

that money got into consumers' hands, they continued to buy what was needed for their families, and they have been the strongest part of the economy during a critical time.

We also had passed—and this is a case where it was bipartisan—tough corporate accountability legislation.

There are some other issues we still could do in the waning hours of this session, but I think to just make speeches and be critical of fiscal policies without offering any alternatives is the height of what we should not be doing in the Senate.

The emperor has no clothes, Mr. President. The leadership has not passed a budget. It has not passed appropriations bills. The Senate has not passed the prescription drug bill. We have not been able to get any traction on homeland security, and we have not even done pension reform. I would like people to know more about what they can count on with regard to putting money in IRAs or maybe taking money out of IRAs for education and what we are going to do in the future in terms of protecting 401(k)s and how stock options are going to be done. But that has not been brought up, and I am not sure it ever will be.

We have the opportunity in the next 3 weeks to do what must be done for our country: We can pass the Defense and military construction appropriations bills to make sure our men and women have what they need to do the job to protect America at home and abroad. We can pass this homeland security bill, create this Department that will bring some focus to our homeland security, and we can help with economic security by controlling spending and by passing such bills out of conference as the energy bill. If we do not deal with the energy needs of this country for the future, if we do not have an energy policy and someday we have a real shortfall, that could have a quick negative effect on our economy.

Those are the issues on which we can work in the next 3 weeks. Of course, we are going to need to stand up to our responsibilities and address the Iraq situation also. I think we will do that. We should focus on those issues we can do, where we can find agreement, and quit being critical without offering any alternatives.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BYRD. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. Morning business.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

### HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the hour of 1 o'clock having arrived, the Senate will now resume consideration of H.R. 5005, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Lieberman amendment No. 4471, in the nature of a substitute.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from West Virginia.

#### AMENDMENT NO. 4644

Mr. BYRD. Madam President, for the information of my colleagues, I have no intention of speaking at great length. I hope that other Senators will come to the floor and engage me—not necessarily engage me, but Senators will come to the floor and speak on the amendment either for or against.

I would like to see other Senators who, I am sure, are as concerned about the pell-mell rush to ram the homeland security legislation through both Houses and put it on the President's desk before much time is to be had for debate and for a clear elucidation of the pros and cons with respect to my amendment. And there are other amendments by other Senators waiting. I also have some other amendments.

I do invite other Senators on both sides of the aisle to come to the floor and participate with reference, hopefully, to my amendment.

Yesterday, the administration and the congressional Republican leadership again chastised the Senate for not acting quickly enough to pass the President's homeland security measure.

Said the very able Senate minority leader:

I fear the Senate Democrats are fiddling while Rome has the potential to burn.

"It's being talked to death," added White House spokesman, Ari Fleischer.

We are said to have been debating this bill for 3 weeks now, 10 days of debate—3 weeks.

Ten days of debate is not too long, something like 3 weeks. It takes 3 weeks to hatch an egg. I believe the distinguished Senator from Tennessee would agree with me; we are both from the hill country. He is from the hill country of Tennessee, and I am from the hill country of West Virginia. It does not make any difference how much heat you apply to that egg, it still takes at least 3 weeks for that egg to hatch out. If I am wrong in that, I would like my colleague from Tennessee to tell me.

We are talking about something that was hatched by four men, are we not, in the dark subterranean caverns of the White House?

I think a bill of this importance should be debated long enough that the Senate will know and the people will know what we are talking about, what we are about to pass. This is no small piece of legislation. It is not legislation of little moment. It is very important legislation. In my speaking on this measure thus far, I have met with a great deal of apathy. I do not believe much attention is being paid to this bill. I had urged that we not act too fast to have this bill on the President's desk before the August recess or by the time the August recess began, and then there was the idea that we ought to pass it by September 11, the first anniversary of that tragic event which occurred in New York City. And I said, no, we need to take longer. I hoped that Senators would read the bill and that Senators' aides would read the bill and that the people over at the Congressional Reference Service, the legislative people over in the Library of Congress, would have an opportunity to read this bill before we voted on it.

We have been debating this now for a few days. We look ahead to the appropriations bills that must be passed before the end of the fiscal year, the proposed adjournment date of October 6, and the November mid-term elections. It seems to be a long time for deliberation on one bill, but merely having a bill on the floor or on the calendar and actually debating it are two different things. To have the bill before the Senate and to be actually debating it are two different things.

I have my eye further ahead, years ahead, to future Congresses and future generations of Americans. I am trying to look ahead. To my way of thinking, the attention which this bill has received on this floor seems exceedingly brief. We are in the midst of an enormous undertaking. We are talking about enacting a massive reorganization of the Federal bureaucracy, a radical overhaul of our border security and immigration system, and a powerful new intelligence structure that may forever change the way Americans think about their own freedoms. It is a mighty huge responsibility that we are taking on, and we are endeavoring to do it all in one fell swoop: do it now, do it here. We have heard that advertisement on television: Do it now, do it here.

I understand the pressures to move quickly today. We live in an age of instant coffee, instant replays, and instant messages. I suppose the drive for instant legislation is a natural outgrowth. But I prefer the taste of slow brewed coffee. And I like to study the fine print in legislation I am being asked to support.

I would like to know, for instance, just exactly how many Federal workers will be employed at this new Department. I saw a recent article in The

Washington Post that mentioned that the new Transportation Security Administration was slated to employ 28,000 Federal screeners when it was first created by Congress just last November. But, its Inspector General has determined that the agency will actually need 63,000 screeners—37,000 employees more than was originally anticipated. Wow. In less than a year, the size of that new agency has more than doubled.

I would like to know, since the Transportation Security Administration is supposed to be moved into the new Homeland Security Department, are these 63,000 screeners part of the 170,000 employees that we keep hearing will make up the new Department?

I would like to know if any of them are from West Virginia, for example. I would think that other Senators would want to know if these Federal employees will be from their States. After all, we are being asked to trim back their worker protections. As for that matter, I would like to know just how many of the total number of affected Federal workers are from my State. Exactly how many are from each State? I think every Senator has a legitimate interest in knowing the answer to that and many other questions.

Since we have seen the Transportation Security Agency employment figures rise so rapidly, I would be interested in learning if we can bank on that figure of 170,000 employees in the new Department or if that is just a rough "guesstimate."

While we are at it, I would like to know just exactly why these particular 28 Federal agencies and offices were selected, out of the more than 100 that have homeland security functions, to be part of this grand new Department. The administration crafted its homeland security plan in secret, so the Congress has little knowledge of why the President chose these 28 agencies and offices to be transferred. Why these offices? Why these agencies? Why not other agencies?

The Lieberman bill, like the House-passed bill, proposes to transfer to the Department the same 28 agencies and offices outlined in the President's plan. But the Governmental Affairs Committee has not developed any sort of criteria for why these agencies were chosen to be moved, other than the fact that they were identified in the President's proposal. Certainly, the Congress needs a better reason than that for transferring 28 agencies and offices and 170,000 employees.

I considered the possibility that the answer to my question might lie in the definition of "homeland security" but then I do not believe I found in the Lieberman substitute bill a definition of homeland security. It may be there, but I am not sure. I have been studying this Lieberman bill and the House bill. The Lieberman bill is an improvement over the House bill. It is leap years ahead of the House bill, but I cannot remember having found a definition of

homeland security in the Lieberman bill.

Thinking, by the way, that such a definition was a pretty important thing to have in a piece of landmark legislation intended to address one of our Nation's most pressing challenges, I included a definition in my amendment.

I would be interested to know why some of the Assistant Secretaries called for in this bill have no defined functions. Under Title I, the Lieberman bill creates five assistant secretary positions within the new Department, all of whom would have to be confirmed by the Senate, but grants the President the authority to define the functions and responsibilities of these assistant secretary positions when the President submits his appointees to the Senate for confirmation. Once confirmed by the Senate, the Lieberman plan authorizes the Homeland Security Secretary to assign those functions that the Secretary deems appropriate.

The Congress should understand how the President plans to utilize these assistant secretaries before it creates their positions. What's more, it should define those responsibilities and functions in statute. Under the Lieberman plan, the President can broadly define the role of an assistant secretary, outside of the law, and, after the appointee has been confirmed by the Senate, the Secretary can alter that role, without regard to the intent of the Congress.

