Edwards and Lloyd Cutler, reported that during the period of Republican control of the Senate judicial nominees who were ethnic minorities or women took longer to get considered by the Senate, were less likely to be voted on and less likely to be confirmed—if they were considered at all by the Republican-controlled Senate Judiciary Committee.

I recall all too well the months and years it took for the Republican-controlled Senate to confirm Hispanic judicial nominees like Judge Sotomayor, Judge Paez, and Judge Tagle, in addition to other women or minorities like Judge Margaret Morrow, Judge Marsha Berzon, Judge Ann Aiken, Judge Margaret McKeown, and Judge Susan Oki Mollway. I also recall the numerous women and people of color who were nominated to the federal bench by President Clinton but who were never given hearings by the Republicans, like Judge Roger Gregory, Judge Helene White, Jorge Rangel, Enrique Moreno, and Kathleen McCree Lewis. Judge White of the Michigan Court of Appeals waited over 1,500 days but was never given a hearing or a vote. Still others, like Bonnie Campbell, were given a hearing but never given a vote on their nominations. These are just a few of the women and minorities whose confirmations were delayed or defeated through delay.

President Clinton worked hard to increase the diversity of the federal bench and 12 percent of his appointments to the circuit courts were Latino. It would have been closer to 16 percent if all of his Hispanic nominees to the circuit courts had been accorded hearings and votes. By contrast, President Bush has nominated only one Hispanic to the dozens of circuit court vacancies that have existed during his term. Thus, as of today, 3 percent of this President's circuit court nominees are Hispanic. Between the circuit vacancies that were blocked by Republicans and the new ones that have arisen during the past 15 months, President Bush has had the opportunity to choose nominees for 41 vacancies on the circuit courts—13 of these have already been confirmed. This President has chosen only one Hispanic to fill any of these 41 vacancies, and none to any of the following vacancies: the four vacancies in the Tenth Circuit, which includes Colorado and New Mexico, among other States; the three vacancies on the Fifth Circuit, which includes Texas; the six vacancies on the Ninth Circuit, which includes California and Arizona, among other States; none to the three vacancies in the Second Circuit, which includes New York; and none to the three vacancies on the Third Circuit, which includes New Jersey and Pennsylvania.

If this White House had looked a little harder and were not so focused on packing the circuit court bench with a narrow ideology, it could have found many qualified nominees, like Enrique Moreno, Jorge Rangel, Christina Arguello and others to fill these vacancies. Instead, President Bush did not choose to re-nominate these individuals who had been unfairly blocked by members of his party, and he also withdrew the nomination of Enrique Moreno to the Fifth Circuit, a nomination that the ABA had rated ''Well Qualified.''

So when Republicans try to take credit for President Clinton's Hispanic nominees and try to blame Democrats for the lack of Hispanic nominees by President Bush, they should be confronted with the facts and asked why they opposed so many of President Clinton's qualified Hispanic nominees and why so many of them voted against Judge Paez and Judge Sotomayor and Judge Barkett, and why so many Hispanic nominees were delayed for years and why so many were never given hearings or votes. Of course the facts have not prevented unfounded accusations by critics of the Democratic majority. The Republican press conference accusing Senate Democrats of being anti-Hispanic was an example of such inflammatory and baseless accusations.

As the Congressional Hispanic Caucus meets this week with Hispanic leaders from across the country, I welcome their views on the few Hispanic judicial nominees sent to the Senate by the President and their help in encouraging this White House to work more closely with Senators from both political parties to nominate qualified, mainstream Hispanic nominees to the federal bench.

Our diversity is one of the great strengths of our Nation, and that diversity of background should be reflected in our federal courts. Race or ethnicity and gender are, of course, not substitutes for the wisdom, experience, fairness and impartiality that qualify someone to be a federal judge entrusted with lifetime appointments to the federal bench. White men should get no presumption of competence or entitlement. Hispanic and African American men and women should not be presumed to be incompetent. All nominees should be treated fairly, but no one is entitled to a lifetime appointment to preside over the claims of American citizens and immigrants in our federal courts. We must, of course, carefully examine the records of all nominees to such high offices, but we know well the benefits of diversity and how it contributes to achieving and improving justice in America.

