriate law enforcement agencies, in any case in which the financial institution has reason to believe that the breach or suspected breach affects a large number of customers, including as described in subsection (e)(1)(C), subject to regulations of the Federal Trade Commission.

''(2) OTHER ENTITIES.—For purposes of paragraph (1), any person that maintains personal financial information for or on behalf of a financial institution shall promptly notify the financial institution of any case in which such customer information has been, or is reasonably believed to have been, breached.

''(c) TIMELINESS OF NOTIFICATION.—Notification required by this section shall be made—

''(1) promptly and without unreasonable delay, upon discovery of the breach or suspected breach; and

''(2) consistent with—

''(A) the legitimate needs of law enforcement, as provided in subsection (d); and

''(B) any measures necessary to determine the scope of the breach or restore the reasonable integrity of the information security system of the financial institution.

''(d) DELAYS FOR LAW ENFORCEMENT PURPOSES.—Notification required by this section may be delayed if a law enforcement agency determines that the notification would impede a criminal investigation, and in any such case, notification shall be made promptly after the law enforcement agency determines that it would not compromise the investigation.

''(e) FORM OF NOTICE.—Notification required by this section may be provided—

''(1) to a customer—

''(A) in written notification;

''(B) in electronic form, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in section 101 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001);

''(C) if the Federal Trade Commission determines that the number of all customers affected by, or the cost of providing notifications relating to, a single breach or suspected breach would make other forms of notification prohibitive, or in any case in which the financial institution certifies in writing to the Federal Trade Commission that it does not have sufficient customer contact information to comply with other forms of notification, in the form of—

''(i) an e-mail notice, if the financial institution has access to an e-mail address for the affected customer that it has reason to believe is accurate;

''(ii) a conspicuous posting on the Internet website of the financial institution, if the financial institution maintains such a website; or

''(iii) notification through the media that a breach of personal financial information has occurred or is suspected that compromises the security, confidentiality, or integrity of customer information of the financial institution; or

''(D) in such other form as the Federal Trade Commission may by rule prescribe; and

''(2) to consumer reporting agencies and law enforcement agencies (where appropriate), in such form as the Federal Trade Commission may prescribe, by rule.

''(f) CONTENT OF NOTIFICATION.—Each notification to a customer under subsection (b) shall include—

''(1) a statement that—

''(A) credit reporting agencies have been notified of the relevant breach or suspected breach; and

''(B) the credit report and file of the customer will contain a fraud alert to make creditors aware of the breach or suspected breach, and to inform creditors that the express authorization of the customer is required for any new issuance or extension of credit (in accordance with section 605(g) of the Fair Credit Reporting Act); and

''(2) such other information as the Federal Trade Commission determines is appropriate.

''(g) COMPLIANCE.—Notwithstanding subsection (e), a financial institution shall be deemed to be in compliance with this section, if—

''(1) the financial institution has established a comprehensive information security program that is consistent with the standards prescribed by the appropriate regulatory body under section 501(b);

''(2) the financial institution notifies affected customers and consumer reporting agencies in accordance with its own internal information security policies in the event of a breach or suspected breach of personal financial information; and

''(3) such internal security policies incorporate notification procedures that are consistent with the requirements of this section and the rules of the Federal Trade Commission under this section.

''(h) CIVIL PENALTIES.—

''(1) DAMAGES.—Any customer injured by a violation of this section may institute a civil action to recover damages arising from that violation.

''(2) INJUNCTIONS.—Actions of a financial institution in violation or potential violation of this section may be enjoined.

''(3) CUMULATIVE EFFECT.—The rights and remedies available under this section are in addition to any other rights and remedies available under applicable law.

''(i) RULES OF CONSTRUCTION.—

''(1) IN GENERAL.—Compliance with this section by a financial institution shall not be construed to be a violation of any provision of subtitle (A), or any other provision of Federal or State law prohibiting the disclosure of financial information to third parties.

''(2) LIMITATION.—Except as specifically provided in this section, nothing in this section requires or authorizes a financial institution to disclose information that it is otherwise prohibited from disclosing under subtitle A or any other provision of Federal or State law.

''(j) ENFORCEMENT.—The Federal Trade Commission is authorized to enforce compliance with this section, including the assessment of fines for violations of subsection (b)(1).''.

SEC. 3. EFFECTIVE DATE.

This Act shall take effect on the expiration of the date which is 6 months after the date of enactment of this Act.

By Mr. BINGAMAN (for himself, Mr. DEWINE, Mr. CORZINE, Mr. DURBIN, Mr. SCHUMER, Mr. JOHNSON, Ms. CANTWELL, Mr. LAUTENBERG, Ms. STABENOW, Mr. KENNEDY, Mrs. CLINTON, Mr. KERRY, Ms. MIKULSKI, Mr. AKAKA, Mr. SALAZAR, and Mr. SARBANES):

S. 1217. A bill to amend title II of the Social Security Act to phase out the 24-month waiting period for disabled individuals to become eligible for medicare benefits, to eliminate the waiting period for individuals with life-threatening conditions, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce bipartisan legislation entitled ''Ending the Medicare Disability Waiting Period Act of 2005'' with Senators DEWINE, CORZINE, DURBIN, SCHUMER, JOHNSON, CANTWELL, LAUTENBERG, STABENOW, KENNEDY, CLINTON, KERRY, MIKULSKI, AKAKA, SALAZAR, and SARBANES. This legislation would phase-out the current 2-year waiting period that people with disabilities must endure after qualifying for Social Security Disability Insurance (SSDI). In the interim or as the waiting period is being phased out, the bill would also create a process by which the Secretary can immediately waive the waiting period for people with life-threatening illnesses.

When Medicare was expanded in 1972 to include people with significant disabilities, lawmakers created the 24-month waiting period. According to a July 2003 report from the Commonwealth Fund, it is estimated that over 1.2 million SSDI beneficiaries are in the Medicare waiting period at any given time, ''all of whom are unable to work because of their disability and most of whom have serious health problems, low incomes, and limited access to health insurance.''

The stated reason at the time was to limit the fiscal cost of the provision. However, I would assert that there is no reason, be it fiscal or moral, to tell people that they must wait longer than 2 years after becoming severely disabled before we provide them access to much needed health care.

In fact, it is important to note that there really are actually three waiting periods that are imposed upon people seeking to qualify for SSDI. First, there is the disability determination process through the Social Security Administration, which often takes many months or even longer than a year in some cases. Second, once a worker has been certified as having a severe or permanent disability, they must wait an additional 5 months before receiving their first SSDI check. And third, after receiving that first SSDI check, there is the 2-year period that people must wait before their Medicare coverage begins.

What happens to the health and well-being of people waiting more than 2½ years before they finally receive critically needed Medicare coverage? According to Karen Davis, president of the Commonwealth Fund, which has conducted 2 important studies on the issue, ''Individuals in the waiting period for Medicare suffer from a broad range of debilitating diseases and are in urgent need of appropriate medical care to manage their conditions. Eliminating the 2-year wait would ensure access to care for those already on the way to Medicare.''

Again, we are talking about individuals that have been determined to be unable to engage in any ''substantial, gainful activity'' because of either a physical or mental impairment that is expected to result in death or to continue for at least 12 months. These are people that, by definition, are in more need of health coverage than anybody else in our society. Of the 1.2 million people stuck in the 2-year waiting period at any given time, it is estimated that one-third, or 400,000, are left completely uninsured. The consequences are unacceptable and are, in fact, dire.

In fact, various studies show that death rates among SSDI recipients are highest during the first 2 years of enrollment while waiting to be covered by Medicare. For example, the Commonwealth Fund report, entitled ''Elimination of Medicare's Waiting Period for Seriously Disabled Adults: Impact on Coverage and Costs,'' 4 percent of these people die during the waiting period. In other words, it is estimated that of the estimated 400,000 uninsured disabled Americans in the waiting period at any given time, 16,000 of them will die awaiting Medicare coverage. Let me repeat . . . 16,000 of the 400,000 uninsured disabled in the waiting period at any given moment will die while waiting for Medicare coverage to begin.

Moreover, this does not factor in the serious health problems that others experience while waiting for Medicare coverage during the 2-year period. Although there is no direct data on the profile of SSDI beneficiaries in the 2-year waiting period, the Commonwealth Fund has undertaken a separate analysis of the Medicare Current Beneficiary Survey for 1998 to get a good sense of the demographic characteristics, income, and health conditions of this group.

According to the analysis, ''. . . 45 percent of nonelderly Medicare beneficiaries with disabilities had incomes below the Federal poverty line, and 77 percent had incomes below 200 percent of poverty. Fifth-nine percent reported that they were in fair or poor health; of this group, more than 90 percent reported that they suffered from one or more chronic illnesses, including arthritis (52 percent), hypertension (46 percent), mental disorder (36 percent), heart condition (35 percent), chronic lung disease (26 percent), cancer (20 percent), diabetes (19 percent), and stroke (12 percent).''

To ascertain the impact the waiting period has on the lives of these citizens, the Commonwealth Fund and the Christopher Reeve Paralysis Foundation conducted a follow-up to ''gain insight into the experiences of people with disabilities under age 65 in the Medicare 2-year waiting period.'' According to that second report entitled ''Waiting for Medicare: Experiences of Uninsured People with Disabilities in the Two-Year Waiting Period for Medicare'' in October 2004, ''Most of these individuals must invariably get by with some combination of living one day at a time, assertiveness, faith, and sheer luck.''

One person in the waiting period with a spinal cord injury from Atlanta, Georgia, seeking medical treatment for their condition was told to simply ''try not to get sick for 2 years.'' As the individual said in response, ''None of us TRIED to become disabled.''

The people that we have spoken to in the waiting period, since the introduction of this legislation last year, talk about foregoing critically needed medical treatment, stopping medications and therapy, feeling dismayed and depressed about their lives and future, and feeling a loss of control over their lives and independence while in the waiting period.

These testimonials and appeals in support of this legislation are often emotional and intense. Some describe the waiting period as a ''living nightmare'' and appropriately ask how it is possible that their government is doing this to them.

In fact, some have had the unfortunate fate of having received SSI and Medicaid coverage, applied for SSDI, and then lost their Medicaid coverage because they were not aware that the change in income, when they received SSDI, would push them over the financial limits for Medicaid. In such a case, and let me emphasize this point, the government is effectively taking their health care coverage away because they are so severely disabled.

Therefore, for some in the waiting period, their battle is often as much with the government as it is with their medical condition, disease, or disability.

Nobody could possible think this makes any sense.

House Ways and Means Chairman BILL THOMAS questioned the rationale of the waiting period in a press conference on April 29, 2005.

As the Medicare Rights Center has said, ''By forcing Americans with disabilities to wait 24 months for Medicare coverage, the current law effectively sentences these people to inadequate health care, poverty, or death . . . Since disability can strike anyone, at any point in life, the 24-month waiting period should be of concern to everyone, not just the millions of Americans with disabilities today.''

Although elimination of the Medicare waiting period will certainly increase Medicare costs, it is important

to note that there will be some corresponding decrease in Medicaid costs. Medicaid, which is financed by both Federal and State governments, often provides coverage for a subset of disabled Americans in the waiting period, as long as they meet certain income and asset limits. Income limits are typically at or below the poverty level, including at just 74 percent of the poverty line in New Mexico, with assets generally limited to just $2,000 for individuals and $3,000 for couples.

The Commonwealth Fund estimates that, of the 1.26 million people in the waiting period, 40 percent are enrolled in Medicaid. As a result, the Commonwealth Fund estimates in the study that Federal Medicaid savings would offset nearly 30 percent of the increased costs. Furthermore, States, which have been struggling financially with their Medicaid programs, would reap a windfall that would help them better manage their Medicaid programs.

Furthermore, from a continuity of care point of view, it makes little sense that somebody with disabilities must leave their job and their health providers associated with that plan, move on the Medicaid to often have a different set of providers, to then switch to Medicare and yet another set of providers. The cost, both financial and personal, of not providing access to care or poorly coordinated care services for these seriously ill people during the waiting period may be greater in many cases than providing health coverage.

And finally, private-sector employers and employees in those risk-pools would also benefit from the passage of the bill. As the 2003 report notes, ''. . . to the extent that disabled adults rely on coverage through their prior employer or their spouse's employer, eliminating the waiting period would also produce savings to employers who provide this coverage.''

To address concerns about costs and immediate impact on the Medicare program, the legislation phases out the waiting period over a 10-year period. In the interim, the legislation would create a process by which others with life-threatening illnesses could also get an exception to the waiting period. Congress has previously extended such an exception to the waiting period for individuals with amyothrophic lateral sclerosis (ALS), also known as Lou Gehrig's disease, and for hospice services. The ALS exception passed the Congress in December 2000 and went into effect July 1, 2001. Thus, the legislation would extend the exception to all people with life-threatening illnesses in the waiting period.

I would like to thank Senator DEWINE and the other original cosponsors, including Senators CORZINE, DURBIN, SCHUMER, JOHNSON, CANTWELL, LAUTENBERG, STABENOW, KENNEDY, CLINTON, KERRY, MIKULSKI, AKAKA, SALAZAR, and SARBANES, for supporting this critically important legislation. Furthermore, I would like to commend Representative GENE GREEN of Texas for his introduction of the companion bill in the House of Representatives and for his work, diligence, and commitment to this issue.

I urge passage of this legislation and ask unanimous consent that a fact sheet, which includes a list of original supporting organizations for the legislation, and the text of the bill be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD as follows:

FACT SHEET

ENDING THE MEDICARE DISABILITY WAITING PERIOD ACT OF 2005

Senators Jeff Bingaman (D–NM) and Mike DeWine (R–OH) are preparing to introduce the ''Medicare Disability Waiting Period Act of 2005.'' The bill would, over 10 years, completely phase-out the two-year waiting period which Americans with disabilities must endure before receiving Medicare coverage. The legislation also creates a process by which the Secretary can immediately waive the waiting period for people with life-threatening illnesses.

When Medicare was expanded in 1972 to include people who have significant disabilities, lawmakers created a ''Medicare waiting period.'' Before they can get Medicare coverage, people with disabilities must first receive Social Security Disability Insurance (SSDI) for 24 months. Generally, SSDI begins five months after an individual's disability has been certified. As a result, people with disabilities face three consecutive waiting periods prior to getting health coverage: (1) a determination of SSDI approval from the Social Security Administration; (2) a five-month waiting period to receive SSDI; and, (3) another 24-month waiting period to get Medicare coverage.

Because of the 24-month Medicare waiting period, an estimated 400,000 Americans with disabilities are uninsured and many more are underinsured at a time in their lives when the need for health coverage is most dire, Dale and Verdier, The Commonwealth Fund, July 2003. In fact, various studies show that death rates among SSDI recipients are highest during the first two years of enrollment, Mauney, AMA, June 2002. For example, according to the Commonwealth Fund, 4 percent of these people die during the waiting period.

There is an important exception to the 24-month waiting period and that is for individuals with amyothrophic lateral sclerosis (ALS), also known as Lou Gehrig's disease, and for hospice services. The ALS exception passed the Congress in December 2000 and went into effect July 1, 2001.

''Ending the Medicare Waiting Period Act of 2005'' would, over 10 years, phase-out the waiting period and would also, in the interim, create a process by which others with life-threatening illnesses, like ALS, could also get an exception to the waiting period.

As the Medicare Rights Center has said, ''By forcing Americans with disabilities to wait 24 months for Medicare coverage, the current law effectively sentences these people to inadequate health care, poverty or death. . . . Since disability can strike anyone, at any point in life, the 24-month waiting period should be of concern to everyone, not just the millions of Americans with disabilities today.''

If you have any questions or need additional information, please contact Bruce Lesley in Senator BINGAMAN's office at 202–224–5521 or Abby Kral in Senator DEWINE's office at 202–224–7900.

SUPPORTING ORGANIZATIONS

Acid Maltase Deficiency Association
AIDS Foundation of Chicago
The AIDS Institute
AIDS Project Los Angeles
Air Compassion America
Alzheimer's Association
American Academy of Audiology
American Academy of HIV Medicine
American Congress of Rehabilitation Medicine (ACRM)
American Congress of Community Supports and Employment Services (ACCSES)
American Dance Therapy Association
American Gastroenterological Association
American Network of Community Options and Resources
American Occupational Therapy Association
American Psychological Association
Angel Flight Mid-Atlantic
The Arc of the United States
Association for Community Affiliated Plans
Association of University Centers on Disabilities (AUCD)
Benign Essential Blepharospasm Research Foundation
Brian Tumor Action Network
California Health Advocates
Center for Medicare Advocacy, Inc.
Coalition for Pulmonary Fibrosis
Community Action New Mexico
Disability Service Providers of America (DSPA)
Empowering Our Communities in New Mexico
Families USA
Family Voices
Gay Men's Health Crisis
Harm Reduction Coalition
Hereditary Hemorrhagic Telangiectasia (HHT) Foundation International
HIV Medicine Association
HIVictorious, Inc., Madison, WI
Medicare Rights Center
Mercy Medical Airlift
Miami, ACT UP
National Alliance for the Mentally Ill (NAMI)
National Alliance of State and Territorial AIDS Directors (NASTAD)
National Association of Children's Behavioral Health
National Association of Councils on Developmental Disabilities (NACDD)
National Association of Protection and Advocacy Systems (NAPAS)
National Ataxia Foundation
National Health Law Program (NHeLP)
National Kidney Foundation
National Mental Health Association
National Minority AIDS Council
National Organization for Rare Disorders (NORD)
National Patient Advocacy Foundation
National Women's Law Center
New Mexico AIDS Services
New Mexico Medical Society
New Mexico POZ Coalition
New Mexico Public Health Association
North American Brain Tumor Coalition
Paralyzed Veterans of America
Power Mobility Coalition
Reflex Sympathetic Dystrophy Syndrome Association of America
Senior Citizens Law Office, New Mexico
Southern New Hampshire HIV/AIDS Task Force
Special Olympics
The Title II Community AIDS National Network
United Cerebral Palsy
United Spinal Association
Utah AIDS Foundation
Visiting Nurse Associations of America
Von Hippel-Lindau Family Alliance

S. 1217

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Ending the Medicare Disability Waiting Period Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. PHASE-OUT OF WAITING PERIOD FOR MEDICARE DISABILITY BENEFITS.

(a) IN GENERAL.—Section 226(b) of the Social Security Act (42 U.S.C. 426(b)) is amended—

(1) in paragraph (2)(A), by striking '', and has for 24 calendar months been entitled to,'' and inserting '', and for the waiting period (as defined in subsection (k)) has been entitled to,'';

(2) in paragraph (2)(B), by striking '', and has been for not less than 24 months,'' and inserting '', and has been for the waiting period (as defined in subsection (k)),'';

(3) in paragraph (2)(C)(ii), by striking '', including the requirement that he has been entitled to the specified benefits for 24 months,'' and inserting '', including the requirement that the individual has been entitled to the specified benefits for the waiting period (as defined in subsection (k)),''; and

(4) in the flush matter following paragraph (2)(C)(ii)(II)—

(A) in the first sentence, by striking ''for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and'' and inserting ''for each month beginning after the waiting period (as so defined) for which the individual satisfies paragraph (2) and'';

(B) in the second sentence, by striking ''the 'twenty-fifth month of his entitlement' refers to the first month after the twenty-fourth month of entitlement to specified benefits referred to in paragraph (2)(C) and''; and

(C) in the third sentence, by striking '', but not in excess of 78 such months''.

(b) SCHEDULE FOR PHASE-OUT OF WAITING PERIOD.—Section 226 of the Social Security Act (42 U.S.C. 426) is amended by adding at the end the following new subsection:

''(k) For purposes of subsection (b) (and for purposes of section 1837(g)(1) of this Act and section 7(d)(2)(ii) of the Railroad Retirement Act of 1974), the term 'waiting period' means—

''(1) for 2006, 18 months;
''(2) for 2007, 16 months;
''(3) for 2008, 14 months;
''(4) for 2009, 12 months;
''(5) for 2010, 10 months;
''(6) for 2011, 8 months;
''(7) for 2012, 6 months;
''(8) for 2013, 4 months;
''(9) for 2014, 2 months; and
''(10) for 2015 and each subsequent year, 0 months.''.

(c) CONFORMING AMENDMENTS.—

(1) SUNSET.—Effective January 1, 2015, subsection (f) of section 226 of the Social Security Act (42 U.S.C. 426) is repealed.

(2) MEDICARE DESCRIPTION.—Section 1811(2) of such Act (42 U.S.C. 1395c(2)) is amended by striking ''entitled for not less than 24 months'' and inserting ''entitled for the waiting period (as defined in section 226(k))''.

(3) MEDICARE COVERAGE.—Section 1837(g)(1) of such Act (42 U.S.C. 1395p(g)(1)) is amended by striking ''of the later of (A) April 1973 or (B) the third month before the 25th month of such entitlement'' and inserting ''of the third month before the first month following the waiting period (as defined in section 226(k)) applicable under section 226(b)''.

(4) RAILROAD RETIREMENT SYSTEM.—Section 7(d)(2)(ii) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(d)(2)(ii)) is amended—

(A) by striking '', for not less than 24 months'' and inserting '', for the waiting period (as defined in section 226(k) of the Social Security Act); and

(B) by striking ''could have been entitled for 24 calendar months, and'' and inserting ''could have been entitled for the waiting period (as defined is section 226(k) of the Social Security Act), and''.

(d) EFFECTIVE DATE.—Except as provided in subsection (c)(1), the amendments made by this section shall apply to insurance benefits under title XVIII of the Social Security Act with respect to items and services furnished in months beginning at least 90 days after the date of the enactment of this Act (but in no case earlier than January 1, 2006).

SEC. 3. ELIMINATION OF WAITING PERIOD FOR INDIVIDUALS WITH LIFE-THREATENING CONDITIONS.

(a) IN GENERAL.—Section 226(h) of the Social Security Act (42 U.S.C. 426(h)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) in the matter preceding subparagraph (A) (as redesignated by paragraph (1)), by inserting ''(1)'' after ''(h)'';

(3) in paragraph (1) (as designated by paragraph (2))—

(A) in the matter preceding subparagraph (A) (as redesignated by paragraph (1)), by inserting ''or any other life-threatening condition identified by the Secretary'' after ''amyotrophic lateral sclerosis (ALS)''; and

(4) in subparagraph (B) (as redesignated by paragraph (1)), by striking ''(rather than twenty-fifth month)''; and

(5) by adding at the end the following new paragraph:

''(2) For purposes of identifying life-threatening conditions under paragraph (1), the Secretary shall compile a list of conditions that are fatal without medical treatment. In compiling such list, the Secretary shall consult with the Director of the National Institutes of Health (including the Office of Rare Diseases), the Director of the Centers for Disease Control and Prevention, the Director of the National Science Foundation, and the Institute of Medicine of the National Academy of Sciences.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to insurance benefits under title XVIII of the Social Security Act with respect to items and services furnished in months beginning at least 90 days after the date of the enactment of this Act (but in no case earlier than January 1, 2006).

SEC. 4. INSTITUTE OF MEDICINE STUDY AND REPORT ON DELAY AND PREVENTION OF DISABILITY CONDITIONS.

(a) STUDY.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall request that the Institute of Medicine of the National Academy of Sciences conduct a study on the range of disability conditions that can be delayed or prevented if individuals receive access to health care services and coverage before the condition reaches disability levels.