I would like to inquire for workers in the chemical industry and the trucking industry just exactly who is going to determine how they are supposed to deal with hazardous materials. Will the Transportation Department still make rules for trucking hazardous cargo or will all that now fall under the purview of the new Department? Are chemical plants to be subject to the powers at Homeland Security or the Environmental Protection Agency or will all of these regulatory matters be sorted out in arm-wrestling matches?

I do not believe that we have taken enough care in this bill to clearly define what we are authorizing the executive to do, and that is exactly how the President would have it. The administration wants us to be careless in our legislation so it can be reckless in its implementation. The administration does not want to be constrained by a specific plan, whether crafted in the White House or in the Congress, because the administration does not want to be pinned down on the details of its policies or the specifics of its actions.

A favorite piece of reading material for this administration apparently is "Gulliver's Travels," where we read about the Lilliputians. That is a great piece of literature; I have liked it over the years. But we have heard various Secretaries in this administration and other high officials in this administration indicate that they are very fretful, they are very irritated by the fact they are being asked to abide by certain rules. These have been longstanding

rules. So the administration does not want to be tied down by any rules. We have heard them tell the story of the Lilliputians a number of times. So they do not want to be pinned down. This administration does not want to be pinned down by any rules, not pinned down on the details of its policies or the specifics of its actions.

President Bush has pressured Congress to act quickly on his proposal, insisting that because homeland security has become his top priority for the Federal Government, Congress must immediately provide him the resources and flexibility that he is demanding.

The House of Representatives passed legislation approving most of the proposal only 38 days after he submitted it to Congress. The House of Representatives passed the legislation in 2 days. Why, it would take longer than that in some communities in this Congress, some cities in this country. It would take longer than that to get a sewage permit. It would take longer than 2 days to get a sewage permit in some parts of the country. And perhaps for good reason. They passed a piece of legislation such as this with its far-reaching ramifications in 2 days in the other body.

I cannot see how either House of Congress can properly consider the merits of a new Department of Government and the transfer of 28 Federal agencies in 1 month's time, especially when the stakes are so high. But here we are with a bill before us; the clock is ticking.

I know Chairman LIEBERMAN and his committee have spent many hours on this bill. They have far more expertise on the subject matter than I have. I am not a member of that committee. I am not a member of any committee that has jurisdiction over this subject matter per se. Senator STEVENS and I were very concerned about some of the language in the House bill, certainly, in his administration proposal, about what would happen to the legislative process, how the constitutional process, the power of the purse, was being changed by the proposed legislation. So Senator STEVENS and I wrote to Senator LIEBERMAN and to Senator THOMPSON and asked that change be made in their legislation before they reported it to protect the legislative process as we have known it for over two centuries.

They worked hard. Senator LIEBERMAN and Senator THOMPSON worked very hard to craft the best bill they could craft under the circumstances. They have made a number of important improvements to the bill passed by the House. I thank the committee again, as I have thanked the committee before on several occasions, and its staff, for their efforts. But the stakes are so high and I believe we would be better off if we took further opportunities to look at the details, to study the details, to talk about ways to fill in the details. Let us remember with this legislation the Senate will be shaping not only the mission and the

structure of the new Department but also the relationship that Congress will have with the Department during its lengthy transition period and throughout the process of making and implementing homeland security policy.

This legislation is going to be around quite a long time, in all likelihood, and the protections that I am interested in having in this legislation are protections for the rainy day, as well as for the day of sunshine, protections for our vital processes. These are the details that will be with us a long time. Whether it is a Democratic administration or a Republican administration, I should think we would all want to see what is best for the country, what is best for our children and grandchildren. If we are going to pass something, let it be well thought out, knowing, as I do know, that this legislation is going to be around for a long time.

We have heard that the war on terrorism is going to be a long time in its duration. I don't doubt that. We have spent nearly \$20 billion in Afghanistan thus far, and we don't know whether Bin Laden is alive or dead. So this will be around for a long time.

This President and his administration, hurrying today to just have us turn this matter over to them, may not be around. Who knows. This President may be here 2 more years after this year or he may be here 6 more years or he may be here 8 more years. Who knows. Only God knows. There may be a Democratic President, a Democratic administration, there may be a Democratic House at some point. So I think we should not act with our blinders on and act only for partisan reasons because at the moment there is a Republican administration in the White House. We must not hurry this through just to get a bill through, to meet a certain date.

As Senator LIEBERMAN and I and others have said, we need to do it right. That is what I assume is the responsibility of every Senator, to do what he can to improve this bill, if it can be improved. I have never seen a bill that came to the Senate floor that couldn't be improved. Every appropriations bill that was reported to the Senate floor by my Appropriations Committee, of which I am the chairman, is always subject to amendments, and many amendments are offered and acted upon favorably. So we have room for improvement.

I do not come here as an adversary of Senator LIEBERMAN. I do not think my amendment is adversarial to his bill. I think that, even though his bill is a great improvement over the House bill, there is room for further improvement. That is not saying anything I think anyone would be offended by on his committee. I have heard of no such offense.

That is our job here, to do the best we can to come out at the end of the day with the finest product, the best product this Senate is capable of. We are talking about homeland security,

the security of the people in this country. We must recognize that there is real work to be done by the Senate to make sure that all of the agencies are moved into the Department and that it is all done in a responsible way.

I understand the eagerness to pass a strong bill in order to make a strong statement. We all want to assure the public that we are acting decisively to secure the public's safety. No one wants to be portrayed as standing in the way of greater security on American soil. President Bush would have us believe he can simply create this Department out of thin air, as if by magic. It wasn't too long ago that this President and the Director of Homeland Security, Mr. Ridge, were saying: We don't need another Department. Why have another Department? Why have another Department?

Well, that is a long story. We went about, up the hill and down the hill, on the business of having the Director of Homeland Security, Mr. Ridge, come up before the Senate Appropriations Committee and testify on the budget. And of course the administration put its foot down hard. They didn't want that done. So we have sought that in that Appropriations Committee, Mr. STEVENS and I—we have on one occasion put language into an appropriations bill requiring the Director of Homeland Security to be confirmed by the Senate.

When the administration saw that Mack truck coming down the road—that bill was brought to the Senate, and it passed by a majority, a great majority; 71 Senators voted for it. Not one Senator objected to that language. Not one Senator offered an amendment to strike that language. So the administration saw that Mack truck coming and, lo and behold, the administration decided: Oh, we have to get in front of that wave. And then they came up with this marvelous piece of brainwork. It came from just four men in the bowels of the White House. They came up with this marvelous piece of magic. And now they want it passed in a hurry to create this Department of Homeland Security—which, not too long ago, as I say, the President did not seem to want, to create a Homeland Security Department, nor did Mr. Ridge.

Well, a little wave of his magic wand, a few magic words to the press, and poof, the President pulls a new Department out of his hat.

That is the old vaudeville stunt, a new rabbit out of the hat. Don't watch my right hand, watch my left hand. Watch what my left hand is doing. Don't pay any attention to my right hand. All of a sudden, he pulls a rabbit out of the hat.

The President pulls a new department out of his hat. But after the President's sleight of hand is over and the smoke clears from the stage, the task of replacing political magic with real management will begin.

I have often urged my colleagues to look to history as a guide to the fu-

ture. There is much to be learned from the successes and the failures of our forefathers and we would do well to take the countenance of the past. I realize that everybody shares my love of history or see the past's connection with today and I am disappointed. But I am disconcerted when we fail to learn from our own experiences.

Last October, nearly half the Senate was thrown into disarray as the Hart Building was closed due to anthrax contamination.

I was shut out of my office. My staff were shut out of my office in the Hart Building. Many Senators were shut out of their offices, barred from our mainframes, our fax machines, our files. Our staffs were relocated, with new phones, new computers, new fax machines. Staff members couldn't reach each other, let alone our constituents. We scrambled to find ways to ensure a continuation of constituent services.

We saw how difficult it was to set up new quarters and make our offices functional again. But this bill before us is our anthrax experience many times over. And this time, the work that will be interrupted may be work that would prevent the loss of thousands more lives in another terrorist attack. I think it is worth the time to ensure that this agency is formed in the right way, from the ground up. We should take the time to work out the kinks before launching it.