VOTE EXPLANATION

Mr. BUNNING. Mr. President I was necessarily absent for the vote in executive session on September 9, 2002. Therefore, I did not formally vote on the nomination of Kenneth A. Marra, of Florida, to be United States District Judge for the Southern District of Florida. Had I been present for that vote, I would have voted ''yea'' to confirm Mr. Marra for this position.

CBO COST ESTIMATE—S. 1971

Mr. BAUCUS. Mr. President, the Committee on Finance filed a report on S. 1971 without the Congressional Budget Office cost estimate. I ask unanimous consent that the CBO cost estimate be printed in the RECORD.

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1971—National Employee Savings and Trust Equity Guarantee Act

Summary: S. 1971 would make several changes to both the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA) that would affect the operations and taxation of private pension plans. These include changing the requirements for diversification options, providing information to assist participants in making investment decisions, and changing the premiums paid to the Pension Benefit Guaranty Corporation (PBGC). In addition, S. 1971 would modify the tax treatment of certain executive compensation and make other changes.

The Joint Committee on Taxation (JCT) estimates that the bill would increase governmental receipts by $437 million over the 2003–2007 period, and by $221 million over the 2003–2012 period. Most of the revenue increase would occur in 2003 ($578 million), and the bill would result in a loss of revenue from 2005 through 2010.

CBO estimates that the bill would increase direct spending by $36 million over the 2003–2007 period and by $89 million over the 2003–2012 period. Discretionary spending would also increase by $4 million over the 2003–2007 period, assuming appropriation of the necessary amounts. Because S. 1971 would affect revenues and direct spending, pay-as-you-go procedures would apply.

JCT has determined that the revenue provisions of the bill do not contain any mandates. CBO has determined that the other provisions contain no intergovernmental mandates, but they do contain several mandates on sponsors, administrators, and fiduciaries of private pension plans. CBO estimates that the direct cost of those new requirements on private-sector entities would exceed the annual threshold specified in the Unfunded Mandates Reform Act ($115 million in 2002, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of the bill is shown in the following table.

	By fiscal year, in millions of dollars—				
	2003	2004	2005	2006	2007
CHANGES IN REVENUES					
Executive compensation provisions	182	95	68	40	19
Change in interest rate for calculating plans' funding requirement	397	−54	−119	−97	−65
Voluntary early retirement incentive plans	−1	−4	−7	−10	−10

	By fiscal year, in millions of dollars—				
	2003	2004	2005	2006	2007
Total revenues	578	37	−57	−66	−55
CHANGES IN DIRECT SPENDING					
Flat-rate PBGC premiums	(1)	(1)	1	1	1
Variable-rate PBGC premiums	0	3	4	5	6
Interest rate range for funding overpayment	9	−3	−3	−2	−1
Payment of interest on overpayments of PBGC premiums	3	3	3	3	3
Total direct spending	12	3	5	7	9
TOTAL CHANGES IN DIRECT SPENDING AND REVENUES					
Net increase or decrease (−) in the budget deficit	−566	−34	62	73	64
SPENDING SUBJECT TO APPROPRIATIONS					
Studies by PBGC, Treasury, and Labor:					
Estimated authorization level	4	0	0	0	0
Estimated outlays	3	1	0	0	0

[1] less than $500,000.

Notes.—Components may not sum to totals because of rounding.

Sources: CBO and the Joint Committee on Taxation.

Basis of estimate

This estimate assumes that S. 1971 will be enacted around October 1, 2002.

Revenues

All estimates of the revenue proposals of the bill were provided by JCT. The provisions relating to executive compensation would tax without deferral certain compensation provided through offshore trusts, and require wage withholding at the top marginal tax rate for certain supplemental wage payments in excess of $1 million. Those provisions would increase revenues by $182 million in 2003, by $402 million over the 2003–2007 period, and by $496 million over the 2003–2012 period. The pension-related provision with the largest revenue effect would alter the allowable interest rates used to calculate pension funding requirements (see discussion below). That provision would increase revenues by $62 million over the 2003–2007 period and reduce revenues by $199 million over the 2003–2012 period. Other pension provisions would reduce revenues by $1 million in 2003, by $32 million over the 2003–2007 period, and by $82 million over the 2003–2012 period.