(b) REPORT.—Not later than the date that is 2 years after the date of enactment of this Act, the Secretary shall submit to Congress a report containing the results of the Institute of Medicine study authorized under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $750,000 for the period of fiscal years 2006 and 2007.

By Mr. KENNEDY (for himself and Mr. DURBIN):

S. 1218. A bill to amend the Elementary and Secondary Education Act of 1965, the Higher Education Act of 1965, and the Internal Revenue Code of 1986 to improve recruitment, preparation, distribution, and retention of public elementary and secondary school teachers and principals, and for other purposes; to the Committee on Finance.

Mr. KENNEDY. Mr. President, it is a privilege to join my distinguished colleague, Senator DURBIN, in introducing the Teacher Excellence for All Children Act of 2005. Its goal is to bring us closer to giving every child a highly qualified teacher, and enable more teachers to obtain the support they need to improve their instruction. We join our distinguished colleague Congressman GEORGE MILLER in this effort, who is introducing this legislation in the House, and commend him for his leadership on the issue.

One of the major challenges we face today is to improve the recruitment, preparation, and retention of good teachers. Few issues are of greater importance to our future than education. The Nation is strongest when our schools are strongest—when all students can attend good schools with good teachers to help them learn. In this new era of globalization, a well-educated citizenry and well-skilled workforce are essential to our role in the world.

We owe a great debt to America's teachers. They work day in and day out to give children a decent education. Teachers are on the front lines in the Nation's schools, and at the forefront of the constant effort to improve public education. It is their vision, energy, hard work, and dedication that will make all the difference in successfully meeting this challenge.

We took a major step forward in the No Child Left Behind Act and its recognition that all students deserve first-rate teachers to help them reach their potential and succeed in life. This act made a bold national commitment to guarantee a highly qualified teacher in every classroom. But to reach that goal, we need to recruit, train, retain and support our teachers. The TEACH Act addresses four specific challenges head on: to increase the supply of outstanding teachers; to ensure all children have teachers with expertise in the subjects they teach; to improve teaching by identifying and rewarding the best practices and expanding professional development opportunities; and to help schools retain teachers and principals by providing the support they need to succeed.

Since enrollment in public schools has reached an all-time high of 53 million students, and is expected to keep

increasing over the next decade, additional highly qualified teachers are needed to meet the growing demand.

Many schools face a teacher crisis, particularly in our poorest communities. Currently, there are approximately 3 million public school teachers across the country. Two million new, qualified teachers will be needed in the next 10 years to serve the growing student population. Yet we are not even retaining the teachers we have today. A third of all teachers leave during their first 3 years, and almost half leave during the first 5 years.

Too often, teachers also lack the training and support needed to do well in the classroom. They are paid on average almost $8,000 less than graduates in other fields, and the gap widens to more than $23,000 after 15 years of teaching. Thirty-seven percent of teachers cite low salaries as a main factor for leaving the classroom before retirement.

The TEACH Act will do more to recruit and retain highly qualified teachers—particularly in schools and subjects where they are needed the most. The bill provides financial incentives to encourage talented persons to enter and remain in the profession and it offers higher salaries, tax breaks, and greater loan forgiveness.

To attract motivated and talented individuals to teaching, the bill provides up-front tuition assistance—$4,000 per year—to high-performing undergraduate students who agree to commit to teach for 4 years in high-need areas and in subjects such as math, science, and special education.

One of our greatest challenges in school reform today is to equalize the playing field, so that the neediest students have access to the best teachers to help them succeed. Research shows that good teachers are the single most important factor in the success of children in school, both academically and developmentally. Children with good instruction can reach new heights through the hard work, vision, and energy of their teachers. Good teaching helps overcome the harmful effects of poverty and other disadvantages on student learning.

Unfortunately, we still have a long way to go. In high-poverty schools, teacher turnover is 33 percent higher than in other schools. In the poorest middle schools and high schools, students are 77 percent more likely to be assigned an out-of-field teacher. Almost a third of classes are taught by teachers with no background in the subject—no major degree, no minor degree, no certification.

Despite our past efforts, this problem is worsening. In most academic subjects, the percentage of secondary school teachers ''out-of-field''—those teaching a class in which they do not have a major, a minor, or a certification—increased from 1993 to 2000. Clearly, we must do a better job of attracting better teachers to the neediest classrooms and do more to reward their efforts so that they stay in the classroom.

Because schools compete for the best teachers, the bill provides funding to school districts to reward teachers who transfer to schools with the greatest challenges, and provides incentives for teachers working in math, science, and special education.

The TEACH Act also establishes a framework to develop and use the systems needed at the State and local levels to identify and improve teacher effectiveness and recognize exceptional teaching in the classroom. States will develop data systems to track student progress and relate it to the level of instruction provided in the classroom. The bill also encourages the development of model teacher advancement programs with competitive compensation structures that recognize and reward different roles, responsibilities, knowledge, skills and positive results.

Too often, teachers lack the training they need before reaching the classroom. On the job, they have few sources of support to meet the challenges they face in the classroom, and few opportunities for ongoing professional development to expand their skills. The bill responds to the needs of teachers in their first years in the classroom by creating new and innovative teacher induction models that use proven strategies to support beginning teachers. New teachers will have access to mentoring, opportunities for cooperative planning with their peers, and a special transition year to ease into the pressures of entering the classroom. Veteran teachers will have an opportunity to improve their skills through peer mentoring and review. Other support includes professional development delivered through teaching centers to improve training and working conditions for teachers.

Since good leadership is also essential for schools, the bill provides important incentives and support for principals by raising standards and improving recruitment and training for them as well.

This legislation was developed with the help of a broad and diverse group of educational professionals and experts, including the Alliance for Excellent Education, the American Federation of Teachers, the Business Roundtable, the Center for American Progress Action Fund, the Children's Defense Fund, the Education Trust, the National Council on Teacher Quality, the National Council of La Raza, the National Education Association, New Leaders for New Schools, the New Teacher Center, Operation Public Education, the Teacher Advancement Program Foundation, Teach for America and the Teaching Commission. I thank them for their help and their work on behalf of our Nation's children.

As Shirley Mount Hufstedler, the first United States Secretary of Education, has said:

The role of the teacher remains the highest calling of a free people. To the teacher, America entrusts her most precious resource, her children; and asks that they be prepared, in all their glorious diversity, to face the rigors of individual participation in a democratic society.

We must do all in our power to help them in this endeavor.

I urge my colleagues to join in supporting this bill and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1218

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Teacher Excellence for All Children Act of 2005''.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

SEC. 3. FINDINGS.

The Congress finds as follows:

(1) There are not enough qualified teachers in the Nation's classrooms, and an unprecedented number of teachers will retire over the next 5 years. Over the next decade, the Nation will need to bring 2,000,000 new teachers into public schools.

(2) Too many teachers and principals do not receive adequate preparation for their jobs.

(3) More than one-third of children in grades 7–12 are taught by a teacher who lacks both a college major and certification in the subject being taught. Rates of ''out-of-field teaching'' are especially high in high-poverty schools.

(4) Seventy percent of mathematics classes in high-poverty middle schools are assigned to teachers without even a minor in mathematics or a related field.

(5) Teacher turnover is a serious problem, particularly in urban and rural areas. Over one-third of new teachers leave the profession within their first 3 years of teaching, and 14 percent of new teachers leave the field within the first year. After 5 years—the average time it takes for teachers to maximize students' learning—half of all new teachers will have exited the profession. Rates of teacher attrition are highest in high-poverty schools. Between 2000 and 2001, 1 out of 5 teachers in the Nation's high-poverty schools either left to teach in another school or dropped out of teaching altogether.

(6) Fourth graders who are poor score dramatically lower on the National Assessment of Educational Progress (NAEP) than their counterparts who are not poor. Over 85 percent of fourth graders who are poor failed to attain NAEP proficiency standards in 2003.

(7) African-American, Latino, and low-income students are much less likely than other students to have highly-qualified teachers.

(8) Research shows that individual teachers have a great impact on how well their students learn. The most effective teachers have been shown to be able to boost their pupils' learning by a full grade level relative to students taught by less effective teachers.

(9) Although nearly half (42 percent) of all teachers hold a master's degree, fewer than 1 in 4 secondary teachers have a master's degree in the subject they teach.

(10) Young people with high SAT and ACT scores are much less likely to choose teaching as a career. Those who have higher SAT or ACT scores are twice as likely to leave the profession after only a few years.

(11) Only 16 States finance new teacher induction programs, and fewer still require inductees to be matched with mentors who teach the same subject.

TITLE I—RECRUITING TALENTED NEW TEACHERS

SEC. 101. AMENDMENTS TO HIGHER EDUCATION ACT OF 1965.

(a) TEACH GRANTS.—Title II of the Higher Education Act of 1965 (20 U.S.C. 1021 et seq.) is amended by adding at the end the following new part:

''PART C—TEACH GRANTS

''SEC. 231. PURPOSES.

''The purposes of this part are—

''(1) to improve student academic achievement;

''(2) to help recruit and prepare teachers to meet the national demand for a highly qualified teacher in every classroom; and

''(3) to increase opportunities for Americans of all educational, ethnic, class, and geographic backgrounds to become highly qualified teachers.

''SEC. 232. PROGRAM ESTABLISHED.

''(a) PROGRAM AUTHORITY.—

''(1) PAYMENTS REQUIRED.—For each of the fiscal years 2006 through 2013, the Secretary shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (defined in accordance with section 484) who files an application and agreement in accordance with section 233, and qualifies under subsection (a)(2) of such section, a TEACH Grant in the amount of $4,000 for each academic year during which that student is in attendance at an institution of higher education.

''(2) REFERENCE.—Grants made under this part shall be known as 'Teacher Education Assistance for College and Higher Education Grants' or 'TEACH Grants'.

''(b) PAYMENT METHODOLOGY.—

''(1) PREPAYMENT.—Not less than 85 percent of such sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based upon an amount requested by the institution as needed to pay eligible students until such time as the Secretary determines and publishes in the Federal Register with an opportunity for comment, an alternative payment system that provides payments to institutions in an accurate and timely manner, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

''(2) DIRECT PAYMENT.—Nothing in this section shall be interpreted to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which they are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1) .

''(3) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this part shall be made, in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purposes of this part. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

''(c) REDUCTIONS IN AMOUNT.—

''(1) PART TIME STUDENTS.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the TEACH Grant to which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purpose of this part, computed in accordance with this part. Such schedule of reductions shall be established by regulation and published in the Federal Register in accordance with section 482 of this Act.

''(2) NO EXCEEDING COST.—No TEACH Grant for a student under this part shall exceed the cost of attendance (as defined in section 472) at the institution at which such student is in attendance. If, with respect to any student, it is determined that the amount of a TEACH Grant exceeds the cost of attendance for that year, the amount of the TEACH Grant shall be reduced until the TEACH Grant does not exceed the cost of attendance at such institution.

''(d) PERIOD OF ELIGIBILITY FOR GRANTS.—

''(1) UNDERGRADUATE STUDENTS.—The period during which an undergraduate student may receive TEACH Grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that—

''(A) any period during which the student is enrolled in a noncredit or remedial course of study, subject to paragraph (3), shall not be counted for the purpose of this paragraph; and

''(B) the total amount that a student may receive under this part for undergraduate study shall not exceed $16,000.

''(2) GRADUATE STUDENTS.—The period during which a graduate student may receive TEACH Grants shall be the period required for the completion of a master's degree course of study being pursued by that student at the institution at which the student is in attendance, except that the total amount that a student may receive under this part for graduate study shall not exceed $8,000.

''(3) REMEDIAL COURSE; STUDY ABROAD.—Nothing in this section shall exclude from eligibility courses of study that are noncredit or remedial in nature (including courses in English language acquisition) that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills. Nothing in this section shall exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

''SEC. 233. ELIGIBILITY AND APPLICATIONS FOR GRANTS.

''(a) APPLICATIONS; DEMONSTRATION OF ELIGIBILITY.—

''(1) FILING REQUIRED.—The Secretary shall from time to time set dates by which students shall file applications for TEACH Grants under this part. Each student desiring a TEACH Grant for any year shall file an application therefore containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the functions and responsibilities of this part.

''(2) DEMONSTRATION OF ELIGIBILITY.—Each such application shall contain such information as is necessary to demonstrate that—

''(A) if the applicant is an enrolled student—

''(i) the student is an eligible student for purposes of section 484 (other than subsection (r) of such section);

''(ii) the student—

''(I) has a grade point average that is determined, under standards prescribed by the Secretary, to be comparable to a 3.25 average on a zero to 4.0 scale, except that, if the student is in the first year of a program of undergraduate education, such grade point average shall be determined on the basis of the student's cumulative high school grade point average; or

''(II) displayed high academic aptitude by receiving a score above the 75th percentile on at least one of the batteries in an undergraduate or graduate school admissions test; and

''(iii) the student is completing coursework and other requirements necessary to begin a career in teaching, or plans to complete such coursework and requirements prior to graduating; or

''(B) if the applicant is a current or prospective teacher applying for a grant to obtain a graduate degree—

''(i) the applicant is a teacher or a retiree from another occupation with expertise in a field in which there is a shortage of teachers, such as mathematics, science, special education, English language acquisition, or another high-need subject; or

''(ii) the applicant is or was a teacher who is using high-quality alternative certification routes, such as Teach for America, to get certified.

''(b) AGREEMENTS TO SERVE.—Each application under subsection (a) shall contain or be accompanied by an agreement by the applicant that—

''(1) the applicant will—

''(A) serve as a full-time teacher for a total of not less than 4 academic years within 8

years after completing the course of study for which the applicant received a TEACH Grant under this part;

''(B) teach—

''(i) in a school described in section 465(a)(2)(A); and

''(ii) in any of the following fields: mathematics, science, a foreign language, bilingual education, or special education, or as a reading specialist, or another field documented as high-need by the Federal Government, State government, or local education agency and submitted to the Secretary;

''(C) submit evidence of such employment in the form of a certification by the chief administrative officer of the school upon completion of each year of such service; and

''(D) comply with the requirements for being a highly qualified teacher as defined in section 9101 of the Elementary and Secondary Education Act of 1965; and

''(2) in the event that the applicant is determined to have failed or refused to carry out such service obligation, the sum of the amounts of such Teach Grants will be treated as a loan and collected from the applicant in accordance with subsection (c) and the regulations thereunder.

''(c) REPAYMENT FOR FAILURE TO COMPLETE SERVICE.—In the event that any recipient of a TEACH Grant fails or refuses to comply with the service obligation in the agreement under subsection (b), the sum of the amounts of such Grants provided to such recipient shall be treated as a Direct Loan under part D of title IV, and shall be subject to repayment in accordance with terms and conditions specified by the Secretary in regulations promulgated to carry out this part.''.

(b) RECRUITING TEACHERS WITH MATHEMATICS, SCIENCE, OR LANGUAGE MAJOR.—Title II of the Higher Education Act of 1965 (20 U.S.C. 1021 et seq.), as amended by subsection (a), is further amended by adding at the end the following:

''PART D—RECRUITING TEACHERS WITH MATHEMATICS, SCIENCE, OR LANGUAGE MAJORS

''SEC. 241. PROGRAM AUTHORIZED.

''(a) GRANTS AUTHORIZED.—From the amounts appropriated under section 242, the Secretary shall make competitive grants to institutions of higher education to improve the availability and recruitment of teachers from among students majoring in mathematics, science, foreign languages, special education, or teaching the English language to students with limited English proficiency. In making such grants, the Secretary shall give priority to programs that focus on preparing teachers in subjects in which there is a shortage of highly qualified teachers and that prepare students to teach in high-need schools.

''(b) APPLICATION.—Any institution of higher education desiring to obtain a grant under this part shall submit to the Secretary an application at such time, in such form, and containing such information and assurances as the Secretary may require, which shall—

''(1) include reporting on baseline production of teachers with expertise in mathematics, science, a foreign language, or teaching English language learners; and

''(2) establish a goal and timeline for increasing the number of such teachers who are prepared by the institution.

''(c) USE OF FUNDS.—Funds made available by a grant under this part—

''(1) shall be used to create new recruitment incentives to teaching from other majors, with an emphasis on high-need subjects such as mathematics, science, foreign languages, and teaching the English language to students with limited English proficiency;

''(2) may be used to upgrade curriculum in order to provide all students studying to become teachers with high-quality instructional strategies for teaching reading and teaching the English language to students with limited English proficiency, and for modifying instruction to teach students with special needs;

''(3) may be used to integrate school of education faculty with other arts and science faculty in mathematics, science, foreign languages, and teaching the English language to students with limited English proficiency through steps such as—

''(A) dual appointments for faculty between schools of education and schools of arts and science; and

''(B) integrating coursework with clinical experience; and

''(4) may be used to develop strategic plans between schools of education and local school districts to better prepare teachers for high-need schools, including the creation of professional development partnerships for training new teachers in state-of-the-art practice.

''SEC. 242. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to make grants under this part $200,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.''.

(c) PART A AUTHORIZATION.—Section 210 of the Higher Education Act of 1965 (20 U.S.C. 1030) is amended—

(1) by striking ''$300,000,000 for fiscal year 1999'' and inserting ''$400,000,000 for fiscal year 2006''; and

(2) by striking ''4 succeeding'' and inserting ''5 succeeding''.

SEC. 102. EXTENDING AND EXPANDING TEACHER LOAN FORGIVENESS.

(a) PERMANENT EXTENSION.—Section 3(b)(3) of the Taxpayer-Teacher Protection Act of 2004 (P.L. 108–409; 118 Stat. 2300) is amended by striking ''1998, and before October 1, 2005'' and inserting ''1998''.

(b) INCREASED AMOUNT; APPLICABILITY OF EXPANDED PROGRAM TO READING SPECIALIST.—Sections 428J(c)(3) and 460(c)(3) of the Higher Education Act of 1965 (20 U.S.C. 1078–10(c)(3), 1087j(c)(3)) are each amended—

(1) by striking ''$17,500'' and inserting ''$20,000'';

(2) by striking ''and'' at the end of subparagraph (A)(ii);

(3) by striking the period at the end of subparagraph (B)(iii) and inserting ''; and''; and

(4) by adding at the end the following new subparagraph:

''(C) an elementary or secondary school teacher who primarily teaches reading and who—

''(i) has obtained a separate reading instruction credential from the State in which the teacher is employed; and

''(ii) is certified by the chief administrative officer of the public or nonprofit private elementary school or secondary school in which the borrower is employed to teach reading—

''(I) as being proficient in teaching the essential components of reading instruction, as defined in section 1208 of the Elementary and Secondary Education Act of 1965; and

''(II) as having such credential.''.

(c) ANNUAL INCREMENTS INSTEAD OF END OF SERVICE LUMP SUMS.—

(1) FFEL LOANS.—Section 428J(c) of the Higher Education Act of 1965 (20 U.S.C. 1078–10(c)) is amended by adding at the end the following:

''(4) ANNUAL INCREMENTS.—Notwithstanding paragraph (1), in the case of an individual qualifying for loan forgiveness under paragraph (3), the Secretary shall, in lieu of waiting to assume an obligation only upon completion of 5 complete years of service, assume the obligation to repay—

''(A) after each of the first and second years of service by an individual in a position qualifying under paragraph (3), 15 percent of the total amount of principal and interest of the loans described in paragraph (1) to such individual that are outstanding immediately preceding such first year of such service;

''(B) after each of the third and fourth years of such service, 20 percent of such total amount; and

''(C) after the fifth year of such service, 30 percent of such total amount.''.

(2) DIRECT LOANS.—Section 460(c) of the Higher Education Act of 1965 (20 U.S.C. 1087j(c)) is amended by adding at the end the following:

''(4) ANNUAL INCREMENTS.—Notwithstanding paragraph (1), in the case of an individual qualifying for loan cancellation under paragraph (3), the Secretary shall, in lieu of waiting to assume an obligation only upon completion of 5 complete years of service, assume the obligation to repay—

''(A) after each of the first and second years of service by an individual in a position qualifying under paragraph (3), 15 percent of the total amount of principal and interest of the loans described in paragraph (1) to such individual that are outstanding immediately preceding such first year of such service;

''(B) after each of the third and fourth years of such service, 20 percent of such total amount; and

''(C) after the fifth year of such service, 30 percent of such total amount.''.

TITLE II—CLOSING THE TEACHER DISTRIBUTION GAP

SEC. 201. GRANTS TO LOCAL EDUCATIONAL AGENCIES TO PROVIDE PREMIUM PAY TO TEACHERS IN HIGH-NEED SCHOOLS.

Title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.) is amended by adding at the end the following:

''PART E—TEACHER EXCELLENCE FOR ALL CHILDREN

''SEC. 2500. DEFINITIONS.

''In this part:

''(1) The term 'high-need local educational agency' means a local educational agency—

''(A) that serves not fewer than 10,000 children from families with incomes below the poverty line, or for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line; and

''(B) that is having or expected to have difficulty filling teacher vacancies or hiring new teachers who are highly qualified.

''(2) The term 'value-added longitudinal data system' means a longitudinal data system for determining value-added student achievement gains.

''(3) The term 'value-added student achievement gains' means student achievement gains determined by means of a system that—

''(A) is sufficiently sophisticated and valid—

''(i) to deal with the problem of students with incomplete records;

''(ii) to enable estimates to be precise and to use all the data for all students in multiple years, regardless of sparseness, in order to avoid measurement error in test scores (such as by using multivariate, longitudinal analyses); and

''(iii) to protect against inappropriate testing practices or improprieties in test administration;

''(B) includes a way to acknowledge the existence of influences on student growth, such as pull-out programs for support beyond

standard delivery of instruction, so that affected teachers do not receive an unfair advantage; and

''(C) has the capacity to assign various proportions of student growth to multiple teachers when the classroom reality, such as team teaching and departmentalized instruction, makes such type of instruction an issue.

''Subpart 1—Distribution

''SEC. 2501. PREMIUM PAY; LOAN REPAYMENT.

''(a) GRANTS.—The Secretary shall make grants to local educational agencies to provide higher salaries to exemplary, highly qualified principals and exemplary, highly qualified teachers with at least 3 years of experience, including teachers certified by the National Board for Professional Teaching Standards, if the principal or teacher agrees to serve full-time for a period of 4 consecutive school years at a public high-need elementary school or a public high-need secondary school.

''(b) USE OF FUNDS.—A local educational agency that receives a grant under this section may use funds made available through the grant—

''(1) to provide to exemplary, highly qualified principals up to $15,000 as an annual bonus for each of 4 consecutive school years if the principal commits to work full-time for such period in a public high-need elementary school or a public high-need secondary school; and

''(2) to provide to exemplary, highly qualified teachers—

''(A) up to $10,000 as an annual bonus for each of 4 consecutive school years if the teacher commits to work full-time for such period in a public high-need elementary school or a public high-need secondary school; or

''(B) up to $12,500 as an annual bonus for each of 4 consecutive school years if the teacher commits to work full-time for such period teaching a subject for which there is a documented shortage of teachers in a public high-need elementary school or a public high-need secondary school.

''(c) TIMING OF PAYMENT.—A local educational agency providing an annual bonus to a principal or teacher under subsection (b) shall pay the bonus on completion of the service requirement by the principal or teacher for the applicable year.