Like so many government reorganizations before it, this legislation lumps together a number of disparate agencies and slaps a new sign across them. It does nothing to fill in the details of a very sketchy plan. It does nothing to resolve the inevitable problems that lie ahead. It is an opportunity to get off the hook easily. Pass something; claim the credit for passing the legislation in the upcoming election. That is probably part of the idea—claim credit for that. Go out to the American people and say: The Senate acted. We worked out a new plan. But it does nothing to resolve the inevitable problems that lie ahead. But I, for one, think we owe more to the American people than that. I think we owe more to them than that.

If the aim here is only to speed implementation of homeland security matters, let us do something to ensure that this administration and the Congress are not allowed to let development of the Department languish.

Most agree that we should act now to set the wheels in motion for a new Department, but we should not kid ourselves about what we are doing with this legislation.

The President and the Secretary of Homeland Security—if we pass the House bill—certainly will have the whole kit and caboodle. Congress will just walk off to the sideline. And, to a certain extent, the same is true with the bill that has been adopted by the committee chaired so ably by Mr. LIEBERMAN.

The President and the Secretary of Homeland Security will have to transfer 28 agencies—some say 22, some say 30—create 6 new directorates, and coordinate information and resources from countless Federal, State, and local agencies and private corporations. The administration expects Congress to hand over a blank check. They may do that in some States. Maybe the President is accustomed to having it that way in Texas. I do not know. I suppose there have been Governors in West Virginia who believed they might be entitled to a blank check on something. But we are not talking about something at the State level. This is the Federal level, and it is the Federal Constitution to which we have to pay very close attention.

The Administration expects Congress to hand over a blank check to craft this Department without additional guidance during implementation.

This expectation is not only unrealistic, it is irresponsible.

If the Senate adopts the President's proposal without making further efforts to improve it, we will have copped out! If this Senate is not willing to put in the time and attention that this new Department undoubtedly requires, I have to wonder whether we are really serious about investing responsibly in a long-term federal response to homeland security threats at all. I hope this is not all just for show!

Is that what it is? Is it all for show? Just rush the bill through so that we can say to the voters: Oh, the Senate has passed the homeland security bill. I hope it is not all for show.

The Senate must take a responsible approach toward enacting the President's proposal. If the Department of Homeland Security is worth doing, it is worth doing right, and both Houses of Congress must act deliberately to see that this Department gets up and running properly and expeditiously.

To ensure that all of these agencies and Federal workers are being moved to the right places for the right reasons, we will have to set the stage for our work after this bill is enacted. If we give the President blanket authority to transfer and reorganize these agencies without further action by Congress, the Department's transition will certainly suffer under a clumsy, trial-and-error approach that has been the death knell for so many other important government efforts before it. It will take a lot of work to get this Department where it needs to be, and Congress should not buy in to the empty promises of a one-time fix for all of the federal government's homeland security functions. We must sign up for the long haul now.

Any good carpenter knows that he will save himself a lot of headaches if he takes the time to measure twice and cut once. But in the midst of this enormous building project we have undertaken to construct a new department of government, no one is bothering to make even a rough measure of the actions we are taking.

Even if we wanted to do so, we would have nothing to measure against, because the President has not given us any workable blueprints laying out the architectural details of the Homeland Security Department. The President just shouts at us to keep building, because he wants a home for his secret war as soon as possible.

And by including all of these hurried agency transfers in his proposal, President Bush is trying to move in the furniture into this new home before he has even finished putting a roof over the Department. Given his success in pushing through his proposal, this may truly be the house that George built, and, if we don't hold our own feet to the flames, Congress will spend years making repairs to this hastily designed and poorly built structure. If his commitment to protecting homeland security is not strong enough to endure congressional involvement and public scrutiny, then our security is in serious jeopardy. And if the President's policies are not sound enough to survive the constitutional process, then we would probably be more secure without them.

Securing the safety of the American people in their own homeland will be the most important challenge of our time, and it will require responsible leadership both from the White House and from the Congress. Such leadership does not consist of hollow political solutions and public relations campaigns. When the lives of our citizens are on the line, we have a duty to rise above public approval polls and make the hard decisions about how best to protect the country's long-term interests. The President is asking us to establish the Department of Homeland Security without making these decisions, and without any clear evidence from the White House that he is willing to make the hard decisions under the processes required by the Constitution.

Congress must require of the President and of itself more than a single, open-ended plan for a new department with broad authority and a vague mission. Congress cannot allow the President to conceal his failure to produce a comprehensive homeland security strategy behind the smoke and mirrors of "managerial flexibility." If we are serious about formulating a real response to these new threats, we must press ahead to fill in all the details.

The amendment that I will be offering provides a process by which the Congress remains involved in implementation of the Department.

With the Byrd amendment, the Lieberman bill would immediately create the superstructure for a new Homeland Security Department, including the executive positions and directorates outlined in Title I of the Lieberman substitute but require additional legislation to transfer the agencies, functions, and employees to the new Department.

The amendment that I shall offer would establish a process that would

allow the Congress to act within the same implementation time frame—13 months—outlined by the House-passed bill and the Lieberman substitute.

Beginning on February 3, 2003, the Homeland Security Secretary would submit recommendations for legislation to the Congress, which would be referred to the Governmental Affairs Committee in the Senate and the Government Reform Committee in the House, to transfer agencies, functions, and employees to the Directorate of Border and Transportation Protection; 120 days later, the Homeland Security Secretary would submit recommendations for legislation to transfer functions and agencies into the Directorate of Intelligence and Directorate of Critical Infrastructure Protection; 120 days later, the Homeland Security Secretary will submit recommendations for legislation to transfer agencies and functions to the Directorate of Emergency Preparedness and Response and the Directorate of Science and Technology.

The Byrd amendment gives Congress additional opportunities to work through the details about worker protections, civil liberties, privacy, secrecy, and about which agencies and functions should be transferred to the new Department.

Additionally, the Byrd amendment would give Congress the opportunity to gauge and modify how the new Department is being implemented, while it drafts legislation to transfer additional functions and agencies. The Byrd amendment would provide Congress with additional means to head off problems that traditionally plague and delay massive reorganizations.

I have defined as well as I could in this time my amendment.

I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 4644.

Mr. BYRD. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

At the moment there is not a sufficient second.

The Senator from West Virginia.

Mr. BYRD. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I rise to speak against the amendment which the distinguished Senator from West Virginia has offered. I do so, of

course, with great respect for him personally, for his record of service to our country, for his record of leadership in the Senate, and for all that this Senator—and I would say every Senator—learns from him just about every day here.

I rise to speak against the amendment. I am going to try to speak clearly about why I feel so strongly against this amendment, but I certainly hope the Senator from West Virginia will understand, and colleagues as well, that I do it with great respect.

Senator BYRD has been good enough to express his appreciation for many parts of the amendment which is the proposal that emerged from the Senate Governmental Affairs Committee, which I am privileged to chair, by a 12-to-5 bipartisan vote at the end of July. I appreciate those kind words.

But I must say that though Senator BYRD has said his intentions are not adversarial to the committee-reported proposal for a Department of Homeland Security, it seems to me that adoption of Senator BYRD's amendment would eviscerate our proposal. It would, as he has described it, create a superstructure, a kind of house—create the exterior of the house—but there would not be much in the house. There might be an attic, with the Secretary and some of the executives up there, but nothing underneath for at least a year, and probably well beyond that, to better protect the security of the American people here at home.

So this amendment, though it preserves the superstructure, strikes at the heart of what the Senate Governmental Affairs Committee has been working to bring forth for well over a year now.

We began our investigations on the problem of homeland security before September 11 of last year. We held hearings on matters related to homeland security before September 11. In fact, we had a hearing scheduled for September 12 on one aspect of homeland security, and we went forward with it as best we could. Half the witnesses could not make it to Washington.

We labored, in the weeks and months after September 11, holding 18 different hearings. In October, Senator SPECTER and I, introduced—in October of 2001, almost a year ago—legislation to create a Department of Homeland Security. In fairness, that legislation was based, in good part, on the work of a citizens' commission headed by our former colleagues Gary Hart and Warren Rudman. And they had been working on it since the early part of 2000.

In May of this year, our committee reported that bill that Senator SPECTER and I had introduced, together with a companion bill Senator GRAHAM had introduced, amended and approved by the committee itself by a 9-to-7 vote—unfortunately, a vote on partisan lines. All the Democratic members voted for the bill. All the Republican members, at that time, voted against it.