Direct spending

Reduced Flat-Rate Premiums Paid to PBGC—Under current law, defined benefit pension plans operated by a single employer pay two types of annual premiums to the Pension Benefit Guaranty Corporation. All covered plans are subject to a flat-rate premium of $19 per participant. In addition, underfunded plans must also pay a variable-rate premium that depends on the amount by which the plan's liabilities exceed its assets.

The bill would reduce the flat-rate premium from $19 to $5 per participant for plans established by employers with 100 or fewer employees during the first five years of the plans' operations. According to information obtained from the PBGC, approximately 7,500 plans would eventually qualify for this reduction. Those plans cover an average of 10 participants each. CBO estimates that the change would reduce the PBGC's premium income by less than $500,000 in 2003 and by $8 million over the 2003–2012 period. Since PBGC premiums are offsetting collections to a mandatory spending account, reductions in premium receipts are reflected as increases in direct spending.

Changes in Variable Premiums Paid to the PBGC.—S. 1971 would make several changes affecting the variable-rate premium paid by underfunded plans. CBO estimates, in total, this section will decrease receipts from those premiums by $9 million in 2003 and $51 million over the 2003–2012 period.

First, for all new plans that are underfunded, the bill would phase in the variable-rate premium. In the first year, the plans would pay nothing. In the succeeding four years, they would pay 20 percent, 40 percent, 60 percent, and 80 percent, respectively, of the full amount. In the sixth and later years, they would pay the full variable-rate premium determined by their funding status. On the basis of information from the PBGC, CBO estimates that this change would affect the premiums of approximately 250 plans each year. It would reduce the PBGC's total premium receipts by about $2 million in 2004 and by $41 million from 2004 through 2012.

Second, the bill would reduce the variable-rate premium paid by all underfunded plans (not just new plans) established by employers with 25 or fewer employees. Under the bill, the variable-rate premium per participant paid by those plans would not exceed $5 multiplied by the number of participants in the plan. CBO estimates that approximately 2,500 plans would have their premium payments to the PBGC reduced by this provision beginning in 2004. As a result, premium receipts would decline by $1 million in 2004 and by $10 million over the 2004–2012 period.

Finally, the bill would alter the allowable interest rates used to calculate pension funding requirements contained in ERISA and the Internal Revenue Code, which would allow plans to become more underfunded in plan year 2001 without subjecting them to tax and other penalties. Even though most plan-year 2001 accounts will be finalized in September 2002, the new interest rate requirement would give some plans credits that may be used in plan-year 2002, which would affect premiums paid in fiscal year 2003. JCT estimates that this provision initially would cause employers to reduce pension plan contributions, but later increase these contributions until fund returns to baseline levels. Some plans subsequently would have to pay higher premiums because their reduced contributions would further increase their level of underfunding. Other plans, however, would qualify for a special exemption and not be required to pay the variable premium for plan-year 2001. Based on information from the PBGC, CBO estimates the net effect would be a decrease of $9 million in premium receipts in 2003. From 2004 through 2007, premium income would then increase, resulting in a net change in receipts of less than $500,000 over the 2003–2007 period.

Authorization for the PBGC to Pay Interest on Refunds of Premium Overpayments.—The legislation would authorize the PBGC to pay interest to plan sponsors on premium overpayments. Interest paid on overpayments would be calculated at the same rate as interest charged on premium underpayments. On average, the PBGC receives $19 million per year in premium overpayments, charges an interest rate of 8 percent on underpayments, and experiences a two-year lag between the receipt of payments and the issuance of refunds. Based on this information, CBO estimates that direct spending would increase by $3 million annually.