''(d) GRANT PERIOD.—The Secretary shall make grants under this section in yearly installments for a total period of 4 years.

''(e) OBSERVATION, FEEDBACK, AND EVALUATION.—The Secretary may make a grant to a local educational agency under this section only if the State in which the agency is located or the agency has in place or proposes a plan, developed on a collaborative basis with the local teacher organization, to develop a system in which principals and, if available, master teachers rate teachers as exemplary. Such a system shall be—

''(1) based on strong learning gains for students;

''(2) based on classroom observation and feedback at least four times annually;

''(3) conducted by multiple sources, including master teachers and principals; and

''(4) evaluated against research-validated rubrics that use planning, instructional, and learning environment standards to measure teaching performance.

''(f) APPLICATION REQUIREMENTS.—To seek a grant under this section, a local educational agency shall submit an application at such time, in such manner, and containing such information as the Secretary reasonably requires. At a minimum, the application shall include the following:

''(1) A description of the agency's proposed new teacher hiring timeline, including interim goals for any phase-in period.

''(2) An assurance that the agency will—

''(A) pay matching funds for the program carried out with the grant, which matching funds may be derived from funds received under other provisions of this title;

''(B) commit to making the program sustainable over time;

''(C) create incentives to bring a critical mass of exemplary, highly qualified teachers to each school whose teachers will receive assistance under this section;

''(D) improve the school's working conditions through activities that may include but are not limited to—

''(i) reducing class size;

''(ii) ensuring availability of classroom materials, textbooks, and other supplies;

''(iii) improving or modernizing facilities; and

''(iv) upgrading safety; and

''(E) accelerate the timeline for hiring new teachers in order to minimize the withdrawal of high-quality teacher applicants and secure the best new teacher talent for their hardest-to-staff schools.

''(3) An assurance that, in identifying exemplary teachers, the system described in paragraph (1) will take into consideration—

''(A) growth of the teacher's students on any tests required by the State educational agency;

''(B) value-added student achievement gains if such teacher is in a State that uses a value-added longitudinal data system;

''(C) National Board for Professional Teaching Standards certification; and

''(D) evidence of teaching skill documented in performance-based assessments.

''(g) HIRING HIGHLY QUALIFIED TEACHERS EARLY AND IN A TIMELY MANNER.—

''(1) IN GENERAL.—In addition to the requirements of subsection (f), an application under such subsection shall include a description of the steps the local educational agency will take to enable all or a subset of the agency's schools to hire new highly qualified teachers early and in a timely manner, including—

''(A) requiring a clear and early notification date for retiring teachers that is no later than March 15 each year;

''(B) providing schools with their staffing allocations no later than April of the preceding school year;

''(C) enabling schools to consider external candidates at the same time as internal candidates for available positions;

''(D) moving up the teacher transfer period to April and not requiring schools to hire transferring or 'excessed' teachers from other schools without selection and consent; and

''(E) establishing and implementing a new principal accountability framework to ensure that principals with increased hiring authority are improving teacher quality.

''(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

''(h) PRIORITY.—In providing higher salaries to principals and teachers under this section, a local educational agency shall give priority to principals and teachers at schools identified under section 1116 for school improvement, corrective action, or restructuring.

''(i) DEFINITIONS.—In this section:

''(1) The term 'high-need' means, with respect to an elementary school or a secondary school, a school that serves an eligible school attendance area in which not less than 65 percent of the children are from low-income families, based on the number of children eligible for free and reduced priced lunches under the Richard B. Russell National School Lunch Act, or in which not less than 65 percent of the children enrolled are from such families.

''(2) The term 'documented shortage of teachers'—

''(A) means a shortage of teachers documented in the needs assessment submitted under section 2122 by the local educational agency involved or some other official demonstration of shortage by the local education agency; and

''(B) may include such a shortage in mathematics, science, a foreign language, special education, bilingual education, or reading.

''(3) The term 'exemplary, highly qualified principal' means a principal who—

''(A) demonstrates a belief that every student can achieve at high levels;

''(B) demonstrates an ability to drive substantial gains in academic achievement for all students while closing the achievement gap for those farthest from meeting standards;

''(C) uses data to drive instructional improvement;

''(D) provides ongoing support and development for teachers; and

''(E) builds a positive school community, treating every student with respect and reinforcing high expectations for all.

''(4) The term 'exemplary, highly qualified teacher' means a highly qualified teacher who is rated as exemplary pursuant to a system described in subsection (e).

''(j) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated $2,200,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.

''SEC. 2502. CAREER LADDERS FOR TEACHERS PROGRAM.

''(a) GRANTS.—The Secretary may make grants to local educational agencies to establish and implement a Career Ladders for Teachers Program in which the agency—

''(1) augments the salary of teachers in high-need elementary schools and high-need secondary schools to correspond to the increasing responsibilities and leadership roles assumed by the teachers as they take on new professional roles (such as serving on school leadership teams, serving as instructional coaches, and serving in hybrid roles), including by—

''(A) providing up to $10,000 as an annual augmentation to master teachers (including teachers serving as master teachers as part of a state-of the-art teacher induction program under section 2511); and

''(B) providing up to $5,000 as an annual augmentation to mentor teachers (including teachers serving as mentor teachers as part of a state-of-the-art teacher induction program under section 2511);

''(2) provides up to $4,000 as an annual bonus to all career teachers, master teachers, and mentor teachers in high-need elementary schools and high-need secondary schools based on a combination of—

''(A) at least 3 classroom evaluations over the course of the year that shall—

''(i) be conducted by multiple evaluators, including master teachers and the principal;

''(ii) be based on classroom observation at least 3 times annually; and

''(iii) be evaluated against research-validated benchmarks that use planning, instructional, and learning environment standards to measure teacher performance; and

''(B) the performance of the teacher's students as determined by—

''(i) student growth on any test that is required by the State educational agency or

local educational agency and is administered to the teacher's students; or

''(ii) in States or local educational agencies with value-added longitudinal data systems, whole-school value-added student achievement gains and classroom-level value-added student achievement gains; or

''(3) provides up to $4,000 as an annual bonus to principals in elementary schools and secondary schools based on the performance of the school's students, taking into consideration whole-school value-added student achievement gains in States that have value-added longitudinal data systems and in which information on whole-school value-added student achievement gains is available.

''(b) ELIGIBILITY REQUIREMENT.—A local educational agency may not use any funds under this section to establish or implement a Career Ladders for Teachers Program unless—

''(1) the percentage of teachers required by prevailing union rules votes affirmatively to adopt the program; or

''(2) in States that do not recognize collective bargaining between local educational agencies and teacher organizations, at least 75 percent of the teachers in the local educational agency vote affirmatively to adopt the program.

''(c) DEFINITIONS.—In this section:

''(1) The term 'career teacher' means a teacher who has a bachelor's degree and full credentials or alternative certification including a passing level on elementary or secondary subject matter assessments and professional knowledge assessments.

''(2) The term 'mentor teacher' means a teacher who—

''(A) has a bachelor's degree and full credentials or alternative certification including a passing level on any applicable elementary or secondary subject matter assessments and professional knowledge assessments;

''(B) has a portfolio and a classroom demonstration showing instructional excellence;

''(C) has an ability, as demonstrated by student data, to increase student achievement through utilizing specific instructional strategies;

''(D) has a minimum of 3 years of teaching experience;

''(E) is recommended by the principal and other current master and mentor teachers;

''(F) is an excellent instructor and communicator with an understanding of how to facilitate growth in the teachers the teacher is mentoring; and

''(G) performs well as a mentor in established induction and peer review and mentoring programs.

''(3) The term 'master teacher' means a teacher who—

''(A) holds a master's degree in the relevant academic discipline;

''(B) has at least 5 years of successful teaching experience, as measured by performance evaluations, a portfolio of work, or National Board for Professional Teaching Standards certification;

''(C) demonstrates expertise in content, curriculum development, student learning, test analysis, mentoring, and professional development, as demonstrated by an advanced degree, advanced training, career experience, or National Board for Professional Teaching Standards certification;

''(D) presents student data that illustrates the teacher's ability to increase student achievement through utilizing specific instructional interventions;

''(E) has instructional expertise demonstrated through model teaching, team teaching, video presentations, student achievement gains, or National Board for Professional Teaching Standards certification;

''(F) may hold a valid National Board for Professional Teaching Standards certificate, may have passed another rigorous standard, or may have been selected as a school, district, or State teacher of the year; and

''(G) is currently participating, or has previously participated, in a professional development program that supports classroom teachers as mentors.

''(4) The term 'high-need', with respect to an elementary school or a secondary school, has the meaning given to that term in section 2501.

''(d) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there is authorized to be appropriated $200,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.''.

TITLE III—IMPROVING TEACHER PREPARATION

SEC. 301. AMENDMENT TO ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.

Part E of title II of the Elementary and Secondary Education Act of 1965, as added by title II of this Act, is amended by adding at the end the following:

''Subpart 2—Preparation

''SEC. 2511. ESTABLISHING STATE-OF-THE-ART TEACHER INDUCTION PROGRAMS.

''(a) GRANTS.—The Secretary may make grants to States and eligible local educational agencies for the purpose of developing state-of-the-art teacher induction programs.

''(b) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—In this section, the term 'eligible local educational agency' means—

''(1) a high-need local educational agency; or

''(2) a partnership of a high-need local educational agency and an institution of higher education, a teacher organization, or any other nonprofit education organization.

''(c) USE OF FUNDS.—A State or an eligible local educational agency that receives a grant under subsection (a) shall use the funds made available through the grant to develop a state-of the-art teacher induction program that—

''(1) provides new teachers a minimum of 3 years of extensive, high-quality, comprehensive induction into the field of teaching; and

''(2) includes—

''(A) structured mentoring from highly qualified master or mentor teachers who are certified, have teaching experience similar to the grade level or subject assignment of the new teacher, and are trained to mentor new teachers;

''(B) at least 90 minutes each week of common meeting time for a new teacher to discuss student work and teaching under the director of a master or mentor teacher;

''(C) regular classroom observation in the new teacher's classroom;

''(D) observation by the new teacher of the mentor teacher's classroom;

''(E) intensive professional development activities for new teachers that result in improved teaching leading to student achievement, including lesson demonstration by master and mentor teachers in the classroom, observation, and feedback;

''(F) training in effective instructional services and classroom management strategies for mainstream teachers serving students with disabilities and students with limited English proficiency;

''(G) observation of teachers and feedback at least 4 times each school year by multiple evaluators, including master teachers and the principals, using research-validated benchmarks of teaching skills and standards that are developed with input from teachers;

''(H) paid release time for the mentor teacher for mentoring, or salary supplements under section 2502, for mentoring new teachers at a ratio of one full-time mentor to every 12 new teachers;

''(I) a transition year to the classroom that includes a reduced workload for beginning teachers; and

''(J) a standards-based assessment of every beginning teacher to determine whether the teacher should move forward in the teaching profession, which assessment may include examination of practice and a measure of gains in student learning.

''(d) ADDITIONAL REQUIREMENT.—The Secretary shall commission an independent evaluation of state-of the-art teacher induction programs supported under this section in order to compare the design and outcome of various models of induction programs.

''(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there is authorized to be appropriated $300,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.

''SEC. 2512. PEER MENTORING AND REVIEW PROGRAMS.

''(a) GRANTS.—The Secretary shall make grants to local educational agencies for peer mentoring and review programs.

''(b) USE OF FUNDS.—A local educational agency that receives a grant under this section shall use the funds made available through the grant to establish and implement a peer mentoring and review program. Such a program shall be established through collective bargaining agreements or, in States that do not recognize collective bargaining between local educational agencies and teacher organizations, through joint agreements between the local educational agency and affected teacher organizations.

''(c) APPLICATION.—To seek a grant under this section, a local educational agency shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require. The Secretary shall require each such application to include the following:

''(1) Data from the applicant on recruitment and retention prior to implementing the induction program.

''(2) Measurable goals for increasing retention after the induction program is implemented.

''(3) Measures that will be used to determine whether teacher effectiveness is improved through participation in the induction program.

''(4) A plan for evaluating and reporting progress toward meeting the applicant's goals.

''(d) PROGRESS REPORTS.—The Secretary shall require each grantee under this section to submit progress reports on an annual basis.

''(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated $50,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.

''SEC. 2513. ESTABLISHING STATE-OF-THE-ART PRINCIPAL TRAINING AND INDUCTION PROGRAMS AND PERFORMANCE-BASED PRINCIPAL CERTIFICATION.

''(a) GRANTS.—The Secretary may make grants to not more than 10 States to develop, implement, and evaluate pilot programs for performance-based certification and training of exemplary, highly qualified principals who can drive gains in academic achievement for all children.

''(b) PROGRAM REQUIREMENTS.—A pilot program developed under this section—

''(1) shall pilot the development, implementation, and evaluation of a statewide performance-based system for certifying principals;

''(2) shall pilot and demonstrate the effectiveness of statewide performance-based certification through support for innovative performance-based programs on a smaller scale;

''(3) shall provide for certification of principals by institutions with strong track records, such as a local educational agency, nonprofit organization, or business school, that is approved by the State for purposes of such certification and has formalized partnerships with in-State local educational agencies;

''(4) may be used to develop, sustain, and expand model programs for recruiting and training aspiring and new principals in both instructional leadership and general management skills;

''(5) shall include evaluation of the results of the pilot program and other in-State programs of principal preparation (which evaluation may include value-added assessment scores of all children in a school and should emphasize the correlation of academic achievement gains in schools led by participating principals and the characteristics and skills demonstrated by those individuals when applying to and participating in the program) to inform the design of certification of individuals to become school leaders in the State; and

''(6) shall make possible interim certification for up to 2 years for aspiring principals participating in the pilot program who—

''(A) have not yet attained full certification;

''(B) are serving as assistant principals or principal residents, or in positions of similar responsibility; and

''(C) have met clearly defined criteria for entry into the program that are approved by the applicable local educational agency.

''(c) PRIORITY.—In selecting grant recipients under this section, the Secretary shall give priority to States that will use the grants for one or more high-need local educational agencies and schools.

''(d) TERMS OF GRANT.—A grant under this section—

''(1) shall be for not more than 5 years; and

''(2) shall be performance-based, permitting the Secretary to discontinue funding based on failure of the State to meet benchmarks identified by the State.

''(e) USE OF EVALUATION RESULTS.—A State receiving a grant under this section shall use the evaluation results of the pilot program conducted pursuant to the grant and similar evaluations of other in-State programs of principal preparation (especially the correlation of academic achievement gains in schools led by participating principals and the characteristics and skills demonstrated by those individuals when applying to and participating in the pilot program) to inform the design of certification of individuals to become school leaders in the State.

''(f) DEFINITIONS.—For the purposes of this section:

''(1) The term 'exemplary, highly qualified principal' has the meaning given to that term in section 2501.

''(2) The term 'performance-based certification system' means a certification system that—

''(A) is based on a clearly defined set of standards for skills and knowledge needed by new principals;

''(B) is not based on numbers of hours enrolled in particular courses;

''(C) certifies participating individuals to become school leaders primarily based on—

''(i) their demonstration of those skills through a formal assessment aligned to these standards; and

''(ii) academic achievement results in a school leadership role such as a residency or an assistant principalship; and

''(D) awards certification to individuals who successfully complete programs at institutions that include local educational agencies, nonprofit organizations, and business schools approved by the State for purposes of such certification and have formalized partnerships with in-State local educational agencies.

''(g) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated $100,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.

''SEC. 2514. STUDY ON DEVELOPING A PORTABLE PERFORMANCE-BASED TEACHER ASSESSMENT.

''(a) STUDY.—

''(1) IN GENERAL.—The Secretary shall enter into an arrangement with an objective evaluation firm to conduct a study to assess the validity of any test used for teacher certification or licensure by multiple States, taking into account the passing scores adopted by multiple States. The study shall determine the following:

''(A) The extent to which tests of content knowledge represent subject mastery at the baccalaureate level.

''(B) Whether tests of pedagogy reflect the latest research on teaching and learning.

''(C) The relationship, if any, between teachers' scores on licensure and certification exams and other measures of teacher effectiveness, including learning gains achieved by the teachers' students.

''(2) REPORT.—The Secretary shall submit a report to the Congress on the results of the study conducted under this subsection.

''(b) GRANT TO CREATE A MODEL PERFORMANCE-BASED ASSESSMENT.—

''(1) GRANT.—The Secretary may make 1 grant to an eligible partnership to create a model performance-based assessment of teaching skills that reliably evaluates teaching skills in practice and can be used to facilitate the portability of teacher credentials and licensing from one State to another.

''(2) CONSIDERATION OF STUDY.—In creating a model performance-based assessment of teaching skills, the recipient of a grant under this section shall take into consideration the results of the study conducted under subsection (a).

''(3) ELIGIBLE PARTNERSHIP.—In this section, the term 'eligible partnership' means a partnership of—

''(A) an independent professional organization; and

''(B) an organization that represents administrators of State educational agencies.''.

SEC. 302. AMENDMENT TO THE HIGHER EDUCATION ACT OF 1965: TEACHER QUALITY ENHANCEMENT GRANTS.

Part A of title II of the Higher Education Act of 1965 is amended by striking sections 206 through 209 (20 U.S.C. 1026–1029) and inserting the following:

''SEC. 206. ACCOUNTABILITY AND EVALUATION.

''(a) STATE GRANT ACCOUNTABILITY REPORT.—An eligible State that receives a grant under section 202 shall submit an annual accountability report to the Secretary, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Education and the Workforce of the House of Representatives. Such report shall include a description of the degree to which the eligible State, in using funds provided under such section, has made substantial progress in meeting the following goals:

''(1) PERCENTAGE OF HIGHLY QUALIFIED TEACHERS.—Increasing the percentage of highly qualified teachers in the State as required by section 1119 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6319).

''(2) STUDENT ACADEMIC ACHIEVEMENT.—Increasing student academic achievement for all students, which may be measured through the use of value-added assessments, as defined by the eligible State.

''(3) RAISING STANDARDS.—Raising the State academic standards required to enter the teaching profession as a highly qualified teacher.

''(4) INITIAL CERTIFICATION OR LICENSURE.—Increasing success in the pass rate for initial State teacher certification or licensure, or increasing the numbers of qualified individuals being certified or licensed as teachers through alternative routes to certification and licensure.

''(5) DECREASING TEACHER SHORTAGES.—Decreasing shortages of highly qualified teachers in poor urban and rural areas.

''(6) INCREASING OPPORTUNITIES FOR RESEARCH-BASED PROFESSIONAL DEVELOPMENT.—Increasing opportunities for enhanced and ongoing professional development that—

''(A) improves the academic content knowledge of teachers in the subject areas in which the teachers are certified or licensed to teach or in which the teachers are working toward certification or licensure to teach; and

''(B) promotes strong teaching skills.

''(7) TECHNOLOGY INTEGRATION.—Increasing the number of teachers prepared effectively to integrate technology into curricula and instruction and who use technology to collect, manage, and analyze data to improve teaching, learning, and parental involvement decisionmaking for the purpose of increasing student academic achievement.

''(b) ELIGIBLE PARTNERSHIP EVALUATION.—Each eligible partnership applying for a grant under section 203 shall establish, and include in the application submitted under section 203(c), an evaluation plan that includes strong performance objectives. The plan shall include objectives and measures for—

''(1) increased student achievement for all students, as measured by the partnership;

''(2) increased teacher retention in the first 3 years of a teacher's career;

''(3) increased success in the pass rate for initial State certification or licensure of teachers;

''(4) increased percentage of highly qualified teachers; and

''(5) increasing the number of teachers trained effectively to integrate technology into curricula and instruction and who use technology to collect, manage, and analyze data to improve teaching, learning, and decisionmaking for the purpose of improving student academic achievement.

''(c) REVOCATION OF GRANT.—

''(1) REPORT.—Each eligible State or eligible partnership receiving a grant under section 202 or 203 shall report annually on the progress of the eligible State or eligible partnership toward meeting the purposes of this part and the goals, objectives, and measures described in subsections (a) and (b).

''(2) REVOCATION.—

''(A) ELIGIBLE STATES AND ELIGIBLE APPLICANTS.—If the Secretary determines that an eligible State or eligible applicant is not making substantial progress in meeting the purposes, goals, objectives, and measures, as appropriate, by the end of the second year of a grant under this part, then the grant payment shall not be made for the third year of the grant.

''(B) ELIGIBLE PARTNERSHIPS.—If the Secretary determines that an eligible partnership is not making substantial progress in meeting the purposes, goals, objectives, and measures, as appropriate, by the end of the third year of a grant under this part, then

the grant payments shall not be made for any succeeding year of the grant.

''(d) EVALUATION AND DISSEMINATION.—The Secretary shall evaluate the activities funded under this part and report annually the Secretary's findings regarding the activities to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives. The Secretary shall broadly disseminate successful practices developed by eligible States and eligible partnerships under this part, and shall broadly disseminate information regarding such practices that were found to be ineffective.

''SEC. 207. ACCOUNTABILITY FOR PROGRAMS THAT PREPARE TEACHERS.

''(a) STATE REPORT CARD ON THE QUALITY OF TEACHER AND PRINCIPAL PREPARATION.—Each State that receives funds under this Act shall provide to the Secretary annually, in a uniform and comprehensible manner that conforms with the definitions and methods established by the Secretary, a State report card on the quality of teacher preparation in the State, both for traditional certification or licensure programs and for alternative certification or licensure programs, which shall include at least the following:

''(1) A description of the teacher and principal certification and licensure assessments, and any other certification and licensure requirements, used by the State.

''(2) The standards and criteria that prospective teachers and principals must meet in order to attain initial teacher and principal certification or licensure and to be certified or licensed to teach particular subjects or in particular grades within the State.

''(3) A demonstration of the extent to which the assessments and requirements described in paragraph (1) are aligned with the State's standards and assessments for students.

''(4) The percentage of students who have completed the clinical coursework for a teacher preparation program at an institution of higher education or alternative certification program and who have taken and passed each of the assessments used by the State for teacher certification and licensure, and the passing score on each assessment that determines whether a candidate has passed that assessment.

''(5) For students who have completed the clinical coursework for a teacher preparation program at an institution of higher education or alternative certification program, and who have taken and passed each of the assessments used by the State for teacher certification and licensure, each such institution's and each such program's average raw score, ranked by teacher preparation program, which shall be made available widely and publicly.

''(6) A description of each State's alternative routes to teacher certification, if any, and the number and percentage of teachers certified through each alternative certification route who pass State teacher certification or licensure assessments.

''(7) For each State, a description of proposed criteria for assessing the performance of teacher and principal preparation programs in the State, including indicators of teacher and principal candidate skills, placement, and retention rates (to the extent feasible), and academic content knowledge and evidence of gains in student academic achievement.

''(8) For each teacher preparation program in the State, the number of students in the program, the number of minority students in the program, the average number of hours of supervised practice teaching required for those in the program, and the number of full-time equivalent faculty, adjunct faculty, and students in supervised practice teaching.

''(9) For the State as a whole, and for each teacher preparation program in the State, the number of teachers prepared, in the aggregate and reported separately by—

''(A) level (elementary or secondary);

''(B) academic major;

''(C) subject or subjects for which the student has been prepared to teach; and

''(D) teacher candidates who speak a language other than English and have been trained specifically to teach English-language learners.