In June of this year—June 6, I believe it was—President Bush, after all the months before then in which the President and his administration had said an Office of Homeland Security, as filled by Governor Ridge, was enough to deal with the new challenges of homeland security—changed his mind. And I admire him for that, and I appreciate that. And I think he reached a conclusion that it would take more than an office—without statutory power, without budget authority—to meet the challenge that terrorists placed on his shoulders, and ours, to protect the security of the American people.

My friend and distinguished colleague from West Virginia said the President pulled this bill out of a hat. Well, if he pulled it out of a hat, it was a hat that belonged to the Senate Governmental Affairs Committee because so much of the proposal that the President ultimately made is exactly the same as the bill that was reported out of our committee in May.

That is why I have said, all along, that probably 90 percent of the various proposals here—the committee proposal, the President's proposal—are in agreement with one another. And we are arguing over a small number of issues, not insignificant issues, but relatively small in number compared to all we agree on. We worked to take some of the ideas the President had and added them to our bill. Still, it is mostly the same bill as our committee reported out at the end of May.

Then at the end of July—July 24 and 25—we had two very productive, extensive days of committee deliberation, a so-called markup, in which we were quite open to suggestions that had been made by Members of the Senate. I myself consulted with the various chairmen of relevant committees. Senator THOMPSON spoke to the ranking minority members, ranking Republicans on the committees. We built a better package and reported it out on July 25. Not perfect. As the Senator from West Virginia quite accurately says, no legislation that is brought before this Senate is perfect; it always can stand amendment, including this proposal.

But I must say again, with all respect, that the Byrd amendment would basically pull out of the bill most of the hard work our committee has done. It would again frame questions that our committee has worked now almost a year to answer and has presented to the Senate our best considered judgment about what the answers to those questions should be. And the basic question is, How can we best protect the security of the American people after September 11 against terrorism and threats to their security?

Senator BYRD's amendment reminds me of those board games I played as a child, and sometimes occasionally still do with children or grandchildren, where, when you hit a certain box, they tell you to go back to the beginning

and start all over again. That is what adoption of this amendment would do. It would obviate all the work we have done. It would essentially say that the answers we came up with were not adequate. And it would establish a system where the administration, over the next year, would basically try to fill a house that is now empty in the Byrd amendment. Underneath the attic, where the Secretary and a few of the executives are, there is nothing to protect the security of the American people.

The administration would be required to submit—beginning early in February of next year, and every 4 months thereafter—proposals for filling in that structure. But the requirements of the Byrd amendment say that not earlier than February 3 of next year, and succeeding 120 days thereafter, would the administration be able to submit the inner workings of the Department. And there is no clear time limit as to when this Department would be up and running.

I gather that the Senator has modified or will modify his amendment to say that Congress must act on the administration's proposals for what will happen in five of the six divisions of the Department by 13 months after the effective date of the underlying legislation—that date chosen, I presume, 13 months, because our legislation says that the full Department must be up and running 13 months after the effective date.

The passage of the Byrd amendment would give the American people no guarantee that they would have a Department of Homeland Security, protecting them better than we protected them on September 11, in any time that is measurable.

I have a personal sense of urgency. Senator BYRD has spoken to it. We want to better protect the security of the American people. This is an important assignment we have taken on to create this Department. But this is an assignment that comes with a sense of urgency.

The terrorists are out there. We read every day about it, either about apprehensions or arrests of terrorists in various parts of the world. As I have said before on the floor, we defeated the Taliban in Afghanistan. We disrupted the al-Qaida bases there. But so many of them fled, and they are out there. They are not an army that we can see as a conventional army on battlefields. They are not in ships that we can observe at sea. They are hiding in the shadows of this world, in foreign countries, in our country. That is why I say that every day we go without a better organization of the various critical departments that are supposed to be protecting the homeland security of the American people is a day of greater danger for the people.

It is with that sense of urgency that our committee has brought forward our proposal. And this amendment, if passed, would take the heart out of the

proposal and delay its implementation to a day that cannot be measured. That is wrong. I oppose the amendment with the greatest respect but with the greatest sincerity and intensity.

I ask my colleagues, any of whom are thinking about voting for this amendment, to explain on the floor and to their constituents how they could support this amendment and still say they are committed to the creation of a Department of Homeland Security with a sense of urgency that the reality of the terrorist threat requires.

This amendment would establish a Department of Homeland Security and a Secretary with the missions and responsibilities virtually untouched. It would also retain the basic administrative structure of the Department, as the Governmental Affairs Committee proposal has proposed.

The amendment also creates the same six directorates as in our bill, each to be headed by an Under Secretary. But as I have said, there is nothing else in this amendment within five of those six directorates. The one exception is the Immigration and Naturalization Service directorate. There are no responsibilities, no mission statements effectively, no transferred agencies.

The amendment does call, as I have said, for the Secretary of the new Department to submit to Congress, over the course of the next year, a series of legislative proposals to further the mission of the Department, including recommendations for the transfer of "authorities, functions, personnel, assets, agencies, or entities into the various directorates."

These proposals to be provided to the Congress by the Secretary would be responsible for filling in the house. That includes not only the precise list of agencies and programs to be transferred to the new Department but an enumeration of all the responsibilities of the new Department, including the fundamental policy decisions about the Department's most basic missions.

I have talked about the deadline for Congress to act. It is unusual, I say with some humility, for one Congress to attempt to bind another Congress to act. Is it enforceable? Can we have any sense of assurance, if the Byrd amendment passed, that Congress would act on the various proposals of the President 13 months after the effective day, which would probably take us to 2004? I don't see that in this amendment. Remember, in the underlying committee proposal, the Department is created. The effective date of the legislation begins 30 days after it is signed and becomes effective. The Department begins to take shape. The administration then has 12 months after that to complete the full implementation of the new Department, to bring all the 170,000 employees together to get the Department up and running, to overcome the inefficiencies, to bridge the gaps that exist, to create the new divisions of this Department that we desperately need.

As to intelligence, for instance, there is still no place in our Federal Government where all the proverbial dots are connected from law enforcement and intelligence. That is an urgent need we have.

If the committee's proposal is adopted, the new Secretary of Homeland Security would be authorized to do that immediately. All we say is by the expiration of 12 months from the effective date of the legislation; therefore, 13 months after the President's signature, all of this would be completed.

Set that aside from what would happen in the case of the Byrd amendment, in which the only guarantee we have is essentially a hope that Congress will have acted on the administration's proposals 13 months after the Department is created. That is just not enough.

This is no time for us to replace the carefully considered bipartisan legislation that emerged from our committee with this structure without content that may never turn into a genuine Homeland Security Department, with the power, the personnel, and the resources it needs to protect the American people from terrorism.

Mr. BYRD. Madam President, I did not want to interrupt the distinguished Senator. I will be happy to wait until he finishes his statement, but whenever he is ready to be interrupted, I would like to get his attention.

Mr. LIEBERMAN. I thank the Senator from West Virginia. I would like to complete my statement. Then I will be glad to respond to any comments or questions he has.

Let me make three general points about what troubles me about the amendment.

First, the amendment destroys what might be called the holistic design of a new Department. By that I mean the whole will be greater than the sum of its parts. Indeed, since the very beginning, the entire purpose of formulating this Department has been to create a cohesive and unified organization in which all the pieces fit together tightly with all the other pieces. We have strived to bring to our legislation a global understanding of the capabilities our Government has and the capabilities it currently lacks. We have thought carefully about the interrelationships of the different agencies and directorates that will make up the Department.

The result, I am confident, is a Department in which the six constituent divisions strengthen one another such that the whole is greater than the sum of the parts. Splitting this Department into a number of separate pieces that will be created in organizational isolation from each other will undercut the wide angle focus that is necessary for us to best meet the terrorist threat.

We will revert to essentially creating a number of different divisions that are linked to one another in name but not necessarily in function. In the process, I fear the Byrd amendment will threat-

en one of the core purposes of a single Department of Homeland Security under a unified chain of command; that is, namely, to leverage the benefits of bringing together these 28 different agencies and programs in a synergy, in a way that the whole is greater than the sum of the parts.

Pulling the pieces apart and rebuilding them will lose that understanding of our capabilities. Just think about the pieces of the new Department that will need to work together every day. I cite the intelligence directorate again. It is going to communicate with the directorate on critical infrastructure protection and on border transportation security, and it is going to need to develop threat assessment and threat dissemination systems and protocols.