Substantial Owner Benefits in Terminated Plans.—S. 1971 would simplify the rules by which the PBGC pays benefits to substantial owners (those with an ownership interest of at least 10 percent) of terminated pensions plans. Only about one-third of the plans taken over by the PBGC involve substantial owners, and the change in benefits paid to owners-employees under this provision would be less than $500,000 annually.

Discretionary spending

Studies. S. 1971 would direct the PBGC, the Department of Labor, and the Department of the Treasury to undertake four studies: one regarding establishing an insurance system for individual retirement plans, one on the fees charged by individual retirement plans, one on ways to revitalize defined benefits pension plans, and one on floor-offset employee stock ownership plans. Based on the costs of studies with comparable requirements, CBO estimates these studies would cost about $4 million over the 2003–2012 period, assuming the availability of appropriated funds.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purpose of enforcing pay-as-you-go procedures, only the effects through 2006 are counted.

	By fiscal year, in millions of dollars—									
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in receipts	578	37	−57	−66	−55	−97	−94	−50	4	21
Changes in outlays	12	3	5	7	9	10	10	11	11	11

Estimated impact on state, local, and tribal governments: JCT has determined that the revenue provisions of S. 1971 contain no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

CBO reviewed the non-revenue provisions of S. 1971 and has determined that they contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: With only limited exceptions, private employers who provide pension plans for their workers must follow rules specified in ERISA. Therefore, CBO considers changes in ERISA that expand those rules to be private-sector mandates under UMRA. The nonrevenue provisions of S. 1971 would make several such changes to ERISA that would affect sponsors, administrators, and fiduciaries of pension plans. CBO estimates that the direct cost to affected entities of the new requirements in the bill would exceed the annual threshold specified in UMRA ($115 million in 2002, adjusted annually for inflation). JCT has determined that the revenue provisions of S. 1971 do not contain any private-sector mandates.

Title I of the bill would impose restrictions on individual-account (that is, defined contribution) plans regarding assets held in the plans in the form of securities issued by the plan's sponsor. The bill would require affected plans to allow participants to immediately sell those securities that have been acquired through the employee's contributions, and to allow participants to sell certain securities acquired through the employer's contributions after three years of service with the firm. The latter requirement would be phased in over three years. CBO estimates that the added administrative and recordkeeping costs of this provision would be approximately $20 million annually, with larger amounts in the first year.

Title I also would require plans to offer a range of investment options. This requirements would add little to plans' costs because many plans now abide by a safe harbor provision in ERISA that has similar requirements.

Title II of the bill would impose restrictions on plan administrators during transaction suspension periods. (Transaction suspension periods are periods of time when participants are unable to direct the investment of assets in their accounts—for example, when a plan is changing recordkeepers.) To avoid financial liability during those time periods, fiduciaries would be required to abide by certain conditions. The bill also would increase the maximum bond required to be held by fiduciaries from $500,000 to $1 million. CBO estimates that the direct cost of these provisions to plan sponsors and fiduciaries would be small.

Title III of the bill would impose a number of requirements on plans regarding information they must provide to their participants. Administrators of defined contribution plans would be required to provide quarterly statements to participants. Those statements would have to contain several items, including the amount of accrued benefits and bested accrued benefits, the value of investments held in the form of securities of the employing firm, and an explanation of any limitations or restrictions on the right of the individual to direct the investments. Currently, plans must provide more limited statements to participants upon request. CBO estimates that, while many plans now provide pension statements on a quarterly basis, about 30 million participants would begin to receive quarterly statements as a result of this bill. The added cost of this requirement would be about $100 million annually.

Title III also would require administrators of private defined-benefit pension plans to provide vested participants currently employed by the sponsor with a benefit statement at least once every three years, or to provide notice to participants of the availability of benefit statements on an annual basis. CBO estimates that the cost of this provision would be less than $5 million annually.

In addition, Title III would require plans to provide participants with basic investment guidelines and information on option forms of benefits, as well as information that plan sponsors must provide to other investors under securities laws. Plans also would have to make available on a web site any disclosures required of officers and directors of the plan's sponsor by the Securities and Exchange Commission. CBO estimates that the cost of these provisions would exceed $25 million annually.