''(10) The State shall refer to the data generated for paragraphs (8) and (9) to report on the extent to which teacher preparation programs are helping to address shortages of qualified teachers, by level, subject, and specialty, in the State's public schools, especially in poor urban and rural areas as required by section 206(a)(5).

''(b) REPORT OF THE SECRETARY ON THE QUALITY OF TEACHER PREPARATION.—

''(1) REPORT CARD.—The Secretary shall provide to Congress, and publish and make widely available, a report card on teacher qualifications and preparation in the United States, including all the information reported in paragraphs (1) through (10) of subsection (a). Such report shall identify States for which eligible States and eligible partnerships received a grant under this part. Such report shall be so provided, published and made available annually.

''(2) REPORT TO CONGRESS.—The Secretary shall report to Congress—

''(A) a comparison of States' efforts to improve teaching quality; and

''(B) regarding the national mean and median scores on any standardized test that is used in more than 1 State for teacher certification or licensure.

''(3) SPECIAL RULE.—In the case of programs with fewer than 10 students who have completed the clinical coursework for a teacher preparation program taking any single initial teacher certification or licensure assessment during an academic year, the Secretary shall collect and publish information with respect to an average pass rate on State certification or licensure assessments taken over a 3-year period.

''(c) COORDINATION.—The Secretary, to the extent practicable, shall coordinate the information collected and published under this part among States for individuals who took State teacher certification or licensure assessments in a State other than the State in which the individual received the individual's most recent degree.

''(d) INSTITUTION AND PROGRAM REPORT CARDS ON QUALITY OF TEACHER PREPARATION.—

''(1) REPORT CARD.—Each institution of higher education or alternative certification program that conducts a teacher preparation program that enrolls students receiving Federal assistance under this Act shall report annually to the State and the general public, in a uniform and comprehensible manner that conforms with the definitions and methods established by the Secretary, both for traditional certification or licensure programs and for alternative certification or licensure programs, the following information, disaggregated by major racial and ethnic groups:

''(A) PASS RATE.—(i) For the most recent year for which the information is available, the pass rate of each student who has completed the clinical coursework for the teacher preparation program on the teacher certification or licensure assessments of the State in which the institution is located, but only for those students who took those assessments within 3 years of receiving a degree from the institution or completing the program.

''(ii) A comparison of the institution or program's pass rate for students who have completed the clinical coursework for the teacher preparation program with the average pass rate for institutions and programs in the State.

''(iii) In the case of programs with fewer than 10 students who have completed the clinical coursework for a teacher preparation program taking any single initial teacher certification or licensure assessment during an academic year, the institution shall collect and publish information with respect to an average pass rate on State certification or licensure assessments taken over a 3-year period.

''(B) PROGRAM INFORMATION.—The number of students in the program, the average number of hours of supervised practice teaching required for those in the program, and the number of full-time equivalent faculty and students in supervised practice teaching.

''(C) STATEMENT.—In States that require approval or accreditation of teacher education programs, a statement of whether the institution's program is so approved or accredited, and by whom.

''(D) DESIGNATION AS LOW-PERFORMING.—Whether the program has been designated as low-performing by the State under section 208(a).

''(2) REQUIREMENT.—The information described in paragraph (1) shall be reported through publications such as school catalogs and promotional materials sent to potential applicants, secondary school guidance counselors, and prospective employers of the institution's program graduates, including materials sent by electronic means.

''(3) FINES.—In addition to the actions authorized in section 487(c), the Secretary may impose a fine not to exceed $25,000 on an institution of higher education for failure to provide the information described in this subsection in a timely or accurate manner.

''(e) DATA QUALITY.—Either—

''(1) the Governor of the State; or

''(2) in the case of a State for which the constitution or law of such State designates another individual, entity, or agency in the State to be responsible for teacher certification and preparation activity, such individual, entity, or agency;

shall attest annually, in writing, as to the reliability, validity, integrity, and accuracy of the data submitted pursuant to this section.

''SEC. 208. STATE FUNCTIONS.

''(a) STATE ASSESSMENT.—In order to receive funds under this Act, a State shall have in place a procedure to identify and assist, through the provision of technical assistance, low-performing programs of teacher preparation within institutions of higher education. Such State shall provide the Secretary an annual list of such low-performing institutions that includes an identification of those institutions at risk of being placed on such list. Such levels of performance shall be determined solely by the State and may include criteria based upon information collected pursuant to this part. Such assessment shall be described in the report under section 207(a). A State receiving Federal funds under this title shall develop plans to close or reconstitute underperforming programs of teacher preparation within institutions of higher education.

''(b) TERMINATION OF ELIGIBILITY.—Any institution of higher education that offers a program of teacher preparation in which the State has withdrawn the State's approval or terminated the State's financial support due to the low performance of the institution's teacher preparation program based upon the

State assessment described in subsection (a)—

''(1) shall be ineligible for any funding for professional development activities awarded by the Department of Education; and

''(2) shall not be permitted to accept or enroll any student who receives aid under title IV of this Act in the institution's teacher preparation program.

''SEC. 209. GENERAL PROVISIONS.

''In complying with sections 207 and 208, the Secretary shall ensure that States and institutions of higher education use fair and equitable methods in reporting and that the reporting methods do not allow identification of individuals.''.

SEC. 303. ENFORCING NCLB'S TEACHER EQUITY PROVISION.

Subpart 2 of part E of title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7901 et seq.) is amended by adding at the end the following:

''SEC. 9537. ASSURANCE OF REASONABLE PROGRESS TOWARD EQUITABLE ACCESS TO TEACHER QUALITY.

''(a) IN GENERAL.—The Secretary may not provide any assistance to a State under this Act unless, in the State's application for such assistance, the State—

''(1) provides the plan required by section 1111(b)(8)(C) and at least one public report pursuant to that section;

''(2) clearly articulates the measures the State is using to determine whether poor and minority students are being taught disproportionately by inexperienced, unqualified, or out-of-field teachers;

''(3) includes an evaluation of the success of the State's plan required by section 1111(b)(8)(C) in addressing any such disparities;

''(4) with respect to any such disparities, proposes modifications to such plan; and

''(5) includes a description of the State's activities to monitor the compliance of local educational agencies in the State with section 1112(c)(1)(L).

''(b) EFFECTIVE DATE.—This section applies with respect to any assistance under this Act for which an application is submitted after the date of the enactment of this section.''.

TITLE IV—EQUIPPING TEACHERS, SCHOOLS, LOCAL EDUCATIONAL AGENCIES, AND STATES WITH THE 21ST CENTURY DATA, TOOLS, AND ASSESSMENTS THEY NEED

SEC. 401. 21ST CENTURY DATA, TOOLS, AND ASSESSMENTS.

Part E of title II of the Elementary and Secondary Education Act of 1965, as added by titles II and III of this Act, is amended by adding at the end the following:

''Subpart 3—21st Century Data, Tools, and Assessments

''SEC. 2521. DEVELOPING VALUE-ADDED DATA SYSTEMS.

''(a) TEACHER AND PRINCIPAL EVALUATION.—

''(1) GRANTS.—The Secretary shall make grants to States to develop and implement statewide data systems to collect and analyze data on the effectiveness of elementary school and secondary school teachers and principals, based on value-added student achievement gains, for the purposes of—

''(A) determining the distribution of effective teachers and principals in schools across the State;

''(B) developing measures for helping teachers and principals to improve their instruction; and

''(C) evaluating effectiveness of teacher and principal preparation programs.

''(2) DATA REQUIREMENTS.—At a minimum, a statewide data system under this section shall—

''(A) track student course-taking patterns and teacher characteristics, such as certification status and performance on licensure exams; and

''(B) allow for the analysis of gains in achievement made by individual students over time, including gains demonstrated through student academic assessments under section 1111 and tests required by the State for course completion.

''(3) STANDARDS.—The Secretary shall develop standards for the collection of data with grant funds under this section to ensure that such data are statistically valid and reliable.

''(4) APPLICATION.—To seek a grant under this section, a State shall submit an application at such time, in such manner, and containing such information as the Secretary may require. At a minimum, each such application shall demonstrate to the Secretary's satisfaction that the assessments used by the State to collect and analyze data for purposes of this subsection—

''(A) are aligned to State standards;

''(B) have the capacity to assess the highest- and lowest-performing students; and

''(C) are statistically valid and reliable.

''(b) TEACHER TRAINING.—The Secretary may make grants to institutions of higher education, local educational agencies, nonprofit organizations, and teacher organizations to develop and implement innovative programs to provide preservice and in-service training to elementary and secondary schools on—

''(1) understanding increasingly sophisticated student achievement data, especially data derived from value-added longitudinal data systems; and

''(2) using such data to improve classroom instruction.

''(c) STUDY.—The Secretary shall enter into an agreement with the National Academy of Sciences—

''(1) to evaluate the quality of data on the effectiveness of elementary and secondary school teachers, based on value-added student achievement gains; and

''(2) to compare a range of models for collecting and analyzing such data.

''(d) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated $200,000,000 for the period of fiscal years 2006 and 2007 and such sums as may be necessary for each of the 4 succeeding fiscal years.''.

SEC. 402. COLLECTING NATIONAL DATA ON DISTRIBUTION OF TEACHERS.

Section 155 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9545) is amended by adding at the end the following:

''(d) SCHOOLS AND STAFFING SURVEY.—Not later than the end of fiscal year 2006, and every 3 years thereafter, the Statistics Commissioner shall publish the results of the Schools and Staffing Survey (or any successor survey).''.

TITLE V—RETENTION: KEEPING OUR BEST TEACHERS IN THE CLASSROOM

SEC. 501. AMENDMENT TO ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.

Part E of title II of the Elementary and Secondary Education Act of 1965, as added by titles II, III, and IV of this Act, is amended by adding at the end the following:

''Subpart 4—Retention and Working Conditions

''SEC. 2531. IMPROVING PROFESSIONAL DEVELOPMENT OPPORTUNITIES.

''(a) GRANTS.—The Secretary may make grants to eligible entities for the establishment and operation of new teacher centers or the support of existing teacher centers.

''(b) SPECIAL CONSIDERATION.—In making grants under this section, the Secretary shall give special consideration to any application submitted by an eligible entity that is—

''(1) a high-need local educational agency; or

''(2) a consortium that includes at least one high-need local educational agency.

''(c) DURATION.—Each grant under this section shall be for a period of 3 years.

''(d) REQUIRED ACTIVITIES.—A teacher center receiving assistance under this section shall carry out each of the following activities:

''(1) Providing high-quality professional development to teachers to assist them in improving their knowledge, skills, and teaching practices in order to help students to improve their achievement and meet State academic standards.

''(2) Providing teachers with information on developments in curricula, assessments, and educational research, including the manner in which the research and data can be used to improve teaching skills and practice.

''(3) Providing training and support for new teachers.

''(e) PERMISSIBLE ACTIVITIES.—A teacher center may use assistance under this section for any of the following:

''(1) Assessing the professional development needs of the teachers and other instructional school employees, such as librarians, counselors, and paraprofessionals, to be served by the center.

''(2) Providing intensive support to staff to improve instruction in literacy, mathematics, science, and other curricular areas necessary to provide a well-rounded education to students.

''(3) Providing support to mentors working with new teachers.

''(4) Providing training in effective instructional services and classroom management strategies for mainstream teachers serving students with disabilities and students with limited English proficiency.

''(5) Enabling teachers to engage in study groups and other collaborative activities and collegial interactions regarding instruction.

''(6) Paying for release time and substitute teachers in order to enable teachers to participate in the activities of the teacher center.

''(7) Creating libraries of professional materials and educational technology.

''(8) Providing high-quality professional development for other instructional staff, such as paraprofessionals, librarians, and counselors.

''(9) Assisting teachers to become highly qualified and paraprofessionals to become teachers.

''(10) Assisting paraprofessionals to meet the requirements of section 1119.

''(11) Developing curricula.

''(12) Incorporating additional on-line professional development resources for participants.

''(13) Providing funding for individual- or group-initiated classroom projects.

''(14) Developing partnerships with businesses and community-based organizations.

''(15) Establishing a teacher center site.

''(f) TEACHER CENTER POLICY BOARD.—

''(1) IN GENERAL.—A teacher center receiving assistance under this section shall be operated under the supervision of a teacher center policy board.

''(2) MEMBERSHIP.—

''(A) TEACHER REPRESENTATIVES.—The majority of the members of a teacher center policy board shall be representatives of, and selected by, the elementary and secondary school teachers to be served by the teacher center. Such representatives shall be selected through the teacher organization, or if there is no teacher organization, by the teachers directly.

''(B) OTHER REPRESENTATIVES.—The members of a teacher center policy board—

''(i) shall include at least two members who are representative of, or designated by, the school board of the local educational agency to be served by the teacher center;

''(ii) shall include at least one member who is a representative of, and is designated by, the institutions of higher education (with departments or schools of education) located in the area; and

''(iii) may include paraprofessionals.

''(g) APPLICATION.—

''(1) IN GENERAL.—To seek a grant under this section, an eligible entity shall submit an application at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

''(2) ASSURANCE OF COMPLIANCE.—An application under paragraph (1) shall include an assurance that the applicant will require any teacher center receiving assistance through the grant to comply with the requirements of this section.

''(3) TEACHER CENTER POLICY BOARD.—An application under paragraph (1) shall include the following:

''(A) An assurance that—

''(i) the applicant has established a teacher center policy board;

''(ii) the board participated fully in the preparation of the application; and

''(iii) the board approved the application as submitted.

''(B) A description of the membership of the board and the method of its selection.

''(h) DEFINITIONS.—In this section:

''(1) The term 'eligible entity' means a local educational agency or a consortium of 2 or more local educational agencies.

''(2) The term 'teacher center policy board' means a teacher center policy board described in subsection (f).

''(i) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated $100,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.''.

SEC. 502. EXCLUSION FROM GROSS INCOME OF COMPENSATION OF TEACHERS AND PRINCIPALS IN CERTAIN HIGH-NEED SCHOOLS OR TEACHING HIGH-NEED SUBJECTS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139A the following new section:

''SEC. 139B. COMPENSATION OF CERTAIN TEACHERS AND PRINCIPALS.

''(a) TEACHERS AND PRINCIPALS IN HIGH-NEED SCHOOLS.—

''(1) IN GENERAL.—In the case of an individual employed as a teacher or principal in a high-need school during the taxable year, gross income does not include so much remuneration for such employment (which would but for this paragraph be includible in gross income) as does not exceed $15,000.

''(2) HIGH-NEED SCHOOL.—For purposes of this subsection, the term 'high-need school' means any public elementary school or public secondary school eligible for assistance under section 1114 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6314).

''(b) TEACHERS OF HIGH-NEED SUBJECTS.—

''(1) IN GENERAL.—In the case of an individual employed as a teacher of high-need subjects during the taxable year, gross income does not include so much remuneration for such employment (which would but for this paragraph be includible in gross income) as does not exceed $15,000.

''(2) TEACHER OF HIGH-NEED SUBJECTS.—For purposes of this subsection, the term 'teacher of high-need subjects' means any teacher in a public elementary or secondary school who—

''(A) (i) teaches primarily 1 or more high-need subjects in 1 or more grades 9 through 12, or

''(ii) teaches 1 or more high-need subjects in 1 or more grades kindergarten through 8,

''(B) received a baccalaureate or similar degree from an eligible educational institution (as defined in section 25A(f)(2)) with a major in a high-need subject, and

''(C) is highly qualified (as defined in section 9101(23) of the Elementary and Secondary Education Act of 1965).

''(3) HIGH-NEED SUBJECTS.—For purposes of this subsection, the term 'high-need subject' means mathematics, science, engineering, technology, special education, teaching English language learners, or any other subject identified as a high-need subject by the Secretary of Education for purposes of this section.

''(c) LIMITATION ON TOTAL REMUNERATION TAKEN INTO ACCOUNT.—In the case of any individual whose employment is described in subsections (a)(1) and (b)(1), the total amount of remuneration which may be taken into account with respect to such employment under this section for the taxable year shall not exceed $25,000.''.

(b) CLERICAL AMENDMENT.—The table of section of such part is amended by inserting after the item relating to section 139A the following new item:

''Sec. 139B. Compensation of certain teachers and principals''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to remuneration received in taxable years beginning after the date of the enactment of this Act.

SEC. 503. ABOVE-THE-LINE DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS INCREASED AND MADE PERMANENT.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) of the Internal Revenue Code of 1986 is amended by striking ''In the case of'' and all that follows through ''$250'' and inserting ''The deductions allowed by section 162 which consist of expenses, not in excess of $500''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. CONFORMING AMENDMENTS.

The table of contents at section 2 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended—

(1) by inserting after the items relating to part D of title II of such Act the following new items:

''PART E—TEACHER EXCELLENCE FOR ALL CHILDREN

''Sec. 2500. Definitions.

''SUBPART 1—DISTRIBUTION

''Sec. 2501. Premium pay; loan repayment.

''Sec. 2502. Career ladders for teachers program.

''SUBPART 2—PREPARATION

''Sec. 2511. Establishing state-of-the-art teacher induction programs.

''Sec. 2512. Peer mentoring and review programs.

''Sec. 2513. Establishing state-of-the-art principal training and induction programs and performance-based principal certification.

''Sec. 2514. Study on developing a portable performance-based teacher assessment.

''SUBPART 3—21ST CENTURY DATA, TOOLS, AND ASSESSMENTS

''Sec. 2521. Developing value-added data systems.

''SUBPART 4—RETENTION AND WORKING CONDITIONS

''Sec. 2531. Improving professional development opportunities.''; and

(2) by inserting after the items relating to subpart 2 of part E of title IX of the Elementary and Secondary Education Act of 1965 the following new item:

''Sec. 9537. Assurance of reasonable progress toward equitable access to teacher quality.''.

By Mr. BURNS:

S. 1219. A bill to authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the water needs of the Dry Prairie Rural Water Association, Inc; to the Committee on Energy and Natural Resources.

Mr. BURNS. Mr. President, today I am introducing legislation that provides an important clarification to the Fort Peck Reservation Rural Water System Act of 2000. The water project authorized by that legislation will provide desperately needed drinking water to the residents of the Fort Peck Indian Reservation and the communities surrounding the Reservation Dry Prairie Rural Water System.

In order to accomplish this, the Assiniboine and Sioux Tribes of the Fort Peck Reservation and Dry Prairie are set to enter into an agreement, allowing Dry Prairie to use the water. The Dry Prairie allocation will be approximately 2,800 acre feet of water. The agreement is consistent with the provisions of the Tribes' Water Compact. However, to address any possible questions regarding the Tribes' grant of use of this water to Dry Prairie, both the Tribes and Dry Prairie would like the Secretary's authority to approve this water use agreement to be clearly approved by Congress. The legislation I am introducing today provides this clarification.

The Project, as authorized, calls for the water to be diverted from the Missouri River at a single location south of Poplar, MT, to an intake system or an infiltration gallery. The estimated amount of annual project diversion is 6,000 acre feet for the entire Project area. The Missouri River at the point of diversion has an average annual streamflow of approximately 7.5 million acre feet.

The Tribes, pursuant to their tribal-state water rights compact, one of the first in the Nation, hold a water right to nearly one million acre feet in the Missouri River. This compact has been approved by the Montana Water Court and is binding on all the parties. This Project will finally enable the Fort Peck Tribes to receive critical benefits from its water settlement with the United States and the State of Montana. As a result of this settlement, the Tribes are able to make a significant contribution to the Project: the water that will be used for the entire system. My legislation will provide the legal clarity necessary to ensure this project moves forward as intended.

By Mr. DODD (for himself, Ms. COLLINS, and Mr. LEAHY):

S. 1220. A bill to assist law enforcement in their efforts to recover missing

children and to strengthen the standards for State sex offender registration programs; to the Committee on the Judiciary.

Mr. DODD. Mr. President, I am pleased to join with my colleague from Maine, Senator COLLINS, and my colleague from Vermont, Senator LEAHY, to introduce legislation today to protect America's children from the vicious criminals who prey on them.

While we've made some progress in the last few years, anyone who picks up a newspaper today can see that far too many of our kids are still too vulnerable.

The most recent annual data shows that about 58,000 children were abducted by nonfamily members, usually people who are strangers to the children. The most frequent victims were teenage girls. Almost one-half of these victims were sexually molested.

Our bill, ''The Prevention and Recovery of Missing Children Act of 2005'', will take 3 common-sense steps to better protect the children of America.

First, it will require that information on a missing child be disseminated throughout the country within 2 hours through the National Crime Information Center database. The reason for this requirement is that time is of the essence. In cases where a child is killed, the evidence shows that the child died within the first three hours of being kidnapped. The more quickly that police throughout the country can be alerted, the more likely it is that we can save a child before a child is harmed.

Second, the bill will make it tougher for convicted sex offenders to escape the law and the watchful eye of the community in which they live. We know that far too many jurisdictions rely essentially on the voluntary actions of the convicted sex offender to register his residence, his car and license plate, and other pertinent information. Moreover, requirements vary from state to state and jurisdiction to jurisdiction.

Therefore the legislation we are introducing today will provide tough national standards that will require these criminals to register before they are released from prison. It will require, within 48 hours of moving to a new residence, that these individuals report to local law enforcement and provide information about their residence, a current photograph, DNA sample, as well as report the make, model, and license plate number of his or her vehicle and get a drivers license or ID. Every 90 days, they would have to verify their registry information and annually provide a new photograph. Failure to comply with these requirements would subject the criminal to a felony.

These new requirements are tough, but our children's safety is far too important to be left to patchwork laws and the voluntary action of convicted criminals whose likelihood of repeating the crime is extremely high.

Third, the legislation removes a current requirement that the names of missing children be deleted from the national database when those children turn 18. Just because a child turns 18 doesn't mean that our country should not try to find that child and certainly doesn't mean that the child should be forgotten.

Nothing we do as a Nation is more important than building a better future for our children. And, nothing is more important to building that future than keeping our children safe today.

Therefore, in my view, no legislation is more important to be enacted in this Congress than this legislation to protect our children from every parent's nightmare. I ask unanimous consent to have a brief summary of the bill printed in the RECORD.

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

PREVENTION AND RECOVERY OF MISSING CHILDREN ACT OF 2005—BRIEF SUMMARY

The most recent annual data shows that 58,000 children were abducted by nonfamily members, mostly strangers to the children. Most of the victims were teenage girls and nearly half were sexually molested. The National Crime Information Center (NCIC) database is a critical means of cooperation, linking 16,000 Federal, State, and local law enforcement agencies. Currently, registration for convicted sex offender rules vary by state. A number of States rely on sex offenders to self-report.

Improves missing child reporting requirements. Stops the practice of removing a missing child entry from the NCIC database when the child reaches age 18, to increase the chances for child recovery and investigative information available for other cases.

Improves the chances for recovery of missing children. Requires entry of child information into the NCIC database within 2 hours of receipt. Immediate entry is critical as evidenced by the fact that in 74 percent of abduction homicide cases the child is dead within 3 hours and 91 percent are killed within 24 hours.

Strengthens sex offender registration requirements. Each of the following suggested amendments are currently part of the statutory sex offender registration policies and procedures in at least one or more states.

Requires States to register sex offenders before they are released from prison. Permitting sex offenders to self-register can lead to under-registration and loss of potentially vital investigative information for law enforcement.