The directorate on science and technology will need to learn from the directorate on emergency preparedness and response precisely what technologies are required at the Federal and local level, and then we will have to develop an action plan to deploy those technologies. Every directorate in the organization will have to draw on the science and technology directorate's expertise for critical analysis and decisionmaking regarding scientific or technical issues.

This Department should work like a carefully crafted machine with interlocking gears. If we conceive of it as six separate gears turning in isolation from one another, we are going to drastically diminish its effectiveness. I fear the process that the Byrd amendment would set up will do just that.

Second, I know there was a concern expressed on the floor and off the floor that the committee's proposal for a new Department of Homeland Security fails to put in place adequate checks and balances on executive authority. I disagree. Those checks and balances and the desirability of them in our system of government were very much in our mind as we proceeded with this legislation. In fact, we gained great insight and assistance from Members of the Senate as we crafted this legislation, particularly the senior Senators from West Virginia and Alaska who brought not only their considerable experience but their love for the Senate and devotion to the concept of checks and balances, which assisted us in crafting our amendment.

So we have gone to great lengths to ensure that the Congress will remain actively engaged in the life of this Department—not just in the traditional way in which Congress, in some senses, always has the last word, which is through the appropriations process, but through the transition process as this legislation becomes law. We have very important work to do with the executive branch and the transition process of this new Department. We have to make sure the reorganization is proceeding apace. We have to make further changes in law, if and when such changes are needed. We have to finance



the new Department, consistent with its needs, as determined in the first instance by the Appropriations Committees of both bodies and, of course, by the membership of both bodies. And we have to make sure that critical, non-homeland security functions of the constituent agencies don't fall through the bureaucratic cracks.

That is why we have specifically required that the administration come back to Congress at least every 6 months during the reorganization process to update us and the American people on the progress being made and, if necessary, to request that we make additional amendments and improvements. The committee members are well aware of the complexity and the enormity of what we are proposing. So these required reports during the reorganization process should give Congress an opportunity—our committee first and then Congress—to assess the progress and make necessary adjustments.

The important point here is to get started. No one—least of all me—thinks this is going to be a perfect proposal. It will be a work in progress. To make it progress as rapidly and perfectly as we want, we are going to have to work together—Executive and Congress—in making that so. Our interest in guaranteeing proactive congressional oversight is spelled out in even more detail in our proposal.

Contrary to the President's proposal, which originally sought to give the executive branch unchecked authority to reorganize the constituent agencies within the new Department and unprecedented power to move between 3 and 5 percent of funds appropriated to the constituent agencies of this Department, we have taken a very different path and rejected those requests from the administration. We will insist on the accountability of the appropriations process. We understand the Constitution gives Congress—and only Congress—the responsibility to appropriate the expenditure of the public's money.

So we have specifically rejected the administration's calls for broad, unchecked power to move public money around without the consent of Congress. We have said that while the administration can reorganize agencies within the new Department to the extent that it does not conflict with existing law, if the administration wants to change existing law, contrary to its proposal originally, we require it to come back to us for approval to do that. Congress cannot delegate to the Executive the authority to obviate statutes that are on our books without the consent of Congress. That, of course, is an affirmation of the importance of ongoing congressional involvement in an approval of the reorganization process.

I know Senator BYRD is concerned about the speed with which this is moving forward. I believe this is not moving forward near rapidly enough. I

know he has a historic and proud concern about Congress yielding too much authority to the executive branch, and I share that concern. My strong reassurance to him, and to the other Members of the Senate, is that the Senate Governmental Affairs Committee proposal does what Congress has done since its creation, since its beginning, which is to legislate, create a new Department, but not to give that Department unchecked authority to go forward but to require it to come back for appropriations and require it to live within the law. And if it decides, as it goes forward, that it needs to alter the law, then, of course, it must come back to us and not be allowed to waive laws and repeal them on its own, as it originally asked to do. Congress will remain, under our proposal—a careful, measured proposal—an active and aggressive board of directors overseeing this merger every step of the way.

Third, this amendment is based on the faulty assumption that we have written our legislation hastily, without due consideration of exactly how the Department ought to be structured. As I said at the outset, the fact is we have been working for nearly a year and, in some cases more than a year, to determine what this Department should look like, and to do everything humanly possible to prevent another September 11-type attack.

We have studied these issues exhaustively. We have considered the implications rigorously, and we have written this legislation carefully. Now, any Member of the Senate has the right, of course, to come out and say that a given part of our proposal is not quite right and not what it should be, and that is what the amendment process is all about.

Of course, there have been many amendments filed that go exactly to that point. What Senator BYRD's amendment does is to remove the fruits—all the fruits pretty much—from the tree, except the very few at the top, that we have nourished and worked so hard to cultivate over this year.

(Mrs. CLINTON assumed the Chair.)

Mr. LIEBERMAN. Madam President, long before September 11, our committee had been interested in homeland security. In July of 2001, we held a hearing on FEMA's role on managing bioterrorist attacks. In July 2001, we had been studying whether our Government was adequately organized to protect critical infrastructure and, unrelated to the attacks, had scheduled a hearing on that subject for September 12. The day after the planes crashed into the Pentagon, the World Trade Center Towers and the field in Pennsylvania, that hearing was held in a context we never could have imagined.

About a year ago, we began crafting the precursor of the legislation we are now considering. On October 11 of last year, Senator SPECTER and I introduced our bill to create a Cabinet-level Homeland Security Department. In

May, we merged it with strong legislation that had been proposed in September by Senator GRAHAM of Florida. And on May 22, we reported that legislation out of committee by a vote of 9 to 7.

Since the President announced his support for a Department of Homeland Security on June 6, we have worked closely and collaboratively with committee chairs and ranking members, with fellow members of the Governmental Affairs Committee without regard to party, with experts in the field, and with the White House.

We have incorporated bipartisan proposals for restructuring the INS and reforming the civil service system—the first proposed by Senators KENNEDY and BROWNBACK; the second proposed by Senators AKAKA and VOINOVICH—drawing on years of effort to build a consensus on those key issues.

All told, we held in our committee 18 hearings and heard from 85 witnesses on these issues. Every step of the way, we have been open to and accepted sensible compromises and incorporated new ideas recommended by people inside and outside the committee based on merits, based on the purpose of this legislation, based on the urgency post-September 11 of protecting the security of the American people.

The bill that emerged from this process earned the strong bipartisan support of the Governmental Affairs Committee. In 2 days of work on July 24 and 25, we debated the legislation, we incorporated many amendments, and we endorsed it by a bipartisan vote of 12 to 5.

In essence, this legislation—its core elements anyway—have now been approved twice by the Governmental Affairs Committee. That is not a hasty process. That is work that has been done by the committee over a long period of time.

I must say, as I consider Senator BYRD's amendment, I am reacting as a proud chairman, one who has worked very hard with members of both parties in committee to bring forth this legislation. It is not perfect. It is open to amendment. Let the body have its will. But I ask Senator BYRD and any other Member of the Senate, chairman or ranking member, to think how they would react if, after having worked so hard on a piece of legislation that they believe is urgently needed in the interest of the security of the American people, they were faced with an amendment that took most of it out. It would be as if an appropriations subcommittee bill came to the floor and a Senator got up and kept the sum total but switched all the money around or, more relevant, said: A little bit at the top can be spent; the rest cannot be spent until the administration comes back next year and tells us how they want to spend it.

If I am feeling deeply about this amendment, with all respect to its sponsor, it is because I feel deeply about the need for a Department of

Homeland Security as soon as possible. Each directorate has taken shape over time as we proposed them to respond to the best evidence of what will work from experts and from colleagues.

We began with a model that closely resembled what was proposed in the Hart-Rudman Commission on National Security in the 21st century, which itself was the product of 3 years of work and the insight of many of the top national security minds in our Nation. That was our first framework.

Then in the months that followed, we drew on the lessons learned from our hearings and from countless other reports and hearings and from additional hours of staff research on these issues to refine and improve the initial vision of the Department. We collaborated closely with our colleagues on both sides of the aisle. And since June, when President Bush announced his support for this Department, we have worked with the White House in incorporating parts of its ideas into this proposal.