Previous CBO estimates: CBO has prepared cost estimates for three other bills that contain provisions similar to those in S. 1971. These are:

H.R. 3669, the Employee Retirement Savings Bill of Rights, as reported by the House Committee on Ways and Means on March 14, 2002 (CBO estimate dated March 20, 2002),

H.R. 3762, the Pension Security Act of 2002, as ordered reported by the House Committee on Education and the Workforce on March 20, 2002 (CBO estimate dated April 4, 2002), and

S. 1992, the Protecting America's Pensions Act of 2002, as ordered reported by the Senate Committee on Health, Education, Labor, and Pensions on March 21, 2002 (CBO estimate dated May 7, 2002).

The major budgetary effects of H.R. 3669, like S. 1971, pertain to revenue provisions that relate to pension plan funding. (H.R. 3669 also included a provision excluding certain stock options from wages.) H.R. 3669's provisions affecting pension would produce an estimated revenue loss of $1.2 billion over the 2002–2012 period, compared with the $277 million revenue loss projected for the pension provisions of S. 1971 over the 2003–2012 period.

Like S. 1971, both H.R. 3669 and H.R. 3762 would make several changes to ERISA affecting premiums collected by the PBGC. CBO estimated that H.R. 3669 would increase direct spending by $104 million over from 2003–2012 and H.R. 3762 would increase direct spending by $185 million over the same period. Unlike S. 1971, H.R. 3762 included a provision amending the underlying formula used to determine variable rate-premiums for plan-year 2003. Also, one of the changes made by H.R. 3762 would first apply to plan-year 2002, while that provision in S. 1971 would start with plan-year 2003. Both bills also contained somewhat different language than S. 1971 affecting the interest rates used to calculate variable-rate premiums in the plan-year 2001.

S. 1992 did not have any estimated impact on either revenues or direct spending.

Estimate prepared by: Federal revenues: Annie Bartsch; Federal spending: Geoff Gerhardt; impact on state, local and tribal governments: Leo Lex; impact on the private sector: Bruce Vavrichek.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis; G. Thomas Woodward, Assistant Director for Tax Analysis.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred March 26, 2002 in Denver, CO. A lesbian, April Mora, 17, was brutally attacked by three men. The attackers punched and kicked her in the stomach, then held her down and carved the words "dyke" and "RIP" into her flesh with a razor.

I believe that 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 of 2001 is now 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.

CHALLENGES IN RURAL HEALTH CARE

• Mr. DORGAN. Mr. President, I wanted to take a few minutes to describe some of the challenges facing rural health care systems and why I feel it is critical for the Senate to act now to reduce the inequities in Medicare funding between rural and urban providers.

Rural America depends on its small town hospitals, physicians and nurses, nursing homes, those who provide emergency ambulance services, and other members of our rural health care system. And because of past and proposed cuts in Medicare reimbursement, plus historical unfairness in Medicare payments, these vital services are in jeopardy.

Like most of my Senate colleagues, I supported the Balanced Budget Act, BBA, of 1997 when it was enacted by Congress with strong bipartisan support. Prior to the passage of this law, Medicare was projected to be insolvent by 2001, so it was imperative that we took action to extend Medicare's financial health and to constrain its rate of growth to a more sustainable level.

We later found that the Balanced Budget Act worked to reduce Medicare program costs, but many health care providers were adversely affected by payment reductions that were larger than intended. To address these concerns, Congress in 1999 made adjustments in the Balanced Budget Refinement Act, BBRA, followed in 2000 by the Medicare Beneficiary Improvement and Protection Act, BIPA. Without these needed changes, frankly, as many as a dozen of North Dakota's hospitals might be closed today.

But, additional legislation is still needed to improve Medicare reimbursement for health care providers in order to stabilize the Medicare program and ensure that beneficiaries, especially in rural areas, will continue to have access to their local hospitals, physicians, nursing homes, home health, and other services. Many small rural hospitals in particular serve as the anchor