Requires the registering agency to obtain current fingerprints and a photograph (annually), as well as a DNA sample, from an offender at the time of registration. Up-to-date identifying information is a vital investigative tool and may help law enforcement connect seemingly unrelated cases in different jurisdictions.

Requires registrants to obtain either a driver's license or an identification card from the department of motor vehicles. This provides another mechanism through which law enforcement can track the location of potential re-offenders.

Requires that registration changes occur within 48 hours of the changes taking effect. The delay of registering changes creates a ''loophole'' through which sex offenders can re-offend and remain undetected.

Requires all registered sex offenders to verify their registry information every 90 days. Currently, this requirement is imposed for sexually violent predators only. Obtaining up-to-date registry information from all sex offenders is a vital investigative tool for law enforcement and obtaining it every 90 days provides earlier warning to law enforcement of non-compliant offenders who may have traveled into other jurisdictions, placing new communities at risk.

Requires States to inform another state when a known registered person is moving into its jurisdiction. Placing this burden solely on the sex offender leads to under-registration and places communities at risk.

In order to give sex offenders a strong incentive to comply with registry requirements, the bill mandates a felony designation for the crime of non-compliance. Noncompliance must be viewed as an ongoing offense.

By Mr. STEVENS (for himself, Mr. INOUYE, and Ms. CANTWELL):

S. 1222. A bill to amend the Internal Revenue Code of 1986 to reinstate the Oil Spill Liability Trust Fund tax and to maintain a balance of $3 billion in the Oil Spill Liability Trust Fund; to the Committee on Finance.

Mr. STEVENS. Mr. President, I introduce legislation today to maintain the solvency of the Oil Spill Liability Trust Fund established pursuant to the Oil Pollution Act of 1990. Shortly after midnight on March 24, 1989 the Exxon Valdez went aground on Bligh reef and caused an oil spill in Prince William Sound that is to this day still being monitored, studied, and restored. I wrote the Oil Pollution Act of 1990 in the aftermath of this disaster to provide the needed regulatory safeguards to reduce the potential for a similar spill to happen again and mitigate the environmental impacts in such an instance. The Oil Spill Liability Trust Fund is the cornerstone of the Oil Pollution Act ensuring funds for expeditious oil removal and providing for uncompensated damages to the environment. It is the ''polluter pays'' policy under the Act that requires the responsible party to pay back into the Fund all costs and damages related to a spill.

Unfortunately, the Oil Spill Liability Trust Fund is rapidly running out of money. At a recent Commerce Committee hearing the Commandant of the Coast Guard testified that the Oil Spill Liability Trust Fund would likely be depleted by 2009. And in its report on the ''Implementation of the Oil Pollution Act of 1990'', released May 12, 2005, the Coast Guard announced at the end of fiscal year 2004 there was $842 million remaining in the Fund. This is compared to previous years when the un-obligated balance was well over $1 billion, as was required under the Act through a 5 cents per barrel of oil tax collected from the oil industry on petroleum produced in or imported to the United States. The tax was suspended on July 1, 1993 when the un-obligated balance in the Fund exceeded $1 billion. Thereafter, the tax was reinstated on July 1, 1994 when the balance declined below $1 billion. However, the tax expired on December 31, 1994 pursuant to the sunset provision under the Act.

Since this time, the Oil Spill Liability Trust Fund has been unable to maintain a funding level above $1 billion from its various revenue sources prescribed under the Act, which consist of transfers from other existing pollution funds, interest on the Fund principal from U.S. Treasury investments, cost recoveries from responsible parties, and penalties. The only viable option to maintain the Fund's solvency is the reinstatement of the 5 cents per barrel of oil tax. The bill I introduce today will require the 5 cents tax go into effect after the last day of the first calendar quarter ending more than 30 days after the date of enactment. In addition, the bill provides that the Oil Spill Liabillty Trust Fund be funded at $3 billion, and if the fund drops below $2 billion the 5 cents per barrel tax will automatically be reinstated until the fund exceeds $3 billion.

By Mr. DODD:

S. 1223. A bill to amend the Public Health Service Act to improve the quality and efficiency of health care delivery through improvements in health care information technology, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, today I am pleased to announce the reintroduction of the Information Technology for Health Care Quality Act. By encouraging health care providers to invest in information technology (IT), this legislation has the potential to bring skyrocketing health care costs under control and improve the overall quality of care in our nation.

We are facing a health care crisis in our country. According to the Census Bureau, 45 million Americans were without health insurance in 2003—an increase of 1.4 million over 2002. In many respects, we have the greatest health system in the world, but far too many Americans are unable to take advantage of this system.

The number of uninsured continues to rise because the cost of health care continues to soar. Year after year, health care costs increase by double-digit percentages. The cost of employer-sponsored coverage increased by 11 percent last year, after a 14-percent increase in 2003. Employers are dropping health care coverage because they can no longer afford to foot the bill.

One of the ways to provide health care coverage to every American is to reign in health care costs. And expanding the use of IT in health care is the best tool we have to control costs. Studies have shown that as much as one-third of health care spending is for redundant or inappropriate care. Estimates suggest that up to 14 percent of laboratory tests and 11 percent of medication usage are unnecessary. Finally, and perhaps most disturbingly, we know that it takes, on average, 17 years for evidence to be incorporated into clinical practice. Along these same lines, a recent study showed that patients receive the best evidence-based treatment only about half the time.

Significant cost-savings will undoubtedly be realized simply by moving away from a paper-based system, where patient charts and test results are easily lost or misplaced, to an electronic system where data is easily stored, transferred from location to location, and retrieved at any time. With health IT, physicians will have their patients' medical information, at their fingertips. A physician will no longer have to take another set of X-Rays because the first set was misplaced, or order a test that the patient had six months ago in another hospital because she is unaware that the test ever took place. The potential for cost-savings from simply eliminating redundancies and unnecessary tests, and reducing administrative and transaction costs, is substantial.

Of course, when we consider the improved quality of care and patient safety that will result from wider adoption of health IT, the impact on cost is even greater. For example, IT can provide decision support to ensure that physicians are aware of the most up-to-date, evidence-based best practices regarding a specific disease or condition, which will reduce expensive hospitalizations. Given all of these benefits, estimates suggest that Electrontc Health Records (EHRs) alone could save more than $100 billion each year. The full benefits of IT could be multiple hundreds of billions annually. Such a significant reduction in health care costs would allow us to provide coverage to millions of uninsured Americans.

The benefits of IT go beyond economics. I am sure that all of my colleagues are familiar with the Institute of Medicine (IOM) estimate that up to 98,000 Americans die each year as a result of medical errors. A RAND Corporation study from last year showed that, on average, patients receive the recommended care for certain widespread chronic conditions only half of the time. That is an astonishing figure. To put it in a slightly different way, for many of the health conditions with which physicians should be most familiar, half of all patients are essentially being treated incorrectly.

Most experts in the field of patient safety and health care quality, incuding the IOM, agree that improving IT is one of the crucial steps towards safer and better health care. By providing physicians with access to patients' complete medical history, as well as electronic cues to help them make the correct treatment decisions, IT has the potential to significantly impact the care that Americans receive. It is impossible to put a value on the potential savings in human lives that would undoubtedly result from a nationwide investment in health care information technology.

It might seem counterintuitive that we can realize tremendous cost savings while, at the same time, improving care for patients. But in fact, improving patient care is essential to reducing costs. IT is the key to unlocking the door—it has the potential to lead to improvements in care and efficiency that will save patients' lives, reduce costs, and reduce the number of uninsured.

Unfortunately, despite the impact that IT can have on cost, efficiency, patient safety, and health care quality, most health care providers have not yet begun to invest in new technologies. The use of IT in most hospitals and doctors' offices lags far behind almost every other sphere of society. The vast majority of written work, such as patient charts and prescriptions, is still done using pen and paper. This leads to mistakes, higher costs, reduced quality of care, and in the most tragic cases, death.

There is no question in my mind that the federal government has a significant role to play in expanding investment in health IT. The legislation that I am introducing today defines that role. First, this bill would establish federal leadership in defining a Nationai Health Information Infrastructure (NHII) and adopting health IT standards. While I am pleased that the administration has already appointed a National Coordinator for Health Information Technology, I believe that the authority given to the Coordinator and the resources at his disposal are not equal to the enormity of his task. That is why my legislation creates an office in the White House, the Office of Health Information Technology, to oversee all of the Federal Government's activities in the area of health IT, and to create and implement a national strategy to expand the adoption of IT in health care.

This office would also be responsible for leading a collaborative effort between the public and private sectors to develop technical standards for health IT. These standards will ensure that health care information can be shared between providers, so that a family moving from Connecticut to California will not have to leave their medical history behind. At the same time, this bill would ensure that the adopted standards protect the privacy of patient records. While the creation of portable electronic health records is an important goal, privacy and confidentiality must not be sacrificed.

This legislation would also provide financial assistance to individual health care providers to stimulate investment in IT, and to communities to help them set up interoperable IT infrastructures at the local level, often referred to as Local Health Information Infrastructures—LHIIs. IT requires a huge capital investment. Many providers, especially small doctors offices, and safety-net and rural hospitals and health centers, simply cannot afford to make the type of investment that is needed.

Finally, this legislation would provide for the development of a standard

set of health care quality measures. The creation of these measures is critical to better understanding how our health care system is performing, and where we need to focus our efforts to improve the quality of care. IT has the potential to drastically improve our ability to capture these quality measures. All recipients of Federal funding under this bill would be required to regularly report on these measures, as well as the impact that IT is having on health care quality, efficency, and cost savings.

The establishment of standard quality measures is also the first step in moving our nation towards a system where payment for health care is more appropriately aligned—a system in which health care providers are paid not simply for the volume of patients that they treat, but for the quality of care that they deliver. To this end, my legislation would require the Secretary of Health and Human Services to report to Congress on possible changes to Federal reimbursement and payment structures that would encourage the adoption of IT to improve health care quality and patient safety.

I know that many of my colleagues, including Senator ENZI, Senator KENNEDY, Senator CLINTON, Senator FRIST and Senator GREGG, have an interest in this issue. I look forward to working with all of them to move legislation this year. It is time for our country to make a concerted effort to bring the health care sector into the 21st century. We must invest in health IT systems, and we must begin to do so immediately. The number uninsured, the skyrocketing cost of care, and the number of medical errors should all serve as a wake-up call. We have a tool at our disposal to address all of these problems, and there is no more time to waste. I urge my colleagues to support this legislation.

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. 1223

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Information Technology for Health Care Quality Act''.

SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end thereof the following:

''TITLE XXIX—HEALTH CARE INFORMATION TECHNOLOGY

''SEC. 2901. DEFINITIONS.

''In this title:

''(1) COVERAGE AREA.—The term 'coverage area' means the boundaries of a local health information infrastructure.

''(2) DIRECTOR.—The term 'Director' means the Director of the Office of Health Information Technology.

''(3) HEALTH CARE PROVIDER.—The term 'health care provider' means a hospital, skilled nursing facility, home health entity, health care clinic, community health center, group practice (as defined in section 1877(h)(4) of the Social Security Act, including practices with only 1 physician), and any other facility or clinician determined appropriate by the Director.

''(4) HEALTH INFORMATION TECHNOLOGY.—The term 'health information technology' means a computerized system that—

''(A) is consistent with the standards developed pursuant to section 2903;

''(B) permits the secure electronic transmission of information to other health care providers and public health entities; and

''(C) includes—

''(i) an electronic health record (EHR) that provides access in real-time to the patient's complete medical record;

''(ii) a personal health record (PHR) through which an individual (and anyone authorized by such individual) can maintain and manage their health information;

''(iii) computerized provider order entry (CPOE) technology that permits the electronic ordering of diagnostic and treatment services, including prescription drugs;

''(iv) decision support to assist physicians in making clinical decisions by providing electronic alerts and reminders to improve compliance with best practices, promote regular screenings and other preventive practices, and facilitate diagnoses and treatments;

''(v) error notification procedures so that a warning is generated if an order is entered that is likely to lead to a significant adverse outcome for the patient; and

''(vi) tools to allow for the collection, analysis, and reporting of data on adverse events, near misses, and the quality of care provided to the patient.

''(5) LOCAL HEALTH INFORMATION INFRASTRUCTURES.—The term 'local health information infrastructure' means an independent organization of health care entities established for the purpose of linking health information systems to electronically share information. A local health information infrastructure may not be a single business entity.

''(6) OFFICE.—The term 'Office' means the Office of Health Information Technology established under section 2902.

''SEC. 2902. OFFICE OF HEALTH INFORMATION TECHNOLOGY.

''(a) ESTABLISHMENT.—There is established within the executive office of the President an Office of Health Information Technology. The Office shall be headed by a Director to be appointed by the President. The Director shall report directly to the President.

''(b) PURPOSE.—It shall be the purpose of the Office to—

''(1) improve the quality and increase the efficiency of health care delivery through the use of health information technology;

''(2) provide national leadership relating to, and encourage the adoption of, health information technology;

''(3) direct all health information technology activities within the Federal Government; and

''(4) facilitate the interaction between the Federal Government and the private sector relating to health information technology development and use.

''(c) DUTIES AND RESPONSIBILITIES.—The Office shall be responsible for the following:

''(1) NATIONAL STRATEGY.—The Office shall develop a national strategy for improving the quality and enhancing the efficiency of health care through the improved use of health information technology and the creation of a National Health Information Infrastructure.

''(2) FEDERAL LEADERSHIP.—The Office shall—

''(A) serve as the principle advisor to the President concerning health information technology;

''(B) direct all health information technology activity within the Federal Government, including approving or disapproving agency policies submitted under paragraph (3);

''(C) work with public and private health information technology stakeholders to implement the national strategy described in paragraph (1); and

''(D) ensure that health information technology is utilized as fully as practicable in carrying out health surveillance efforts.

''(3) AGENCY POLICIES.—

''(A) IN GENERAL.—The Office shall, in accordance with this paragraph, approve or disapprove the policies of Federal departments or agencies with respect to any policy proposed to be implemented by such agency or department that would significantly affect that agency or department's use of health information technology.

''(B) SUBMISSION OF PROPOSAL.—The head of any Federal Government agency or department that desires to implement any policy with respect to such agency or department that would significantly affect that agency or department's use of health information technology shall submit an implementation proposal to the Office at least 60 days prior to the proposed date of the implementation of such policy.

''(C) APPROVAL OR DISAPPROVAL.—Not later than 60 days after the date on which a proposal is received under subparagraph (B), the Office shall determine whether to approve the implementation of such proposal. In making such determination, the Office shall consider whether the proposal is consistent with the national strategy described in paragraph (1). If the Office fails to make a determination within such 60-day period, such proposal shall be deemed to be approved.

''(D) FAILURE TO APPROVE.—Except as otherwise provided for by law, a proposal submitted under subparagraph (B) may not be implemented unless such proposal is approved or deemed to be approved under subparagraph (C).

''(4) COORDINATION.—The Office shall—

''(A) encourage the development and adoption of clinical, messaging, and decision support health information data standards, pursuant to the requirements of section 2903;

''(B) ensure the maintenance and implementation of the data standards described in subparagraph (A);

''(C) oversee and coordinate the health information technology efforts of the Federal Government;

''(D) ensure the compliance of the Federal Government with Federally adopted health information technology data standards;

''(E) ensure that the Federal Government consults and collaborates on decision making with respect to health information technology with the private sector and other interested parties; and

''(F) in consultation with private sector, adopt certification and testing criteria to determine if electronic health information systems interoperate.

''(5) COMMUNICATION.—The Office shall—

''(A) act as the point of contact for the private sector with respect to the use of health information technology; and

''(B) work with the private sector to collect and disseminate best health information technology practices.

''(6) EVALUATION AND DISSEMINATION.—The Office shall coordinate with the Agency for Health Research and Quality and other Federal agencies to—

''(A) evaluate and disseminate information relating to evidence of the costs and benefits

of health information technology and to whom those costs and benefits accrue;

''(B) evaluate and disseminate information on the impact of health information technology on the quality and efficiency of patient care; and

''(C) review Federal payment structures and differentials for health care providers that utilize health information technology systems.

''(7) TECHNICAL ASSISTANCE.—The Office shall utilize existing private sector quality improvement organizations to—

''(A) promote the adoption of health information technology among healthcare providers; and

''(B) provide technical assistance concerning the implementation of health information technology to healthcare providers.

''(8) FEDERAL REIMBURSEMENT.—

''(A) IN GENERAL.—Not later than 6 months after the date of enactment of this title, the Office shall make recommendations to the President and the Secretary of Health and Human Service on changes to Federal reimbursement and payment structures that would encourage the adoption of information technology (IT) to improve health care quality and safety.

''(B) PLAN.—Not later than 90 days after receiving recommendations under subparagraph (A), the Secretary shall provide to the relevant Committees of Congress a report that provides, with respect to each recommendation, a plan for the implementation, or an explanation as to why implementation is inadvisable, of such recommendations. The Office shall continue to monitor federally funded and supported information technology and quality initiatives (including the initiatives authorized in this title), and periodically update recommendations to the President and the Secretary.

''(d) RESOURCES.—The President shall make available to the Office, the resources, both financial and otherwise, necessary to enable the Director to carry out the purposes of, and perform the duties and responsibilities of the Office under, this section.

''(e) DETAIL OF FEDERAL EMPLOYEES.—Upon the request of the Director, the head of any Federal agency is authorized to detail, without reimbursement from the Office, any of the personnel of such agency to the Office to assist it in carrying out its duties under this section. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

''SEC. 2903. PROMOTING THE INTEROPERABILITY OF HEALTH CARE INFORMATION TECHNOLOGY SYSTEMS.

''(a) DEVELOPMENT, AND FEDERAL GOVERNMENT ADOPTION, OF STANDARDS.—

''(1) ADOPTION.—

''(A) IN GENERAL.—Not later than 2 years after the date of the enactment of this title, the Director, in collaboration with the Consolidated Health Informatics Initiative (or a successor organization to such Initiative), shall provide for the adoption by the Federal Government of national data and communication health information technology standards that promote the efficient exchange of data between varieties of provider health information technology systems. In carrying out the preceding sentence, the Director may adopt existing standards. Except as otherwise provided for in this title, standards adopted under this section shall be voluntary for private sector entities.

''(B) GRANTS OR CONTRACTS.—The Director may utilize grants or contracts to provide for the private sector development of standards for adoption by the Federal Government under subparagraph (A).

''(C) DEFINITION.—In this paragraph, the term 'provide for' means that the Director shall promulgate, and each Federal agency or department shall adopt, regulations to ensure that each such agency or department complies with the requirements of subsection (b).

''(2) REQUIREMENTS.—The standards developed and adopted under paragraph (1) shall be designed to—

''(A) enable health information technology to be used for the collection and use of clinically specific data;

''(B) promote the interoperability of health care information across health care settings;

''(C) facilitate clinical decision support through the use of health information technology; and

''(D) ensure the privacy and confidentiality of medical records.

''(3) PUBLIC PRIVATE PARTNERSHIP.—Consistent with activities being carried out on the date of enactment of this title, including the Consolidated Health Informatics Initiative (or a successor organization to such Initiative), health information technology standards shall be adopted by the Director under paragraph (1) at the conclusion of a collaborative process that includes consultation between the Federal Government and private sector health care and information technology stakeholders.

''(4) PRIVACY AND SECURITY.—The regulations promulgated by the Secretary under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and sections 261, 262, 263, and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) with respect to the privacy, confidentiality, and security of health information shall apply to the implementation of programs and activities under this title.

''(5) PILOT TESTS.—To the extent practical, the Director shall pilot test the health information technology data standards developed under paragraph (1) prior to their implementation under this section.

''(6) DISSEMINATION.—

''(A) IN GENERAL.—The Director shall ensure that the standards adopted under paragraph (1) are widely disseminated to interested stakeholders.

''(B) LICENSING.—To facilitate the dissemination and implementation of the standards developed and adopted under paragraph (1), the Director may license such standards, or utilize other means, to ensure the widespread use of such standards.

''(b) IMPLEMENTATION OF STANDARDS.—

''(1) PURCHASE OF SYSTEMS BY THE SECRETARY.—Effective beginning on the date that is 1 year after the adoption of the technology standards pursuant to subsection (a), the Secretary shall not purchase any health care information technology system unless such system is in compliance with the standards adopted under subsection (a), nor shall the Director approve any proposal pursuant to section 2902(c)(3) unless such proposal utilizes systems that are in compliance with the standards adopted under subsection (a).

''(2) RECIPIENTS OF FEDERAL FUNDS.—Effective on the date described in paragraph (1), no appropriated funds may be used to purchase a health care information technology system unless such system is in compliance with applicable standards adopted under subsection (a).

''(c) MODIFICATION OF STANDARDS.—The Director shall provide for ongoing oversight of the health information technology standards developed under subsection (a) to—

''(1) identify gaps or other shortcomings in such standards; and

''(2) modify such standards when determined appropriate or develop additional standards, in collaboration with standard setting organizations.

''SEC. 2904. LOAN GUARANTEES FOR THE ADOPTION OF HEALTH INFORMATION TECHNOLOGY.

''(a) IN GENERAL.—The Director shall guarantee payment of the principal of and the interest on loans made to eligible entities to enable such entities—

''(1) to implement local health information infrastructures to facilitate the development of interoperability across health care settings to improve quality and efficiency; or

''(2) to facilitate the purchase and adoption of health information technology to improve quality and efficiency.

''(b) ELIGIBILITY.—To be eligible to receive a loan guarantee under subsection (a) an entity shall—

''(1) with respect to an entity desiring a loan guarantee—

''(A) under subsection (a)(1), be a coalition of entities that represent an independent consortium of health care stakeholders within a community that—

''(i) includes—

''(I) physicians (as defined in section 1881(r)(1) of the Social Security Act);

''(II) hospitals; and

''(III) group health plans or other health insurance issuers (as such terms are defined in section 2791); and

''(ii) may include any other health care providers; or

''(B) under subsection (a)(2) be a health care provider;

''(2) to the extent practicable, adopt the national health information technology standards adopted under section 2903;

''(3) provide assurances that the entity shall submit to the Director regular reports on the activities carried out under the loan guarantee, including—

''(A) a description of the financial costs and benefits of the project involved and of the entities to which such costs and benefits accrue;

''(B) a description of the impact of the project on health care quality and safety; and

''(C) a description of any reduction in duplicative or unnecessary care as a result of the project involved;

''(4) provide assurances that not later than 30 days after the development of the standard quality measures pursuant to section 2906, the entity shall submit to the Director regular reports on such measures, including provider level data and analysis of the impact of information technology on such measures;

''(5) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require.

''(c) USE OF FUNDS.—Amounts received under a loan guarantee under subsection (a) shall be used—

''(1) with respect to a loan guarantee described in subsection (a)(1)—

''(A) to develop a plan for the implementation of a local health information infrastructure under this section;

''(B) to establish systems for the sharing of data in accordance with the national health information technology standards developed under section 2903;

''(C) to purchase directly related integrated hardware and software to establish an interoperable health information technology system that is capable of linking to a local health care information infrastructure; and

''(D) to train staff, maintain health information technology systems, and maintain adequate security and privacy protocols;

''(2) with respect to a loan guarantee described in subsection (a)(2)—

''(A) to develop a plan for the purchase and installation of health information technology;

''(B) to purchase directly related integrated hardware and software to establish an interoperable health information technology system that is capable of linking to a national or local health care information infrastructure; and

''(C) to train staff, maintain health information technology systems, and maintain adequate security and privacy protocols; and

''(3) to carry out any other activities determined appropriate by the Director.