Each directorate evolved as we tried to bring together just the right agencies and offices needed to counter the terrorist threat at home. That is why I say that the Byrd amendment is like a children's board game: When you hit a certain box, it says: Go back to the beginning and start again.

That is awfully frustrating for Senator THOMPSON and me and other members of our committee who have worked so hard to put these directorates together.

The directorate on border and transportation security, for example, started out with a blueprint very similar to that recommended by the Hart-Rudman Commission. It included the Coast Guard, Customs, and the Border Patrol. But over time, in our committee, we came to be educated and to a conclusion that the original proposal was not adequate, was not complete.

We heard from experts that the Animal and Plant Health Inspection Services, in the U.S. Department of Agriculture, had a critical role at ports and borders and ought to be integrated with the other agencies. So we moved APHIS into the directorate.

We were persuaded the entire INS should also be brought over to ensure ongoing coordination with all immigration and border activities and between immigration enforcement and services. So we brought INS into the new Department while subjecting it to the substantial bipartisan restructuring it desperately needed, according to the Kennedy-Brownback legislation, and giving it accountability—because most everybody agrees that the INS is an agency that is not functioning as we want it to—by placing it in its own directorate with direct access to the Secretary and the Under Secretary of the new Department.

As another example, the directorate on emergency preparedness and response began, again, in accordance with the Hart-Rudman recommendations, with FEMA at its core. But over

time, the directorate was expanded to include other vital offices with a central role in preparing for and responding to potential terrorist attacks: the Select Agent Registration Enforcement Program, which plays a central role in the wake of public health emergencies; the Strategic National Stockpile, the Office of Domestic Preparedness from the Department of Justice, the Office of Emergency Preparedness from the Department of Health and Human Services, and so on. Each addition was carefully considered and made in specific response to concerns raised by experts in the field to fill a demonstrated need in the new Department.

Adoption of the Byrd amendment would extinguish all of that work and say: Let's start again.

Consider the evolution of our new independent directorate of intelligence. We appreciated the attention paid to intelligence capabilities in the President's initial proposal, but working together with the chair and the ranking member of the Intelligence Committee, Senator GRAHAM of Florida and Senator SHELBY of Alabama, and Senator SPECTER of Pennsylvania, who made some very substantial contributions to this effort, we concluded we needed to go further to give the new Department the tools it needs to detect danger and prevent attacks against the homeland. Again, we were advised over and over again in our hearings that in this difficult, awful business of fighting terrorism, the best defense really is an offense, and the offense is intelligence, to know through our considerable intelligence community effort and our law enforcement effort, nationally, and at State, county, and local levels of government, to be able to gather all that information, put it together on that one proverbial board so the same sets of eyes see it and they have the capacity to see a pattern which will tell them a threat is coming, and that they will act, therefore, to stop that threat before it happens.

Our colleagues on the Intelligence Committee have come to a point in their investigations of September 11 where they—I have not heard the results. Maybe they have not been published yet. There were some early suggestions of reports in the morning papers, but this afternoon there apparently has been a report on the gaps in the sharing of information, limited by old and no-longer-acceptable bureaucratic barriers.

We created a division, a directorate of intelligence, not to collect more intelligence but to receive it from everybody, so that those eyes, which are the public's protectors, can look at the information so they will have the maximum opportunity to perceive threats before they occur and act offensively to stop them.

Our proposal has already grown and adapted, therefore, over time to the best arguments and the best evidence. Of course, further refinement will be necessary as we go down the road, but

I am deeply convinced that our committee has presented to the Senate a strong, workable structure, which is full of exactly the kinds of agencies and combinations the American people need to protect them.

The frightful facts of September 11 tell us that our Government was not doing enough to protect the security of the American people, and the terrorists took advantage of those vulnerabilities. It requires a Department of Homeland Security, up and running as quickly as possible, to close those gaps and eliminate those as a result of those vulnerabilities.

A Member of the other body, Representative THORNBERRY, played a very active and supportive role in similar legislation. To his credit, in early 2001 he introduced his own legislation in the House creating a Department of Homeland Security, well before September 11, 2001. Congressman Thornberry testified before our committee on April 11 of this year, and he said to us:

We must resist the temptation to study a problem, this problem, to death.

I believe he is right. We have studied enough. We have deliberated enough. We have seen the consequences of our disorganization more graphically and horrifically than we ever could have imagined. Now we must turn our thoughts into action.

In fact, in response to the suggestion that we are going too fast, I say just the opposite. We have already taken too long as a legislature to begin to fix these problems. We have been living with the threat of terrorism for years. The scale has never approached, of course, the horror of September 11, but there were those who warned us that day, September 11, was coming. We knew the collapse of the Soviet Union was coinciding with the rise of other enemies, including subnational enemies; that advanced technology would too easily fall into their hands. We knew they were plotting. We suffered deadly attacks, both at home and abroad.

It is time now to act. If we wait to attempt reform any longer, if we delay, as this amendment would effectively do, I believe we will not have fulfilled our responsibility to the American people. The threat is not going to vanish overnight. It is not going to give us the time this amendment would require to contemplate perfect reforms. We have no choice but to balance this reorganization with the ongoing efforts to strengthen our homeland defense capabilities.

The fact is the advances we have made since September 11 have been, in some senses, in spite of the system, not because of it, because the system remains terribly disorganized and inefficient. The fact is that we need to act now. That is why I oppose this amendment.

We have taken a year to deliberate and made dozens of difficult decisions about what kind of department we want to create. This debate has been



productive thus far on the committee's proposal overall. I am pleased the majority leader filed a cloture petition yesterday which will ripen tomorrow, because it is time to begin to narrow the debate—not to close it off but to narrow it—so we can see an end point by which this body can act.

This amendment would force us to start again, forcing us to revisit every arduous decision we have already made without a clear end date by which the American people could have some sense of security that a Department would be up and working to protect their security.

Last year, former Senator Hart, who worked with former Senator Rudman, was so instrumental in our committee's proposal and the White House proposal. I heard Senator BYRD refer to those four men who were sitting in the basement of the White House secretly crafting the President's proposal. I apologize for the immodesty of this, but I do so on behalf of our committee. When one looks at the product of their labor, the better part of it—that is to say volume, the larger part of it—is taken from the bipartisan work done by the Hart-Rudman Commission and then by our committee.

Senator Hart told our committee in a hearing we held:

This is a daunting task. But we owe it to our children to begin. It would be a mistake of historic proportions to believe that protection must await retribution, that prevention of the next attack must await punishment for the last. We can and must do both. For like death itself, no man knoweth the day when he will be held accountable and none of us knows how quickly the next blow will be delivered. I believe it will be sooner rather than later. And we are still not prepared.

I agree with every word. I say to the occupant of the chair, Senator Hart's comments not only show he bears the marks of a good law school education but he also went to Yale Divinity School for a period of time.

Mr. SPECTER. Will the Senator yield for a question?

Mr. LIEBERMAN. I yield.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, the question to the Senator from Connecticut is on the issue of the timeliness of action by Congress. My question is: Does the Senator from Connecticut think it important to move—even on an earlier day, when the Senator from Connecticut introduced legislation last October for homeland security, which sat on a back burner, having been resisted by the President, the issue having sat on the back burner until the President endorsed the concept of a Department of Homeland Security—but does the Senator from Connecticut believe that too much time has elapsed already?

Mr. LIEBERMAN. Responding to the Senator from Pennsylvania, this Senator does, indeed, believe too much time has elapsed already in better organizing the Federal Government to

protect the security of the American people at home.

In October of last year, I believe October 11, 2001, the distinguished Senator from Pennsylvania and I introduced a proposal to create a Department of Homeland Security, very much similar to the proposal that is before the Senate, though it has been revised and improved as it has gone along the way.

I have said it with some pride and gratitude that the President, when he made his proposal on June 6, took a lot from the work that our committee had done; I don't begrudge that because the President's endorsement of this proposal, which had been our committee's proposal, in fact, put it on the road to passage.

I hope we can find a way to come to a consensus on the great majority of this bill which most Members agree on and get it passed and not let the relatively small number of issues that divide us stop us from doing that quickly.