''(d) SPECIAL CONSIDERATIONS FOR CERTAIN ENTITIES.—In awarding loan guarantees under this section, the Director shall give special consideration to eligible entities that—

''(1) provide service to low-income and underserved populations; and

''(2) agree to electronically submit the information described in paragraphs (3) and (4) of subsection (b) on a daily basis.

''(e) SPECIAL CONSIDERATIONS FOR LOCAL HEALTH INFORMATION INFRASTRUCTURES.—In awarding loan guarantees under this section to local health information infrastructures, the Director shall give special consideration to eligible entities that—

''(1) include at least 50 percent of the patients living in the designated coverage area;

''(2) incorporate public health surveillance and reporting into the overall architecture of the proposed infrastructure; and

''(3) link local health information infrastructures.

''(f) AREAS OF SPECIFIC INTEREST.—In awarding loan guarantees under this section, the Director shall include—

''(1) entities with a coverage area that includes an entire State; and

''(2) entities with a multi-state coverage area.

''(g) ADMINISTRATIVE PROVISIONS.—

''(1) AGGREGATE AMOUNT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the aggregate amount of principal of loans guaranteed under subsection (a) with respect to an eligible entity may not exceed $5,000,000. In any 12-month period the amount disbursed to an eligible entity under this section (by a lender under a guaranteed loan) may not exceed $5,000,000.

''(B) EXCEPTION.—The cumulative total of the principal of the loans outstanding at any time to which guarantees have been issued under subsection (a) may not exceed such limitations as may be specified in appropriation Acts.

''(2) PROTECTION OF FEDERAL GOVERNMENT.—

''(A) IN GENERAL.—The Director may not approve an application for a loan guarantee under this section unless the Director determines that—

''(i) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such percent per annum on the principal obligation outstanding as the Director determines to be reasonable, taking into account the range of interest rates prevailing in the private market for loans with similar maturities, terms, conditions, and security and the risks assumed by the United States; and

''(ii) the loan would not be available on reasonable terms and conditions without the enactment of this section.

''(B) RECOVERY.—

''(i) IN GENERAL.—The United States shall be entitled to recover from the applicant for a loan guarantee under this section the amount of any payment made pursuant to such loan guarantee, unless the Director for good cause waives such right of recovery, and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the loan was made.

''(ii) MODIFICATION OF TERMS.—Any terms and conditions applicable to a loan guarantee under this section may be modified by the Director to the extent the Director determines it to be consistent with the financial interest of the United States.

''(3) DEFAULTS.—The Director may take such action as the Director deems appropriate to protect the interest of the United States in the event of a default on a loan guaranteed under this section, including taking possession of, holding, and using real property pledged as security for such a loan guarantee.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, $250,000,000 for each of fiscal years 2006 through 2011.

''(2) AVAILABILITY.—Amounts appropriated under subparagraph (A) shall remain available for obligation until expended.

''SEC. 2905. GRANTS FOR THE PURCHASE OF HEALTH INFORMATION TECHNOLOGY.

''(a) IN GENERAL.—The Director may award competitive grants to eligible entities—

''(1) to implement local health information infrastructures to facilitate the development of interoperability across health care settings; or

''(2) to facilitate the purchase and adoption of health information technology.

''(b) ELIGIBILITY.—To be eligible to receive a grant under section (a) an entity shall—

''(1) demonstrate financial need to the Director;

''(2) with respect to an entity desiring a grant—

''(A) under subsection (a)(1), represent an independent consortium of health care stakeholders within a community that—

''(i) includes—

''(I) physicians (as defined in section 1881(r)(1) of the Social Security Act);

''(II) hospitals; and

''(III) group health plans or other health insurance issuers (as such terms are defined in section 2791); and

''(ii) may include any other health care providers; or

''(B) under subsection (a)(2) be a health care provider that provides health care services to low-income and underserved populations;

''(3) adopt the national health information technology standards developed under section 2903;

''(4) provide assurances that the entity shall submit to the Director regular reports on the activities carried out under the loan guarantee, including—

''(A) a description of the financial costs and benefits of the project involved and of the entities to which such costs and benefits accrue;

''(B) a description of the impact of the project on health care quality and safety; and

''(C) a description of any reduction in duplicative or unnecessary care as a result of the project involved;

''(5) provide assurances that not later than 30 days after the development of the standard quality measures pursuant to section 2906, the entity shall submit to the Director regular reports on such measures, including provider level data and analysis of the impact of information technology on such measures;

''(6) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

''(7) agree to provide matching funds in accordance with subsection (g).

''(c) USE OF FUNDS.—Amounts received under a grant under subsection (a) shall be used to—

''(1) with respect to a grant described in subsection (a)(1)—

''(A) to develop a plan for the implementation of a local health information infrastructure under this section;

''(B) to establish systems for the sharing of data in accordance with the national health information technology standards developed under section 2903;

''(C) to implement, enhance, or upgrade a comprehensive, electronic health information technology system; and

''(D) to maintain adequate security and privacy protocols;

''(2) with respect to a grant described in subsection (a)(2)—

''(A) to develop a plan for the purchase and installation of health information technology;

''(B) to purchase directly related integrated hardware and software to establish an interoperable health information technology system that is capable of linking to a national or local health care information infrastructure; and

''(C) to train staff, maintain health information technology systems, and maintain adequate security and privacy protocols;

''(3) maintain adequate security and privacy protocols; and

''(4) to carry out any other activities determined appropriate by the Director.

''(d) SPECIAL CONSIDERATIONS FOR CERTAIN ENTITIES.—In awarding grants under this section, the Director shall give special consideration to eligible entities that—

''(1) provide service to low-income and underserved populations; and

''(2) agree to electronically submit the information described in paragraphs (4) and (5) of subsection (b).

''(e) SPECIAL CONSIDERATIONS FOR LOCAL HEALTH INFORMATION INFRASTRUCTURES.—In awarding grants under this section to local health information infrastructures, the Director shall give special consideration to eligible entities that—

''(1) include at least 50 percent of the patients living in the designated coverage area;

''(2) incorporate public health surveillance and reporting into the overall architecture of the proposed infrastructure; and

''(3) link local health information infrastructures;

''(f) AREAS OF SPECIFIC INTEREST.—In awarding grants under this section, the Director shall include—

''(1) entities with a coverage area that includes an entire State; and

''(2) entities with a multi-state coverage area.

''(g) MATCHING REQUIREMENT.—

''(1) IN GENERAL.—The Director may not make a grant under this section to an entity unless the entity agrees that, with respect to the costs to be incurred by the entity in carrying out the infrastructure program for which the grant was awarded, the entity will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount equal to not less than 20 percent of such costs ($1 for each $5 of Federal funds provided under the grant).

''(2) DETERMINATION OF AMOUNT CONTRIBUTED.—Non-Federal contributions required under paragraph (1) may be in cash or in kind, fairly evaluated, including equipment, technology, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent

by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, $250,000,000 for each of fiscal years 2006 through 2011.

''(2) AVAILABILITY.—Amounts appropriated under paragraph (1) shall remain available for obligation until expended.''.

SEC. 3. STANDARDIZED MEASURES OF QUALITY HEALTH CARE AND DATA COLLECTION.

Title XXIX of the Public Health Service Act, as added by section 2, is amended by adding at the end the following:

''SEC. 2906. STANDARDIZED MEASURES OF QUALITY HEALTH CARE.

''(a) IN GENERAL.—

''(1) COLLABORATION.—The Secretary of Health and Human Services, the Secretary of Defense, and the Secretary of Veterans Affairs (referred to in this section as the 'Secretaries'), in consultation with the Quality Interagency Coordination Taskforce (as established by Executive Order on March 13, 1998), the Institute of Medicine, the Joint Commission on Accreditation of Healthcare Organizations, the National Committee for Quality Assurance, the American Health Quality Association, the National Quality Forum, the Medicare Payment Advisory Committee, and other individuals and organizations determined appropriate by the Secretaries, shall establish uniform health care quality measures to assess the effectiveness, timeliness, patient-centeredness, efficiency, equity, and safety of care delivered across all federally supported health delivery programs.

''(2) DEVELOPMENT OF MEASURES.—Not later than 18 months after the date of enactment of this title, the Secretaries shall develop standardized sets of quality measures for each of the 20 priority areas for improvement in health care quality as identified by the Institute of Medicine in their report entitled 'Priority Areas for National Action' in 2003, or other such areas as identified by the Secretaries in order to assist beneficiaries in making informed choices about health plans or care delivery systems. The selection of appropriate quality indicators under this subsection shall include the evaluation criteria formulated by clinical professionals, consumers, and data collection experts.

''(3) PILOT TESTING.—Each federally supported health delivery program may conduct a pilot test of the quality measures developed under paragraph (2) that shall include a collection of patient-level data and a public release of comparative performance reports.

''(b) PUBLIC REPORTING REQUIREMENTS.—The Secretaries, working collaboratively, shall establish public reporting requirements for clinicians, institutional providers, and health plans in each of the federally supported health delivery program described in subsection (a). Such requirements shall provide that the entities described in the preceding sentence shall report to the appropriate Secretary on the measures developed under subsection (a).

''(c) FULL IMPLEMENTATION.—The Secretaries, working collaboratively, shall implement all sets of quality measures and reporting systems developed under subsections (a) and (b) by not later than the date that is 1 year after the date on which the measures are developed under subsection (a)(2).

''(d) REPORTS.—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall—

''(1) submit to Congress a report that details the collaborative efforts carried out under subsection (a), the progress made on standardizing quality indicators throughout the Federal Government, and the state of quality measurement for priority areas that links data to the report submitted under paragraph (2) for the year involved; and

''(2) submit to Congress a report that details areas of clinical care requiring further research necessary to establish effective clinical treatments that will serve as a basis for additional quality indicators.

''(e) COMPARATIVE QUALITY REPORTS.—Beginning not later than 3 years after the date of enactment of this title, in order to make comparative quality information available to health care consumers, including members of health disparity populations, health professionals, public health officials, researchers, and other appropriate individuals and entities, the Secretaries shall provide for the pooling, analysis, and dissemination of quality measures collected under this section. Nothing in this section shall be construed as modifying the privacy standards under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

''(f) ONGOING EVALUATION OF USE.—The Secretary of Health and Human Services shall ensure the ongoing evaluation of the use of the health care quality measures established under this section.

''(g) EVALUATION AND REGULATIONS.—

''(1) EVALUATION.—

''(A) IN GENERAL.—The Secretary shall, directly or indirectly through a contract with another entity, conduct an evaluation of the collaborative efforts of the Secretaries to establish uniform health care quality measures and reporting requirements for federally supported health care delivery programs as required under this section.

''(B) REPORT.—Not later than 1 year after the date of enactment of this title, the Secretary of Health and Human Services shall submit a report to the appropriate committees of Congress concerning the results of the evaluation under subparagraph (A).

''(2) REGULATIONS.—

''(A) PROPOSED.—Not later than 6 months after the date on which the report is submitted under paragraph (1)(B), the Secretary shall publish proposed regulations regarding the application of the uniform health care quality measures and reporting requirements described in this section to federally supported health delivery programs.

''(B) FINAL REGULATIONS.—Not later than 1 year after the date on which the report is submitted under paragraph (1)(B), the Secretary shall publish final regulations regarding the uniform health care quality measures and reporting requirements described in this section.

''(h) DEFINITIONS.—In this section, the term 'federally supported health delivery program' means a program that is funded by the Federal Government under which health care items or services are delivered directly to patients.''.

By Mrs. BOXER (for herself and Mr. LAUTENBERG):

S. 1224. A bill to protect the oceans, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mrs. BOXER. Mr. President, as we commemorate World Oceans Week, we celebrate the wonder and beauty of the world's oceans. We celebrate the role our oceans play in commerce, fishing and shipping. We celebrate the beauty of our coral reefs and the potential lifesaving cures they might contain. And we celebrate our commitment to improving the health of our oceans, so that our children and grandchildren will have a chance to enjoy and cherish them.

That is why I am pleased to introduce the National Oceans Protection Act of 2005—comprehensive legislation to improve the health and governance of our oceans. The bill is co-sponsored by Senator LAUTENBERG.

This legislation ''was written after two major oceans commission reports in the past two years determined that our oceans are in a state of crisis. The congressionally-established U.S. Commission on Ocean Policy and the independent Pew Oceans Commission provided detailed descriptions of the challenges our oceans are facing as well as specific solutions to improve ocean health.

From pollution to over-fishing to invasive species, there are many factors that have contributed to the current crisis in which we find ourselves. Pollution threatens all aspects of ocean health. Every 8 months, nearly 11 million gallons of oil flow from American roads into our waters—the equivalent of the Exxon Valdez oil spill.

Our oceans are also showing signs of being over-fished, which affects the communities that depend on fish stocks for their livelihood. Many fish populations, including salmon, face the threat of being depleted to seriously low levels. Invasive species—such as the killer algae found near San Diego in 2000—are another threat to ocean health. In the San Francisco Bay alone, more than 175 invasive species threaten to overwhelm native species.

By targeting some of the most serious challenges facing our oceans, as outlined in the Commissions' reports, my legislation provides a comprehensive national approach to oceans protection and preservation.

Let me just mention a couple of the important provisions in four key areas:

First, the bill improves the governance of the oceans by giving the National Oceanic and Atmospheric Administration the independence it needs to better facilitate the management and oversight of our oceans.

Second, the bill protects and conserves marine wildlife and habitat by, among other things, creating protection areas and authorizing $50 million per year in grants to local communities to restore fisheries and coastal areas.

Third, the bill strengthens fisheries and encourages sustainable fishing in a number of ways, including requiring that entire ecosystems be taken into account when considering the health of a fishery.

And, fourth, the bill improves the quality of ocean water by establishing maximum amounts of pollution that a body of water can hold and still be healthy. In addition, financial assistance will be provided to local governments to reduce pollution and increase monitoring.

For their contributions to this legislation and their great leadership on

oceans issues, I would like to thank Senators INOUYE, GREGG, LAUTENBERG, and LEVIN, as well as former Senator Hollings.

It is my hope that this bill will provide the framework needed to protect and improve our oceans. The great environmentalist and ocean-explorer Jacques Cousteau once said, ''If we were logical, the future would be bleak, indeed. But we are more than logical. We are human beings, and we have faith, and we have hope, and we can work.''

As we celebrate World Oceans Week, it is my hope that we can work together to provide a bright future for the world's oceans and continue to protect our coastal economy.

I encourage my colleagues to join me in this effort to implement the recommendations of the U.S. Commission on Ocean Policy and the Pew Ocean Commission.

I ask unanimous consent that a summary of the bill and list of endorsements be printed in the RECORD.

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

THE NATIONAL OCEANS PROTECTION ACT

1. IMPROVING THE GOVERNANCE OF THE OCEANS

The Ernest ''Fritz'' Hollings National Ocean Policy and Leadership Act

Establishes an independent National Oceanic and Atmospheric Administration (NOAA).

Independence will occur after a two-year transition period.

Creates a Council on Ocean Stewardship that will annually review funding, policy recommendations, and programs for ocean protection.

The Council will function as a federal coordinating body of the various agencies that deal with oceans issues, and will be placed in the Executive Office of the President.

Other Governance Provisions

Requires that all activities on the Outer Continental Shelf—such as wave energy projects, bioextraction by biotech companies, and wind energy projects—receive a federal permit to ensure that projects do not pose an adverse threat to the health of the oceans current law only requires permits for oil and gas activities.

NOAA, working with other relevant agencies such as the EPA or the Army Corps of Engineers, will develop the permitting process, specifically to protect and preserve the marine environment, conserve fisheries and natural resources, and protect public health and safety.

NOAA makes the final determination of whether the activity poses a threat to any of these interests—and if so, a permit will not be given.

Establishes a Trust Fund in the U.S. Treasury and administered by NOAA composed of Federal money generated from these newly permitted activities; funds will be used for ocean conservation, science and research, and assistance to displaced fishermen.

Prohibits NOAA from issuing any lease for marine aquaculture until strong national standards and regulations are issued to protect fish stocks from disease, parasites, and invasive species and to prevent water quality impairment.

2. PROTECTING AND CONSERVING MARINE WILDLIFE AND HABITAT

Provides protection for ecologically-important coral areas by creating ''Coral Management Areas.''

NOAA must carry out a comprehensive ocean exploration and mapping program to determine areas where coral and other creatures live and the marine environments on which they depend for food and habitat.

Based on this data, NOAA may establish Coral Management Areas, which would trigger protection from certain fishing gear and practices, such as 'rockhopper' trawling gear on fishing nets that tear up essential habitat.

Authorizes $3 million per year for research on the effects of noise pollution (i.e. sonar) on marine mammals.

Establishes a voluntary buyback program for environmentally and ecologically unsafe ''gear''—such as boat engines.

Prohibits almost all discharges of ballast water in U.S. waters and requires ships to install technology to capture invasive species in ballast water before discharge—and creates an early detection and rapid response system to provide assistance to states to protect against invasive species.

Authorizes $50 million per year in grants to local communities to restore fishery and coastal habitats.

Authorizes $500 million per year in grants to local communities to purchase lands that are vulnerable to development and are important to the protection and preservation of habitats.

3. STRENGTHENING FISHERIES AND FISH HABITAT

Requires that, when determining the health of a fishery, the entire ecosystem be taken into account, not just the health of a particular fish species.

Each regional fishery council must establish a science and statistical committee (SSC) to help develop, collect, and evaluate statistical, biological, economic, social, and other scientific information—the regional councils must then set fish take allowances that are consistent with the SSC determinations, but even greater conservation measures can be taken.

Authorizes $115 million over five years for NOAA and the regional fishery councils to develop ecosystem-wide plans to protect and sustain fisheries.

Requires NOAA to establish standards for reducing bycatch and authorizes $55 million over five years to monitor compliance with those standards.

Creates Individual Fishing Quotas (IFQ) that are equitably allocated and that protect against bycatch, overfishing, and economic harm to local communities.

4. IMPROVING THE QUALITY OF OCEAN WATER

Requires EPA to establish maximum amounts of nutrient runoff pollution that a body of water can hold and still be healthy, taking into account regional conditions and reasonable economic considerations.

Requires water utilities to establish water treatment standards to remove nutrient pollution.

Mandates best management practices for agriculture—requiring farmers, to the greatest extent practicable, to take steps to curtail runoff.

Expedites beach pollution testing and posting by determining which beaches are most at risk of dangerous water conditions and requiring beach closures as soon as practicable but not longer than 48 hours after discovery.

Requires public notification and testing of sewer overflows.

Authorizes $11.2 billion per year in funding for state and local governments to reduce stormwater pollution and to increase monitoring and testing.

Requires a survey and continuous monitoring of contaminated sediments that are threats to bodies of water, and establishes standards to protect sensitive aquatic species from contaminated sediments.

SUPPORT FOR THE NATIONAL OCEANS PROTECTION ACT OF 2005

NATIONAL ORGANIZATIONS

Natural Resources Defense Council; The Ocean Conservancy; Oceana; Sierra Club; National Environmental Trust; Worldwide Fund for Conservation; U.S. PIRG; Defenders of Wildlife; E2 (Environmental Entrepreneurs); Ocean Champions; Blue Frontier Campaign; Pacific Coast Federation of Fishermen's Associations; Marine Fish Conservation Network; The Humane Society; ASPCA; Seaflow; Surfrider; Association of National Estuary Programs; Ocean Defense International; Earth Island Institute; Waterkeepers; America's Whale Alliance; Center for International Environmental Law; Acoustic Ecology Institute; Greenpeace Foundation; Earthtrust; Western Wildlife Conservancy; Mangrove Action Project; The Whaleman Foundation; Campaign to Safeguard America's Waters; Reef Relief; WildLaw; Conservation Law Foundation; Cook Inlet Keeper; Cry of the Water; Global Coral Reef Alliance; Save Our Shoreline, Inc; Marine Conservation Biology Institute; Public Employees for Environmental Responsibility (PEER); Reef Protection International; International Forum on Globalization; The Ocean Mammal Institute; Endangered Species Coalition.

CALIFORNIA ORGANIZATIONS

California League of Conservation Voters; Aquatic Adventures Science Education Foundation, San Diego; The Bay Institute, Novato; Baykeeper, San Francisco; Bolinas Lagoon Foundation, Stinson Beach; California Greenworks, Buena Park; Catalina Island Conservancy, Avalon; Community Environmental Council, Santa Barbara; Crystal Cove Alliance, Corona Del Mar; Endangered Habitats League, Los Angeles; The Environmental Action Committee of West Marin, Point Reyes Station; Environmental Center of San Luis Obispo County, San Luis Obispo; Environmental Defense Center, Santa Barbara; Friends of Santa Ana Zoo, Santa Ana; Friends of the Sea Otter, Pacific Grove; Golden Gate Audubon Society, Berkeley; Grassroots Coalition, Los Angeles; Guadalupe-Nipomo Dunes Center and Guadalupe-Nipomo Dunes Collaborative; Heal the Bay, Santa Monica; Huntington Beach Tree Society, Huntington Beach; The Marine Mammal Center, Sausalito; Monterey Bay Aquarium, Monterey Monterey Bay Sanctuary Foundation, Monterey Moss Landing Marine Laboratories, Moss Landing; Newport Bay Naturalists and Friends, Newport Beach; The Ocean Conservancy, Santa Cruz Field Office Ocean Institute, Dana Point; O'Neill Sea Odyssey, Santa Cruz; The Orange County Interfaith Coalition for the Environment, Tustin; PRBO Conservation Science, Stinson Beach; San Diego Audubon Society, San Diego; San Diego Baykeeper San Francisco Zoo, San Francisco; San Luis Bay Surfrider Foundation, San Luis Obispo San Luis Obispo Coastkeeper, San Luis Obispo; Santa Barbara Channelkeper, Santa Barbara; Santa Monica Bay Audubon Society, Santa Monica Save Our Shores, Santa Cruz; Sea Studios Foundation, Monterey; Southwest Wetlands Interpretive Association, Imperial Beach; Steinhart Aquarium at the California Academy of Sciences, San Francisco; Surfrider Foundation, Marin County; Surfrider Foundation—Monterey Chapter; Trillium Press, Brisbane; Wildcoast, Imperial Beach; Wishtoyo Foundation, Oxnard; Baykeeper, San Francisco; Catalina Island Conservancy, Avalon; Environmental Defense Center, Santa Barbara; The Marine Mammal Center, Sausalito.

ELECTED OFFICIALS

Marty Blum, Mayor, City of Santa Barbara; Harold Brown, President, Marin County Board of Supervisors; Denise Moreno

Ducheny, California State Senator, 40th District; Donna Frye, Councilniember, City of San Diego; Fred Keeley, Treasurer-Tax Collector, County of Santa Cruz; Christine Kehoe, California State Senator, 39th District; John Laird, California State Assembly member, 27th Assembly District; Patricia McCoy, Councilmember, City of Imperial Beach; Kevin McKeown, Councilmember, City of Santa Monica; Aaron Peskin, President, San Francisco Board of Supervisors; Wayne Rayfield, Mayor, City of Dana Point; Murray Rosenbluth, Mayor, City of Port Hueneme; Diana Rose, Mayor, City of Imperial Beach; Susan Rose, Supervisor, Santa Barbara County; Bill Rosendahl, Councilmember-Elect, City of Los Angeles; Lori Saldafiña, Californa State Assembly member and Assistant Majority Whip, 76th District; Esther Sanchez, Deputy Mayor, City of Oceanside; Das Williams, Councilmember, City of Santa Barbara; Mayda Winter, Councilmember, City of Imperial Beach.

INDIVIDUALS

Jean-Michel Cousteau, President, Ocean Futures Society; Dr. Sylvia Earle, Explorer-in Residence, the National Geographic Society; Gary Griggs, Director, Institute of Marine Sciences, University of California Santa Cruz; David Helvarg, Author, Blue Frontier—Saving America's Living Seas; Kurt Lieber, President and Founder, Ocean Defenders Alliance; Mark Silberstein, Executive Director, Elkhorn Slough Foundation; Dr. Susan Williams, Director, Bodega Marine Laboratory.

OTHER ORGANIZATIONS

Gulf of Mexico Foundation; Turtle Island Restoration Network; Potomac Riverkeeper; Coastwalk; Gulf Restoration Network; Florida Oceanographic Society; Patapsco Riverkeeper, Inc.; The Coastal Marine Resource Center of New York; New York Whale and Dolphin Action League; San Francisco Ocean Film Festival.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 165—CONGRATULATING THE SMALL BUSINESS DEVELOPMENT CENTERS OF THE SMALL BUSINESS ADMINISTRATION ON THEIR 25 YEARS OF SERVICE TO AMERICA'S SMALL BUSINESS OWNERS AND ENTREPRENEURS

Ms. SNOWE (for herself, Mr. COLEMAN, Mr. ISAKSON, Mr. VITTER, Ms. LANDRIEU, Mr. KERRY, Mr. BURNS, Mr. PRYOR, Mr. BAYH, and Mr. LIEBERMAN) submitted the following resolution; which was referred to the Committee on Small Business and Entrepreneurship:

S. RES. 165

Whereas in 1980, Congress established the Small Business Development Center program to deliver management and technical assistance counseling and provide educational programs to prospective and existing small business owners;

Whereas over the last 25 years, the Small Business Development Center network counseled and trained more than 11,000,000 small business owners and entrepreneurs, helping small businesses start and grow and create jobs in the United States;

Whereas the Small Business Development Centers exemplify the partnership between private sector institutions of higher education and Government, working together to support small businesses and entrepreneurship;

Whereas the Small Business Development Centers have been a critical partner in the start-up and growth of the Nation's small businesses ;

Whereas in 2004, the Small Business Development Centers counseled and trained approximately 750,000 new and existing small businesses;

Whereas the Small Business Development Centers deliver specialized assistance through a network of 63 lead centers and more than 1,100 service locations, in all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa;

Whereas the Small Business Development Centers provide assistance tailored to the local community and the needs of the client, including counseling and training on financial management, marketing, production and organization, international trade assistance, procurement assistance, venture capital formation, and rural development, among other services that improve the economic environment in which small businesses compete;

Whereas in 2003, the Small Business Development Center's in-depth counseling helped small businesses generate nearly $6,000,000,000 in revenues and save an additional $7,000,000,000 in sales;

Whereas in 2003, the Small Business Development Centers helped create and retain over 163,000 jobs across the United States; and

Whereas the Small Business Development Centers proudly celebrate 25 years of service to America's small business owners and entrepreneurs: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the Small Business Development Centers of the Small Business Administration on their 25 years of service to America's small business owners and entrepreneurs;

(2) recognizes their service in helping America's small businesses start, grow, and flourish; and

(3) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the Association for Small Business Development Centers for appropriate display.

Ms. SNOWE. Mr. President, I rise today in support of a Senate resolution that honors the Small Business Administration's (SBA's) Small Business Development Centers (SBDCs) on their tremendous service and dedication to America's small businesses and entrepreneurs over the past 25 years.

Small businesses form a solid foundation for economic growth and job creation. The successes of our Nation's 25 million small businesses have helped create nearly three-quarters of all new jobs and produce 50 percent of our country's Gross Domestic Product.

As Chair of the Senate Committee on Small Business and Entrepreneurship, I understand that the spirit of entrepreneurs, to explore beyond their limits, is the engine driving our economy. Each year 3 to 4 million new businesses open their doors to the marketplace and one in 25 adult Americans takes the steps to start a business. Clearly, it is essential we ensure that every American has the necessary resources available to start, grow and develop a business.

Among the most valuable assets for any entrepreneur is the SBA's Small Business Development Center program. Over the past 25 years, the SBDCs have provided unique one-on-one counseling to over 11 million Americans helping new business start-ups, sustain struggling firms, and expand growth for existing firms.

Through a network of 63 lead centers and more than 1,100 service locations, the SBDCs deliver their services in all 50 States, as well as the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. From financial management, to marketing to procurement assistance, the SBDCs tailor their counseling and training to the needs of the client in each local community.

In addition, the SBDCs have an extraordinary record of excellence. Having counseled and trained more than 50,000 business owners and entrepreneurs in 1980, today they counsel and train almost three-quarters of a million start-ups and existing small businesses annually. Moreover, in 2003, the SBDCs helped create and retain over 163,000 jobs across America.

In 2004 alone, the SBDCs in my home State of Maine assisted entrepreneurs in obtaining over $16 million in loans, helped create and retain over 700 jobs, counseled nearly 3,000 clients and held 200 training events. Just as there's no question that small businesses are the lifeblood of our economy, SBDCs are truly the lifeline for entrepreneurs.

As we celebrate the SBDCs 25th Anniversary, we must reaffirm our commitment to foster an environment that is favorable to economic growth and development for new and growing firms. On that note, the 36 percent cut in the SBA's budget over the last five years has been a step in the wrong direction, and it is a misjudgement I hope Congress will reverse. I will continue to fight to ensure that the SBA and its resource partners like the SBDCs obtain the valuable resources they deserve.

The challenges of starting a new business are surpassed only by the determination and ingenuity of America's entrepreneurs. By strengthening the SBA's core programs such as the SBDC program, we can encourage job growth and provide American small businesses an even greater opportunity to thrive and prosper.

Today I urge my colleagues to show their support for the Small Business Development Center program during their silver anniversary and support this Resolution. Small Business Development Centers are a critical component to strengthening our Nation's economy and creating American jobs, and they clearly deserve our accolades and recognition.

SENATE RESOLUTION 166—TO AUTHORIZE THE PRINTING OF A COLLECTION OF THE RULES OF THE COMMITTEES OF THE SENATE

Mr. LOTT submitted the following resolution; which was considered and agreed to:

S. RES. 166

Resolved, That a collection of the rules of the committees of the Senate, together with related materials, be printed as a Senate document, and that there be printed 500 additional copies of such document for the use of the Committee on Rules and Administration.

SENATE RESOLUTION 167—RECOGNIZING THE IMPORTANCE OF SUN SAFETY, AND FOR OTHER PURPOSES

Mr. MCCAIN (for himself and Mr. SUNUNU) submitted the following resolution; which was considered and agreed to:

S. RES. 167

Whereas Americans of all ages cherish the pleasures of outdoor activities, and too few recognize that overexposure to the sun and its ultraviolet radiation, classified by the Department of Health and Human Services as a known carcinogen, is the leading cause of skin cancer;

Whereas it is critically important to be safe in the sun because skin cancer is the fastest growing cancer in our country today, affecting 1 in 5 Americans during their lifetimes and killing 1 person every hour of every day;

Whereas more than 1,000,000 new cases of skin cancer will be diagnosed in the United States this year, accounting for nearly half of all new cases of cancer and exceeding the incidence of breast, prostate, lung, and colon cancer combined;

Whereas most people receive approximately 80 percent of their lifetime sun exposure by age 18, setting the stage for skin cancer later in life;

Whereas skin cancer is highly preventable by taking simple precautions when engaged in outdoor activities;

Whereas research demonstrates that practicing good sun safety has the potential to significantly reduce the risk of skin cancer;

Whereas the Sun Safety Alliance and its members have dedicated themselves to promoting sun safety, eliminating skin cancer from excessive sun exposure, and encouraging sun protection practices, especially among children; and

Whereas the Sun Safety Alliance has designated the week of June 5, 2005, to June 11, 2005, as National Sun Safety Week: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes

(A) the importance of sun safety; and

(B) the need for school-based sun safety education programs;

(2) encourages all Americans to protect themselves and their children from the dangers of excessive sun exposure;

(3) congratulates the Sun Safety Alliance for its efforts to promote sun safety and prevent skin cancer; and

(4) supports the goals and ideas of National Sun Safety Week.

SENATE CONCURRENT RESOLUTION 41—RECOGNIZING THE SACRIFICES BEING MADE BY THE FAMILIES OF MEMBERS OF THE ARMED FORCES AND SUPPORTING THE DESIGNATION OF A WEEK AS NATIONAL MILITARY FAMILIES WEEK

Mr. HAGEL (for himself and Mr. MARTINEZ) submitted the following concurrent resolution; which was referred to the Committee on Armed Services:

S. CON. RES. 41

Whereas the people of the United States have a sincere appreciation for the sacrifices being made by the families of members of the Armed Forces while their loved ones are deployed in the service of their country;

Whereas military families face unique challenges while their loved ones are deployed because of the lengthy and dangerous nature of these deployments;

Whereas the strain on military family life is further increased when these deployments become more frequent;

Whereas military families on the home front remain resilient because of their comprehensive and responsive support system;

Whereas the brave members of the Armed Forces who have defended the United States since September 11, 2001, continue to have incredible, unending support from their families; and

Whereas the week of June 12, 2005, has been proposed to be designated as National Military Families Week: Now, therefore be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes the sacrifices of military families and the support they provide for their loved ones serving as members of the Armed Forces; and

(2) supports the designation of a week as National Military Families Week.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition and Forestry be authorized to conduct a hearing during the session of the Senate on Thursday, June 9, 2005 at 2 p.m. in SR–328A. The purpose of this hearing will be to review the nominations of Mr. Walter Lukken and Mr. Reuben Jeffries to be commissioners of the Commodity Futures Trading Commission and also for Mr. Jeffries to be chairman of the Commission.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. SESSIONS. 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 Thursday, June 9, 2005, at 10 a.m. to mark up S. 582 ''The Little Rock Central High School Desegregation 50th Anniversary Commemorative Coin Act,'' and to vote on the nomination of Mr. Ben S. Bernanke, of New Jersey, to be a member of the Council of Economic Advisers; and Mr. Brian D. Montgomery, of Texas, to be assistant secretary of Housing/Federal Housing Commissioner, U.S. Department of Housing and Urban Development.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Review of General Aviation Security, at 11 a.m., on Thursday, June 9, 2005, in SR–253.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 9, 2005 at 10:30 a.m. to hold a hearing on nominations.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 9, 2005 at 2:30 p.m. to hold a hearing on the Western Hemisphere.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to hold a hearing during the session of the Senate on Thursday, June 9, 2005 at 10 a.m. in SD–430.

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

COMMITTEE ON THE JUDICIARY

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, June 9, 2005, at 9:30 a.m. in Dirksen Room 226.

Agenda

I. Nominations:

Terrence W. Boyle, II to be U.S. Circuit Judge for the Fourth Circuit; Brett M. Kavanaugh to be U.S. Circuit Judge for the District of Columbia; Rachel Brand to be an Assistant Attorney General for the Office of Legal Policy; Alice S. Fisher to be an Assistant Attorney General for the Criminal Division.

II. Bills:

S. 491, Christopher Kangas Fallen Firefighter Apprentice Act, Specter, Leahy;

S. 1181, Which is Section 8 of Openness Promotes Effectiveness in our National Government Act of 2005, Cornyn, Leahy, Feingold.

III. Matters:

Senate Judiciary Committee Rules.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, June 9, 2005, for a committee hearing to receive testimony on various healthcare-related bills pending before the Committee.

The hearing will take place in Room 418 of the Russell Senate Office Building at 10 a.m.

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

SUBCOMMITTEE ON BIOTERRORISM AND PUBLIC HEALTH PREPAREDNESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Subcommittee on Bioterrorism and Public Health Preparedness, be authorized to hold a hearing during the session of the Senate on Thursday, June 9, 2005 at 2 p.m. in SD–430.

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

PRIVILEGE OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Dan Stevens of my staff be granted floor privileges for the duration of today's session.

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

Mr. HATCH. Mr. President, I ask unanimous consent that the privilege of the floor be granted for the remainder of this session to Ken Valentine, a detailee from the Secret Service who is serving on my staff.

The PRESIDING OFFICER. Without objection, it is so ordered

UNANIMOUS CONSENT AGREEMENT—PRINTING OF STANDING RULES OF THE SENATE

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be directed to prepare a revised edition of the Standing Rules of the Senate, and that such standing rules be printed as a Senate document. I further ask unanimous consent that beyond the usual number, 2,500 additional copies of this document be printed for the use of the Committee on Rules and Administration.

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

AUTHORIZING THE PRINTING OF A COLLECTION OF THE RULES OF SENATE COMMITTEES

Mr. FRIST. I ask unanimous consent the Senate now proceed to the consideration of S. Res. 166, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 166) to authorize the printing of the collection of rules of the committees of the Senate.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid on the table, and any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 166) was agreed to, as follows:

S. RES. 166

Resolved, That a collection of the rules of the committees of the Senate, together with related materials, be printed as a Senate document, and that there be printed 500 additional copies of such document for the use of the Committee on Rules and Administration.

RECOGNIZING THE IMPORTANCE OF SUN SAFETY

Mr. FRIST. I ask unanimous consent the Senate now proceed to the consideration of S. Res. 167, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 167) recognizing the importance of sun safety, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 167) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 167

Whereas Americans of all ages cherish the pleasures of outdoor activities, and too few recognize that overexposure to the sun and its ultraviolet radiation, classified by the Department of Health and Human Services as a known carcinogen, is the leading cause of skin cancer;

Whereas it is critically important to be safe in the sun because skin cancer is the fastest growing cancer in our country today, affecting 1 in 5 Americans during their lifetimes and killing 1 person every hour of every day;

Whereas more than 1,000,000 new cases of skin cancer will be diagnosed in the United States this year, accounting for nearly half of all new cases of cancer and exceeding the incidence of breast, prostate, lung, and colon cancer combined;

Whereas most people receive approximately 80 percent of their lifetime sun exposure by age 18, setting the stage for skin cancer later in life;

Whereas skin cancer is highly preventable by taking simple precautions when engaged in outdoor activities;

Whereas research demonstrates that practicing good sun safety has the potential to significantly reduce the risk of skin cancer;

Whereas the Sun Safety Alliance and its members have dedicated themselves to promoting sun safety, eliminating skin cancer from excessive sun exposure, and encouraging sun protection practices, especially among children; and

Whereas the Sun Safety Alliance has designated the week of June 5, 2005, to June 11, 2005, as National Sun Safety Week: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes

(A) the importance of sun safety; and

(B) the need for school-based sun safety education programs;

(2) encourages all Americans to protect themselves and their children from the dangers of excessive sun exposure;

(3) congratulates the Sun Safety Alliance for its efforts to promote sun safety and prevent skin cancer; and

(4) supports the goals and ideas of National Sun Safety Week.

THANKING THE SPRING 2005 PAGES

Mr. FRIST. Mr. President, before we leave I want to give a final thanks to the page class of the spring of 2005. Tomorrow is a special day. They will be receiving their certificates and will be leaving us to return home. We rarely take that opportunity to say thank you for your service, and thus we do so tonight. They have done a tremendous job over the past several weeks. We thank them for their hard work.

I ask unanimous consent their names be printed in the RECORD.

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

Caroline Cannon, Luke Combellick, Preston Eldridge, Mimi Faller, Geraldine Flanagan, Mary Kathryn Flanagan, Trevor Garrett, Kyle Kilroy, Meg Lavin, Andrew Leciejewski, Natalie Nielson, Jimmy Peterson, Laura Sankovitch, Rylee Sommers-Flanagan, Will Sterling, Jared Tate, Natalie Walters, Don Willie, Kelly Bernero, Mark Hammons, Andrew Humphrey, Morandi Hurst, Heidi Klein, Tiffany Mason, Bryan Miller, Tyler Salisbury, Ellen Tyner, Emma Van Susteren.

ORDERS FOR MONDAY, JUNE 13, 2005

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, the Senate stand in adjournment until 2 p.m. Monday, June 13; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then return to executive session and begin consideration of the nomination of Tom Griffith to be a United States circuit court judge for the DC Circuit as under the order.

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER (Mr. ISAKSON). The Democratic leader.

Mr. REID. Mr. President, as I expressed to the distinguished majority leader personally, and I say so today, and I have said so publicly on a number of occasions, I wish this week we had been working on something else. The

fact is, we have now what I consider a bump in the road out of the way. I am glad we are now going to move on to legislative business. We have so much to do in the next few, literally, weeks we have remaining in this legislative session.

I appreciate very much the people on both sides of the aisle allowing us to move forward on the Energy bill. It is a big piece of legislation that is vitally important to the people of America. Of course, in a big piece of legislation such as this, there will be problems, and certainly there will be in this bill.

Again, as I said previously, I am grateful to Senators DOMENICI and BINGAMAN for getting the bill to us initially. It is a bill that is developed by consensus of the committee. That speaks well of both Senator DOMENICI and Senator BINGAMAN and the members of the committee. That is going to be some heavy lifting in legislative terms.

The distinguished majority leader has set a very high mark for the Senate before we leave here. He wants to finish at least two appropriations bills. I think it is possible we can do three appropriations bills. I hope we can do that. If we can get rid of—I say that in a most positive sense—the Homeland Security, the Energy, water, and Interior bill, and it does not matter what order, that would be good work for this work period.

I also express to the distinguished majority leader my appreciation for his hard work. We are not there yet. But we hope we can arrive at some agreement on stem cell research during that work period. It would make everything move a little more quickly if we do that. The leader is working on that. I am working on that. I hope we can, maybe in the next week, agree on something that will allow us to do that so we do not have a lot of hurdles thrown up in other legislation because of that.

The PRESIDING OFFICER. Does the Senator withdraw his reservation?

Mr. REID. I do.

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

Mr. FRIST. Mr. President, briefly in response—really in agreement—as we heard from the Democrat leader, we have a lot to do. We have an ambitious agenda with a superb piece of legislation that we bring to the Senate early next week, the Energy bill, which addresses gasoline prices, energy independence, a move toward energy independence, issues important to the American people.

In addition to appropriations bills, the Democratic leader mentioned stem cell research. I add to that the Department of Defense authorization which is ready for consideration. Asbestos—the distinguished Senator from Pennsylvania who was just here, Senator SPECTER, has worked so hard on that particular bill. That is important to job creation, to health care, to getting benefits to people who need it. We have a lot to do. I look forward to beginning that process.

Next week, we have one more judge, Thomas Griffith, on Monday. Then we can go to the Energy legislation. So we have an ambitious agenda, but we are working together and we have made a huge amount of progress in the last week.

Mr. REID. Will the Senator yield?

Mr. FRIST. I yield.

Mr. REID. It has been brought to my attention that we also have to do in the next few weeks the Native Hawaiian legislation we talked about that we would help Senator AKAKA on; also, we have a couple of hours the Majority Leader has agreed to set aside for the China trade issue with Senator SCHUMER. Those things I am sure we can work in, but those are things we have to keep in mind that we have to do.

Mr. FRIST. Mr. President, as you can see, the list is huge. We are going about it systematically, in discussion on a regular basis with the Democratic leader. That is the way we will continue as we address many issues important to the American people.

NATIONAL MILITARY FAMILIES WEEK

Mr. FRIST. Mr. President, I ask unanimous consent the Senate now proceed to consideration of H. Con. Res. 159 which was received from the House.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 159) recognizing the sacrifices being made by the families and members of the Armed Forces and supporting the designation of a week as National Military Families Week.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. I ask unanimous consent the concurrent resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 159) was agreed to.

The preamble was agreed to.

PROGRAM

Mr. FRIST. On Monday, the Senate will consider the Griffith nomination to the D.C. Circuit. There will be up to 4 hours of debate on the nomination on Monday afternoon. Then we will set the nomination aside with a confirmation vote occurring on Tuesday morning at 10 a.m.

At 6:30 p.m. Monday evening, the Senate will proceed to S. Res. 39 relating to antilynching. That resolution will not require a rollcall vote and therefore there will be no votes on Monday. On Tuesday, we will begin the Energy bill. Chairman DOMENICI and Senator BINGAMAN will be ready to consider amendments on Tuesday in order to make headway on that important bill. I encourage Senators to come forward early with their amendments and to contact the managers of their intent to offer specific amendments.

ORDER FOR ADJOURNMENT

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order, following the remarks of Senator DEWINE for up to 15 minutes and Senator SALAZAR to follow Senator DEWINE for up to 10 minutes.

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

The Senator from Ohio.

FILIBUSTER AGREEMENT

Mr. DEWINE. Mr. President, we have just seen a major accomplishment in the Senate in the last several weeks: the confirmation of five nominees to serve on the Federal bench. These confirmations were achieved after a historic agreement was reached in the Senate, an agreement that allowed us to proceed.

We have seen five individuals confirmed by the Senate—Priscilla Owen, Janice Rogers Brown, William Pryor, David McKeague, and Richard Griffin. The majority leader has indicated that Thomas Griffith will be on the Senate floor shortly and we will take up that nomination.

This represents a major accomplishment and a major change in the way the Senate has been doing business. This shows bipartisanship. This is a step forward. It is progress.

As one of the 14 Senators involved in negotiating the recent compromise agreement on the use of filibusters to block judicial nominations, I am very pleased to see this progress and to see what has happened since this agreement was reached. As everyone knows, of these five nominations, several of them have been held up for years. Two I have a particular interest in come from the Sixth Circuit from the States of Ohio, Michigan, Kentucky, and Tennessee. These two come from the State of Michigan but are part of the Sixth Circuit which has had vacancies for many years. Now we have these two positions filled.

I am pleased to see this progress we have been making the last 2 weeks on nominations but also the progress we have been making in the Senate on other matters, as well. I think it is good for the country.

The agreement that we entered into not only cleared the field for the President's judicial nominations, some of whom, as I have said, have been waiting for over 4 years, but by avoiding confrontation it also allowed the people's agenda to move forward. And that is a very important matter.

Already, since the agreement was reached, the Senate Judiciary Committee has passed out of the committee

the asbestos bill, and the Senate Energy and Natural Resources Committee has passed the Energy bill.

Now, as someone who was in the room for the negotiations of the filibuster agreement, I would like to take just a few moments to talk about what happened, why I was involved, and where we go from here. Candidly, I became involved in the negotiations because I was not satisfied with what I had seen in the Senate over the last few years. Everyone got in the negotiation, I am sure, for different reasons. I am just speaking for myself. I believed that judges were not getting voted on in the Senate, that the circuit court judges were not being acted upon when they should have been, that many of them were being denied an up-or-down vote. I believed the filibuster was being used in excess to block their nominations. I felt that the status quo was simply not acceptable, that we could no longer continue down that path.