Mr. SPECTER. I have one more question, if the Senator will yield, and the question is on the issue of having under one umbrella the analysis of all of the intelligence branches—CIA, FBI, Defense Intelligence Agency, National Security Agency—on the issue that there were enough dots on the board prior to September 11, that had they been connected, there might have been a veritable blueprint if you put together the July FBI report from Phoenix about the young man taking flight training with Osama bin Laden's picture in his apartment, and the two al-Qaida men who went to Kuala Lumpur, the hijackers known to the CIA and not told to the FBI or INS or the NSA report, on September 10 that there would be an attack the next day, not even translated until September 12, and the information in the computers of Zacarias Moussaoui having been obtained with an appropriate warrant under the Intelligence Surveillance Act.

There was a veritable blueprint for what happened on September 11 and there is urgency, urgency, urgency as we speak to get the intelligence agencies to act together and to coordinate the analysis so we may have as full a picture as possible.

Mr. LIEBERMAN. Responding to the Senator from Pennsylvania, the Senator is absolutely right. The Senator from Pennsylvania has been a leader in congressional involvement and oversight of intelligence, I believe serving as chairman of the Intelligence Committee for a period of time. Again here he was very constructive and helpful in this committee's creation of the directorate of intelligence as we have created it.

I have met, as have many Members of the Senate, as has the occupant of the chair, with families of people who were lost, who were killed on September 11. They ask the gnawing question, which we would ask if we were them, and we

should ask ourselves: How could this have happened? How could September 11 have happened? And one of the most painful answers is that if we had our intelligence and law enforcement agencies better coordinated it might not have happened. The Senator from Pennsylvania spoke eloquently to that.

The truth is, on September 11 there was no single place on which all the information would be brought together, from the intelligence community, from the law enforcement community. There is still no such place. So we remain more vulnerable than we should. This Department would create a director of intelligence that would do exactly that for the first time in our history. If we did nothing else with the Department—and the proposal does a lot else—that would be a substantial step forward in the protection of security of the American people.

I thank the Senator both for his questions and for his very consequential contributions to this legislation.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 4673 TO AMENDMENT NO. 4644

(Purpose: To provide for the establishment of the Department of Homeland Security, an orderly transfer of functions to the Directorates of the Department, and for other purposes)

Mr. REID. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4673 to Amendment No. 4644.

Mr. REID. I ask unanimous consent reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I believe the clerk earlier read, when I offered the amendment, the clerk misstated the number to be 4644. Has that now been corrected? It was No. 4641, which I think the clerk stated, but the amendment is numbered 4644.

The PRESIDING OFFICER. The Senator is correct, it is 4644.

Mr. BYRD. I thank the Chair.

Madam President, I do not intend to take the floor long, but I had understood that Mr. LIEBERMAN would allow me to address some questions to him at a point while he held the floor. He must have let that slip his mind because he yielded to others, which is all right; I want him to do what he wants to if they have questions to ask, and now I have the floor. I will address just a few of the points that the distinguished Senator had.

Of course, the distinguished Senator has pride in the work of his committee, under his chairmanship and under the

cochairmanship of the ranking member, Mr. THOMPSON. Of course he has pride. And he has great expertise, his committee does, certainly, with all the Members of it, great expertise in the subject matter of the legislation.

I am not on that committee. I said that before. I come as just an ordinary Senator. I am not a member of the committee. I am not an elected part of the leadership. I am President pro tempore by virtue of my long service here in my party and in the Senate, but I am an upstart when it comes to this legislation. I just came in the house out of the rain. I can understand the distinguished Senator's pride in his work. Who wouldn't be proud after spending all these months? I know that he is proud. But are we supposed to accept a piece of legislation without amending it because of the pride of authorship of a chairman of the committee, or any other Senator?

The distinguished Senator has asked me, as the chairman of my committee, how would I feel about bringing a piece of legislation—I think my words are being spoken in the spirit of what I think the Senator was saying. Unlike most other Senators, I cannot write down rapidly, quickly, what Senators are saying. I have a little trouble remembering exactly what they said, and if I misstate the portent of his question to me during his statement, I would be happy if I were corrected. I understood the distinguished chairman of the committee which has jurisdiction over the pending matter, I understood him to ask me, as chairman, how would I like to bring a bill out of my committee to the floor that has a certain amount of moneys for this and for that and had funds, line items, for certain programs, certain projects, how would I like it if someone offered an amendment to take all that away and change that to direct those funds to some other agencies.

I assure Members I would like for that work of my committee, along with Senator STEVENS and the other 13 Republican members and the other 14 Democratic members, to be taken as something that did not, was not worthy of the attention of the Senator and to take all that and just give a blank check. Instead of allocating the moneys the committee had determined in the ways that the committee had determined, the Appropriations Committee had determined, just change it all and say make it a blank check. No, I wouldn't like that. And I don't like the blank check that we are about to give the administration in this bill.

The distinguished Senator says he has pride in the work of the committee and doesn't want to see it changed. He would hope it would not be changed by my amendment, certainly, he says.

What did the distinguished Senator and his committee do? They wrote a blank check, as it were. They say to the administration: Here, we will pass this bill, and we are going to turn it over to you, lock, stock, and barrel. We are going to move off to the sidelines,

and you can do it as you will. Here are the bureaus. Here are the directorates. Here is the superstructure, they say. Now give to the administration, over the next 13 months, without any further action by the Congress, the transfer of these various agencies, functions, and employees into the new Department. It is yours. We will have no further say in it.

Oh, you can come up. You can come before us and submit reports and all that. But by this law we are passing, that is all you can do, and it is all we will do. Here it is. Take it all. You have a blank check.

No, I wouldn't want to have someone take an appropriations bill that came out of my committee and strike out all of the line items, all of the provisions, all of the functions and money for functions, and so on, and say just give them a blank check. No, I am not for that. But that is what is being done by the bill of the distinguished Senator from Connecticut. His is striking out the details which my amendment would write in. My amendment would keep the Congress involved. Congress would have oversight, and time and again we would require, in my amendment, that the administration make its recommendations for legislation and those recommendations would go back to the committee, chaired by Mr. LIEBERMAN, and he would have an opportunity to take a new look at it and review it. Congress could conduct oversight.

But he is not going to allow that under his proposal. He is going to say: Here it is. Mr. President, we are not going to fill in the dots. We leave all that to you. You have 13 months in which to do it. You have 13 months to fill in the dots, fill in the details, determine which agencies will go into the Department, and there it is.

Also, the distinguished Senator talks about the agencies. Yet the distinguished Senator and his committee, they don't determine the agencies, what agencies will go into the Department. They don't determine those. I don't know right now what agencies the distinguished Senator from Connecticut is talking about.

Now the distinguished Senator from Connecticut, who is still on the floor, I hope—I would love for him to stay, to remain so I can respond to the points he has made and the questions he has asked. He says the Byrd amendment strikes at the heart of the Lieberman bill. I would like to know how it strikes at the heart of the Lieberman bill. It improves and strengthens the Lieberman bill.

He says the Byrd amendment would pull out of the bill most of the work the committee has done.

Why, it doesn't do that at all. I will tell you what is pulled out of the bill, a good bit of the work that was in the Lieberman bill. The Thompson amendment struck titles II and III from the Lieberman bill. That is what pulled a lot of the heart out of the bill. I didn't

do that. I didn't strike titles II and III. My amendment doesn't strike titles II and III. They are already out of the bill. That was done by the amendment offered by the distinguished Senator from Tennessee, Mr. THOMPSON. That is what struck the heart out of the bill.

The distinguished Senator from Connecticut—I am trying to read my own feeble handwriting—says there is a sense of urgency to get on with this matter.

There have been some who have been referring to this bill as the greatest reorganization since the National Security Act of 1947. Someone just the other day, maybe it was the President—I might be wrong. If I am wrong, I hope someone will correct me—who was comparing this reorganization with the reorganization of the Defense Department, of the military, the creation of the Defense Department in 1947, saying that is the role model. Someone said that is the role model, the creation of the National Security Act, pulling these various military agencies into one department, the Department of Defense.

If that was the role model, if that is the ideal, then how long did it take for the National Security Act to pull these agencies together? How long did it take Congress to pull these agencies together, working with the President and working, by the way, with the military in this Government? It took 4 years. There were many bills offered in Congress. Committees did much work on that matter. It wasn't done overnight. It wasn't done in a week. It wasn't done in a month or 6 months. It took years, 4 years.