Well, what was the solution? How were we going to get judges voted on in the Senate? The status quo abuse of the filibuster, which I felt clearly was an abuse of the filibuster, was not acceptable to me. I was prepared to take action to deal with that. Yet I felt that, in the best interests of the Senate and the Nation, it was really not in the best interests of the Nation or the Senate to totally change the rules and totally eliminate the filibuster, if we could avoid that. I felt what we needed basically was a resolution to this crisis, a new option or alternative that could restore the Senate to where it was when I entered the Senate a decade ago. That was a Senate where the possibility of a filibuster for judicial nominations was there but hardly ever used.

I believe that is exactly what we were able to achieve with the agreement.

During our negotiations, we agreed that a filibuster for a judge should not be used unless under extraordinary circumstances. Furthermore, we made sure the agreement included a provision that if the terms of the agreement were violated, and a judge was filibustered in circumstances that an individual Member considered not to be extraordinary—in other words, if MIKE DEWINE or any Member considered that another Member was filibustering a judge under a circumstance that was not extraordinary, that I or any Member had the right to pull out of that agreement and to go back and say: I am going to use the constitutional option to change the practice, the precedent of the Senate.

That was my right. I insisted on that when I entered the negotiations. I felt that was important and that was the only way I could be a part of the negotiations.

So let me make that very clear. The constitutional option was on the table, and it does remain on the table today. There was never any question in my mind about that. In fact, let me repeat exactly what I said at the press conference that the group held on May 23, right after we had reached our agreement. This is what I said that evening at that press conference when everyone was there, at least 12 of the 14 people who had reached the agreement. This is what I said. I quote myself:

> This agreement is based on good faith—good faith among people who trust each other. And, it's our complete expectation that it will work. Senators have agreed that they will not filibuster except in extraordinary circumstances. We believe that will, in fact, work. Some of you who are looking at the language may wonder what some of the clauses mean. The understanding is—and we don't think this will happen—but if an individual Senator believes in the future that a filibuster is taking place under something that's not extraordinary circumstances, we, of course, reserve the right to do what we could have done tomorrow, which is to cast a yes vote for the constitutional option. I was prepared to do that tomorrow if we could not reach an agreement.

Mr. President, let me also quote from the May 30, Washington Post article by Dan Balz. He wrote the following about the agreement:

> [Senator] DeWine, Senator Lindsey Graham have disputed the assertion . . . that the nuclear option is off the table. DeWine said he explicitly raised the issue just before the group announced the deal.

Balz then quotes me:

> I said at the end, ''Make sure I understand this now, that . . . if any member of the group thinks the judge is filibustered under circumstances that are not extraordinary, that member has the right to vote at any time for the constitutional option.'' Everyone in the room understood that.

Now, the article goes on to say—again, Dan Balz's article in the Washington Post—

> Senator Mark Pryor, [a Democrat and] another member of the group [of 14], concurred, saying that while he hopes the nuclear option is gone for the duration of the 109th Congress, circumstances could bring it back.

Quoting Senator PRYOR:

> I really think Senator DeWine and Senator Graham have it right.

Mr. President, Members of the Senate, Senate Majority Leader FRIST also agrees with this assessment. He said, in this May 30 article by Dan Balz:

> The nuclear option remains on the table. It remains an option. I will not hesitate to use it, if necessary.

And later, Senator FRIST was quoted in the June 5 New York Times from his comments in a speech at Harvard University, as follows. This is Senator FRIST:

> The short-term evaluations, I believe, will prove to be shortsighted and wrong after we get judge after judge after judge after judge through, plus at least one Supreme Court nominee and an energy bill . . . and we will get Bolton.

Mr. President, Members of the Senate, as the recent judicial confirmation votes in the Senate demonstrate, the majority leader is right. We are getting things done. We are getting things done because this agreement was negotiated in good faith by good people who want to get things done, who want to proceed step by step. It was negotiated in good faith by Members working together in the best interests of this Senate and of our Nation. It is a good agreement, one that has enabled us in the Senate to get back to doing the business of the people, for the people. That is what the American people expect, and it certainly is what the American people deserve.

We have made progress. We have been able to confirm judges and bring to the floor of this Senate for up-or-down votes three judges who have been held up for years and two other judges in a circuit, the Sixth Circuit, in Ohio and three other States, that has suffered from a lack of judges on the Sixth Circuit for years, with many vacancies. Today, we filled two of those vacancies. That makes a difference. We are making progress.

I am not arrogant enough to come to the floor today and say that everything is going to work out perfectly. I don't know that it will. I don't have a crystal ball. I just know that we have come a ways. We have taken some steps. We have made some progress. I believe we can rely on the good faith of Members to try to continue to work together, continue to make progress, and continue to try to exercise good faith.

We have set a bar now, a standard. Seven Members of the Senate on each side have said they will not filibuster except under extraordinary circumstances. That is something that had not been set before. That is the bar. No, it is not specifically defined. I understand that. But at least there is a bar. It is an understanding. That is progress. It is a recognition that the filibuster is not something just to be used; it is something to be used only in very rare cases. You have to use it after you think long and hard about it. It is the recognition of 14 people that they will only use that filibuster after thinking long and hard. That is progress.

What we have seen with these five judges is progress. So we celebrate tonight progress, not total victory. You are never done in the Senate. We are always trying to move forward. But at least we should stop for a moment tonight and say: We have made progress. We have come this far. We know we have a ways to go, but here we are, at least.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, let me at the outset say that I am proud that I was 1 of the 14 Members who signed the agreement just referred to by my good friend from Ohio. In the signing of that agreement, one of the things that brought people together was the concept of respect for each other, mutual respect for our colleagues in this Chamber, mutual respect for the people of America.

As we have gone through the debate on the confirmation of judges over the last several days, I have seen debate

within this body as well as debate among some of the constituent groups that I have found troublesome because it goes to the heart of the kind of respect we should afford each other in this Chamber.

I have heard statements that those who happened to be opposed to Bill Pryor, for whom I voted, were opposed to him because he was anti-Catholic. I heard statements made that some of my Democratic colleagues who were opposed to Janice Rogers Brown were opposed to her because she was African American. I submit that nothing could be further from the truth. In fact, when those kinds of statements emanate from Members of this Chamber or when they emanate from some of the constituent groups that follow us, it is a violation of the respect we should afford each other.

I, too, am hopeful that as we move forward in the consideration of other judges and other matters, that kind of hurtful, vitriolic, and unwarranted attack on each other is something we will not see again. If we can establish that kind of collegiality within this body, we can, in fact, return to those days when we had people working across the aisle to solve the common problems that faced Americans, regardless of whether they were Democrats, Independents, or Republicans. It is that kind of ethic I hope is embraced as we move forward in deliberations.

HONORING OUR ARMED FORCES

STAFF SERGEANT JUSTIN L. VASQUEZ

Mr. SALAZAR. Mr. President, I rise to speak for a moment about a brave American who lost his life earlier this week. His name is SSG Justin L. Vasquez. Staff Sergeant Vasquez was killed this past Sunday when a roadside bomb exploded near his military vehicle.

Staff Sergeant Vasquez was 26, and from the small town of Manzanola, CO, near La Junta, along the Arkansas River. He was a member of the 3rd Squadron, 3rd Armored Cavalry Regiment out of Fort Carson, CO.

He aspired to become an FBI agent, to continue his career of helping to protect people. He even considered becoming a lifetime military man. Regardless of whether he chose the FBI or stayed in the military, he was clearly motivated by patriotism and was making service to our great country and our security his career.

Staff Sergeant Vasquez was always a patriot who chose to put his country over himself. He enlisted at 18, and after his first tour of Iraq reenlisted for a second 6-year stretch with the Army in 2003.

Consider that, Mr. President. We are learning everyday that the Army is having trouble meeting its recruiting goals because of the demands of deployments in Iraq and Afghanistan. Staff Sergeant Vasquez chose to re-up for service after having been to Iraq and knowing he was in all likelihood heading back to Iraq.

During this, his second tour in Iraq, Staff Sergeant Vasquez was serving as a commander of a team of Bradley Fighting Vehicles.

Earlier this year, Staff Sergeant Vasquez was selected as one of nine soldiers from Colorado profiled by the Rocky Mountain News during their service in Kuwait. The paper noted that Staff Sergeant Vasquez had ''arguably, the toughest job in First Platoon, if not in all of Lightning Troop''—working with new enlistments fresh out of boot camp.

But perhaps most importantly, Staff Sergeant Vasquez was a leader. Among the nine men under his command, five were new enlistments on their first tour. He would spend much of his time during the days training the inexperienced scouts, helping to build their confidence in their mission and their actions.

Staff Sergeant Vasquez was shaping nervous boys into confident young men, creating leaders for our cities and towns, businesses and PTA boards. He had every confidence in his men and inspired them to have confidence in themselves and their mission.

In his short life, Sergeant Vasquez was a living role model of what each of us in this Chamber hopes to become: a champion for something other than ourselves, a champion for an ideal—freedom—bigger than anyone person.

All of Colorado is saddened by the loss of SSG Justin Vasquez, but we also celebrate everything that he stood for. He served his Nation with honor and distinction, and set an example to which we can all aspire. He will be missed by his family and friends and the men whom he led. Today, they are all in our thoughts and prayers.

I thank the Chair and yield the floor.

ADJOURNMENT UNTIL 2 P.M. MONDAY, JUNE 13, 2005

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 2 p.m. on Monday, June 13, 2005.

Thereupon, the Senate, at 6:27 p.m., adjourned until Monday, June 13, 2005, at 2 p.m.

NOMINATIONS

Executive nominations received by the Senate June 9, 2005:

DEPARTMENT OF STATE

HENRY CRUMPTON, OF VIRGINIA, TO BE COORDINATOR FOR COUNTERTERRORISM, WITH THE RANK AND STATUS OF AMBASSADOR AT LARGE, VICE J. COFER BLACK.

RONALD SPOGLI, OF CALIFORNIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ITALIAN REPUBLIC.

ROBERT H. TUTTLE, OF CALIFORNIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND.

EXECUTIVE OFFICE OF THE PRESIDENT

BENJAMIN A. POWELL, OF FLORIDA, TO BE GENERAL COUNSEL OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. (NEW POSITION)

IN THE AIR FORCE

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

RONALD H. ALFORS, 0000
DAVID M. BANDINI, 0000
JOHN P. BARTHOLF, 0000
WILLIAM C. BENTON, 0000
KEVIN J. BROWN, 0000
STEVEN P. BULLARD, 0000
WILLIAM F. BURNS II, 0000
DEBORAH L. CARTER, 0000
TERRI L. CHANEY, 0000
JAMES A. CLIFFORD, 0000
KENNETH J. DALE, 0000
THOMAS R. DALTON II, 0000
CHARLES A. DENMAN, 0000
CHARLES E. FOSTER, JR., 0000
ROBERT M. GINNETTI, 0000
ROBERT L. GOULD, 0000
JONATHAN H. GROFF, 0000
MARK D. HAMMOND, 0000
WILLIAM A. HARDIN, 0000
HOWARD A. HAYES, 0000
CHRIS R. HELSTAD, 0000
WILLIAM O. HILL, 0000
KERRY M. HOLLOMON, 0000
STANLEY V. HOOD, JR., 0000
RICHARD B. HOWARD, 0000
KEVIN J. KEEHN, 0000
DAVID T. KELLY, 0000
JOHN E. KEOSHIAN, 0000
PAUL M. KERWIEN, 0000
JOSEPH K. KIM, 0000
MICHAEL KOLESSAR, 0000
JEFFREY A. LEWIS, 0000
PAUL A. MACKEY, 0000
RICKY J. MAFFEI, 0000
KEITH P. MARTIN, 0000
CORNELIUS T. MULLANEY, 0000
GREGORY L. NELSON, 0000
MICHAEL L. OGLE, 0000
THEODORE S. ORKIN, JR., 0000
BRADLEY E. PETERSON, 0000
DANN D. PETTIT, 0000
MARK A. REMICK, 0000
CATHY M. RODRIGUEZ, 0000
ROBERT S. SHAFER, JR., 0000
ROBERT L. SHANNON, JR., 0000
HENRY A. SMART, JR., 0000
CHRISTOPHER D. SWADENER, 0000
MILES F. SYMONDS, 0000
JOHN H. THEISEN, 0000
NILDA E. URRUTIAESTRANY, 0000
MICHAEL L. WAGGETT, 0000
CATHERINE O. WATTS, 0000
SUSAN L. WEHRLE, 0000
DONALD S. WENKE, 0000
TOMMY R. WILLAFORD, 0000
ROBERT S. WILLIAMS, 0000
WANDA A. WRIGHT, 0000
DAVID R. ZARTMAN, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

GREGORY H. BLAKE, 0000
JON C. BOWERSOX, 0000
JOHN S. CRAMER, 0000
WILLIAM W. DODSON, 0000
ANDREW L. JUERGENS, 0000
JOHN S. MCCULLOUGH, 0000
JOHN MIRABELLO, 0000
JOSEPH M. PASCUZZO, 0000
JOHN H. RUMMEL, 0000
JOHN E. TORRES, 0000
PAUL E. TURNQUIST, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

GARY D. DAVIS, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

JOHN A. CAVER, 0000
THOMAS B. DUNHAM, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

GRETCHEN S. DUNKELBERGER, 0000
LINDA G. LITTLE, 0000
JANET I. SESSUMS, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

WILLIAM F. EVANS, 0000
LESLIE R. HYDER, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

WILBERT W. EDGERTON, 0000
BRUCE C. EVANS, 0000
JAMES D. HILL, 0000
MICHAEL W. LLOYD, 0000
CLYDE W. MATHEWS, 0000
SUZANNE PETERS, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C. SECTIONS 624, 531, AND 3064:

To be lieutenant colonel

WILLIAM P. * ADELMAN, 0000
JAY T. * ALLEN, 0000
PETER J. * ALLEN, 0000
BRYAN J. * ALSIP, 0000
SCOTT R. * ANTOINE, 0000
KARLA * AUYEUNG, 0000
VERONICA R. BAECHLER, 0000
DARREN S. BARONI, 0000
ANDREW M. * BARR, 0000
ROBERT M., * BAUER II, 0000
JOHN G. BEAUMAN, JR., 0000
PHILIP M. * BECK, 0000
MICHAEL R. BELL, 0000
JASON L. * BLASER, 0000
EARL F. * BRAUNLICH, 0000
ELIZABETH L. * BRILL, 0000
SCOTT A. * BRILL, 0000
JOSEPH G. BROOKS, 0000
DAVID L. BROWN, 0000
LINDA L. BROWN, 0000
TOMMY A. * BROWN, 0000
BRIAN S. * BURLINGAME, 0000
JEFFREY B. * BURNETTE, 0000
JEFFREY M. CALLIN, 0000
DARREL K. CARLTON, 0000
BRENNAN * CARMODY, 0000
STEVEN B. * CERSOVSKY, 0000
YONG K. * CHA, 0000
JAMES R. * CHATHAM, JR., 0000
RAYMOND I. * CHO, 0000
ERIN L. CLARK, 0000
GARY * COLLINS, 0000
ROSS E. * COLT, 0000
STEPHEN J. CONNER, 0000
LANCE E. * CORDONI, 0000
WILLIAM G. * COSTELLO, 0000
ERIC A. CRAWLEY, 0000
MARK A. * CRISWELL, 0000
MARK D. * CUMINGS, 0000
GEORGE R. * CUNNINGHAM, 0000
LOUIS A. DAINTY, 0000
JOHN G. DEVINE, 0000
WILLIAM C. * DIXON IV, 0000
NHAN V. * DO, 0000
MICHAEL D. DULLEA, 0000
ANTHONY * ECLAVEA, 0000
ROBERT J. * ENSLEY, 0000
EDWARD M. FALTA, 0000
DAVID * FONTAINE, 0000
ELIZABETH * FRANCO, 0000
WILLIAM C. FREY, 0000
HAROLD * FRISCH, 0000
RONALD A. * GAGLIANO, JR., 0000
DONALD A. * GAJEWSKI, 0000
CHRISTOPHER * GALLAGHER, 0000
ALAN P. * GEHRICH, 0000
SCOTT A. * GERING, 0000
DOMINADOR G. GOBALEZA, 0000
ROBERT J. * GRAY, 0000
KENNETH A. GRIGGS, 0000
RICHARD A. GULLICK, 0000
LEONARD L. HALL, 0000
RAYMOND J. * HARSHBARGER, 0000
CHRISTOS * HATZIGEORGIOU, 0000
FRANKLIN H. * HAUGER, 0000
KEITH A. * HAVENSTRITE, 0000
CHARLES G. * HENDERSON, 0000
THOMAS S. HEROLD, 0000
MARK L. * HIGDON, 0000
EDMUND W. * HIGGINS, 0000
SIDNEY R. * HINDS II, 0000
JEFFREY K. * HUBERT, 0000
AVA * HUCHUN, 0000
VICTORIA R. * HUGHES, 0000
THEODORE * KIM, 0000
SANDRA G. * LAFON, 0000
FREDERICK W. * LARSEN, 0000
MICHAEL T. LATZKA, 0000
GARTH W. LECHEMINANT, 0000
SEAN K. LEE, 0000
KEITH T. * LONERGAN, 0000
BRUCE L. LOVINS, 0000
MATTHEW J. * MARTIN, 0000
PAUL T. MAYER, 0000
SCOTT C. * MCCALL, 0000
ERIC D. * MCDONALD, 0000
JEROME M. * MCDONALD, 0000
ROBERT C. * MCKENZIE, JR., 0000
SHARON P. MCKIERNAN, 0000
JAMES A., * MCQUOWN, JR., 0000
PATRICK C. * MELDER, 0000
MARGRET E. * MERINO, 0000
JOEL E. MEYER, 0000
BART J. * MEYERS, 0000
MITCHELL S. * MEYERS, 0000
MARTIN R. * MOON, 0000
RONALD V. * MORUZZI, 0000
LAURA T. * MULREANY, 0000
TIMOTHY J. * MURPHY, 0000
SHAWN C. NESSEN, 0000
JAMES A. * OLIVERIO, 0000
KEITH J. * OREILLY, 0000
ERIC M. OSGARD, 0000
MICHAEL S. OSHIKI, 0000
EDMOND L. * PAQUETTE, 0000
ROBERT M. * PARIS, 0000
REAGAN R. * PARR, 0000
RAYFORD A. * PETROSKI, 0000
BRIAN T. * PIERCE, 0000
BARRY R. POCKRANDT, 0000
CHRISTIAN POPA, 0000
SHAUN A. * PRICE, 0000
MICHAEL W. QUINN, 0000
WILLIAM J. * QUINN, 0000
KEVIN C. * REILLY, SR., 0000
THOMAS A. RENNIE, 0000
DAVID E. RISTEDT, 0000
LUIS R. * RIVERO, 0000
MARK A. ROBINSON, 0000
JOSEPH A. * RONSIVALLE, 0000
STUART A. ROOP, 0000
STEPHEN D. * ROSE, 0000
MICHAEL G. * ROSSMAN, 0000
EARLE G. SANFORD, 0000
GARRY H. * SCHWARTZ, 0000
PAUL T. * SCOTT, 0000
DANIEL S. * SENFT, 0000
JAMES J. * SHEEHAN, JR., 0000
PETER J. * SKIDMORE, 0000
BRYAN C. * SLEIGH, 0000
KEVIN C. * SMITH, 0000
LISA H. * SMITH, 0000
JOSEPH C. * SNIEZEK, 0000
AARON L. STACK, 0000
JOHN * STATLER, 0000
MARGARET M. * SWANBERG, 0000
ALBERT W. TAYLOR, 0000
KENNETH F. TAYLOR, JR., 0000
RICHARD J. * TEFF, 0000
BRIAN T. THEUNE, 0000
JOHN E. * TIS, 0000
BRIEN W. TONKINSON, 0000
DAVID A. * TWILLIE, 0000
TRENT J. TWITERO, 0000
SCOTT D. UITHOL, 0000
TODD J. VENTO, 0000
SIDNEY L. * VINSON, 0000
STEVEN A. * WAGERS, JR., 0000
GARY R. * WALLACE, 0000
DAVID T. * WARD, 0000
MICHAEL A. WEBER, 0000
MARK J. * WEHRUM, 0000
STEPHEN J. * WELKA, 0000
DANIEL W. WHITE, 0000
JAY F. * WIGBOLDY, 0000
RICHARD H. WILKINS, 0000
HEATHER R. * WILLIAMS, 0000
PATRICK WILLIAMS, 0000
MICHAEL D. * WIRT II, 0000
MICHAEL M. * WOLL, 0000
PATRICK J. * WOODMAN, 0000
MICHAEL P. WYNN, 0000
CAROL R. * YOUNG, JR., 0000
STANLEY M. * ZAGORSKI, 0000
DAVID C. ZENGER, 0000
JOSEPH J. * ZUBAK, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AS CHAPLAINS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C. SECTIONS 624, 531, AND 3064:

To be lieutenant colonel

TERRY W. AUSTIN, 0000
SHERMAN W. BAKER, JR., 0000
PETER A. BAKTIS, 0000
DAVID R. BEAUCHAMP, 0000
KEN BELLINGER, 0000
DEAN E. BONURA, 0000
JEFFERY T. BRUNS, 0000
NEAL J. * BUCKON, 0000
BRUCE W. CHAPMAN, 0000
GARRY R. DALE, 0000
DAVID G. EPPERSON, 0000
DAVID J. GIAMMONA, 0000
MATTHEW M. GOFF, 0000
GARY HENSLEY, 0000
JEFFREY D. HOUSTON, 0000
KEITH A. JACKSON, 0000
LEON G. KIRCHER, 0000
ALLEN L. KOVACH, 0000
RONALD P. LEININGER, 0000
ROBERT J. MEYER, 0000
STEVEN F. MICHALKE, 0000
PETER L. MUELLER, 0000
ROBERT L. POWERS, JR., 0000
KENNETH F. REVELL, 0000
FRANK R. * SPENCER, 0000
MICHAEL E. STROHM, 0000
DANIEL E. WACKERHAGEN, 0000
ROY T. WALKER, 0000
ROBERT C. WARDEN, 0000
TERRY L. WHITESIDE, 0000
PAUL J. YACOVONE, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY DENTAL CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C. SECTIONS 624, 531, AND 3064:

To be lieutenant colonel

SCOTT W. * BURGAN, 0000
RAFAEL * CARABALLO, 0000
YOUNG M. * CHO, 0000
VENNIS D. * COSBY, 0000
GEORGIA G. * DELACRUZ, 0000
WILLIAM J. * DEMSAR, 0000
MICHAEL T. * EVANS, 0000
DAVID C. * FLINT, 0000
DAN C. * FONG, 0000
GARY D. * GARDNER, 0000
MICHELLE T. * ICASIANO, 0000
BRYAN P. KALISH, 0000
KIMBERLY W. * LINDSEY, 0000
MANUEL * MARIEN, 0000
CRAIG G. * PATTERSON, 0000
JULIE A. * SMITH, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

ROBERT D. DUNSTON, 0000

CONFIRMATIONS

Executive nominations confirmed by the Senate Thursday, June 9, 2005:

THE JUDICIARY

WILLIAM H. PRYOR, JR., OF ALABAMA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT.

RICHARD A. GRIFFIN, OF MICHIGAN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.

DAVID W. MCKEAGUE, OF MICHIGAN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.