I can't understand why someone would say: Oh, we have done all this work. Of course, the committee has done a lot of work. I have already indicated to the distinguished Senator from Connecticut, I know his committee has put a lot of work in on this bill. But after he has laid out a litany of actions, a litany of hearings, and so on and so on, all of that doesn't really compare with the time that was put into the creation of the National Security Act, the creation of the Defense Department.

So here I can't understand all of this talk about a sense of urgency in this bill because it wasn't too long ago that the President was saying why do we need it? We don't need a new Department, and so was Mr. Ridge saying the same thing.

The distinguished Senator from Connecticut says this is a work in progress. So apparently the work in progress is going to be done by the administration over the next 13 months.

My amendment seeks to flesh out the Department, flesh out the directorates, and do it in an orderly way and with Congress conducting oversight throughout.

So I have listened with great interest to the distinguished Senator and his defense of this bill. But I say that any time a bill comes out of my committee

on appropriations, I expect it to be amended. And it isn't because I take pride in the authorship and the work of the committee that I fight another amendment. I never oppose another amendment simply on that basis, that my committee has conducted hearings. We conducted 5 days of hearings on the homeland security budget earlier this year.

But I am always expecting amendments to be offered. I don't oppose another amendment just on that basis. After all, the idea here is to improve the work product. That is why the Senate is one of the two greatest upper bodies ever created. It is why the Senate is the premier upper body of the world today. It has unlimited debate, and it has the right to amend. But to hand it over to the administration, lock, stock, and barrel, and say, Here it is, here is the superstructure, here we provide for some under secretaries, assistant secretaries, and deputy secretaries—and, of course, it doesn't have title I or title II. That was taken out by the fine Senator on the Republican side of the aisle. Those two titles have been eliminated. They were moved out of this bill, and I am so proud those two titles are gone. They are gone.

Here it is, lock, stock and barrel, and you take it and fill it out. You have 13 months in which to do it. Here it is. Take it and fill it up. This is the Byrd amendment. I don't want that because that would fill in some of the details. Congress, the representatives of the people, would fill in the details, some of the details with the directorates.

I am sorry the distinguished Senator from Connecticut is totally, I would say, misapprehensive of my amendment. It plainly states what it will do. I am sorry. He is a good lawyer. He can take the easy side of the debate and make a different case. He can take an apple, shine it up, and make it so you would think it were an orange. He is a good lawyer. I don't speak disrespectfully of him. There are lots of good lawyers in this country. He is trying to tell the American people that the Byrd amendment would rip the heart out of his amendment. It doesn't do that. It makes his proposition better.

I think the Senator wonders about the 13-month deadline. I have said that my amendment would complete the action in the Department and directorates, and the very agencies—although I don't know what agencies there are. The distinguished Senator from Connecticut hasn't yet told us what agencies are going to be put into the directorates.

Here is the legislation, my amendment that says, yes, the whole thing will be completed in the same time period—namely, 13 months roughly—that obtains in the case of the Lieberman proposal. Here is the language. Subsection (e), "Deadline for Congressional Action: Not later than 13 months after the date of enactment of this act, the Congress shall complete action on all supporting and enabling legislation

described under subsection (a), (b), or (c)."

There it is. In the meantime, we would fill in the details. Congress would have its hand on the throttle as we went forward in filling out in these various five directorates in title I.

Mr. LIEBERMAN. Madam President, will the Senator yield for a question?

Mr. BYRD. Yes.

Mr. LIEBERMAN. As I have heard the Senator read this last section from his amendment, it seems to me that what it requires is that Congress finish its action on proposals made by the administration, fill in the blanks in the five directorates within 13 months—not that they would actually be up and running—whereas the underlying committee proposal requires that the full Department be implemented no later than 13 months after the President signs. And presumably substantial chunks of it would be implemented before.

My fear, naturally, is that not only has the Senator, I repeat, taken the heart out of our proposal but that there is no clear date in the Senator's amendment by which Members of the Senate or the American people can have confidence that there will actually be a Department of Homeland Security.

Mr. BYRD. Madam President, may I respond to the distinguished Senator? It is all going to be in the Senator's hands, under my amendment. My amendment would require the Secretary to send up to the Congress his recommendations for implementing and filling in the directorates.

What will happen when those recommendations come to Congress? They will be under the jurisdiction of the committee that is chaired so ably by the distinguished Senator from Connecticut. It is all going to be in the Senator's hands. I will trust the Senator to work in his committee to get those details and recommendations, to weigh them, vote them up or down, amend them, and report to the Senate.

As I have indicated so many times, I am perfectly willing and will be glad to help work out some expedited procedures whereby this will be done.

The whole matter will be in the Senator's hands. I would trust the Senator from Connecticut and his committee far more than I would trust that crowd down on the other end of the avenue. I am talking about the OMB Director, and others. I trust the Senator. I take my hat off to this Senator from Connecticut.

When we say that on February 3 something will happen, on June 3 something will happen, on October 1 something will happen, and in the meantime these matters will go to the committee chaired by the Senator from Connecticut, we trust that Senator to see that the work is done, that it gets done. I don't trust those at the other end of the avenue who will have the thing handed to them, lock, stock, and barrel—take it all; take it all.

I hope the Senator knows I trust him and I have great faith that he and his committee will expedite this action, that they will do a much better job, will keep the hand on the wheel, and the American people to whom the distinguished Senator has so properly referred will be much better protected. I think they would much more trust the elected representatives who are involved on that committee to do a good job and to see that the work is more expeditiously done.

Finally, I will say this: My amendment expedites the work of creating this Department—expedites; doesn't delay but expedites. Read the amendment.

Mr. LIEBERMAN. Madam President, responding to the Senator from West Virginia, I thank him for his trust that we will be able to get the work done next year. But the Senator from Connecticut believes that the committee I am privileged to chair has gotten the work done, and that is what we have presented to the Senate.

The Senator's amendment would not expedite our work. It would in fact block it. It would stop it from implementation. It would extinguish all we have done in these five areas.

I said in my earlier remarks that the committee and I certainly have no claim to perfection. Amendments are in order. As the Senator from West Virginia has said, it is the greatness of this body. And the Senator obviously has a right to submit the amendment that he has, and I respect him. I have a responsibility to my constituents, to my committee, and to my conscience to describe it. With all respect, it appears to me to be an evisceration of what our committee has done. One might just as well vote against the committee's proposal to support the amendment of the Senator from West Virginia. That is how conclusive I think it is.

As I have said, it sort of builds that structure and has a few people up in the attic but nobody underneath really working. A few people in the attic are the Secretary and the Under Secretary, but nobody underneath.

Mr. BYRD. Will Senator yield?

Who are the people underneath in the Senator's amendment? I will tell you who the people are underneath. They are people I am afraid of. The people underneath in the Senator's amendment—I am looking at that chart. I am going to ask to have a chart from my office brought up, too.

It is the people underneath I am afraid of. The people underneath are downtown. They are the people who are saying: Let's get on with it. Let's pass this bill and give the President flexibility, and all this stuff.

I trust the people underneath, if it is Senator LIEBERMAN's committee. I trust them, if they are underneath. That is why I put them front and center in my amendment.

Mr. LIEBERMAN. Well, responding to the Senator from West Virginia, the

authority we would give to this administration if—and I hope when—we adopt a bill creating a Department of Homeland Security is no different than Congress gave, I believe it was, the Carter administration during which the Department of Energy was created. It created the Department and gave President Carter and his administration the opportunity to administer it. We maintain the power of appropriations and oversight.

That is exactly what we would be doing here as a result of suggestions made by the Senator from West Virginia and the Senator from Alaska to our committee and components we included at their suggestion in our committee proposal. We have rejected attempts by the administration to have more authority over appropriations and reorganization.

So I wanted to just say—

Mr. BYRD. I thank the Senator. I thank the Senator for doing that.

Mr. LIEBERMAN. I thank the Senator from West Virginia for the suggestions because I thought they had great merit.

I just want to say this is a chart which describes who is under there. As I said in my remarks, we worked real hard on this. Under the Directorate of Border and Transportation Protection, the Customs Service; Animal, Plant and Health Inspection Service from the Department of Agriculture; the Transportation Security Administration; the Federal Law Enforcement Training Center—these are people we trust.

You and I agree these are people the administration seems to want to deprive of some of their existing civil service protections.

Mr. BYRD. Yes. Let me ask the Senator a question. In what titles of the bill does the Senator deal with this on the chart?

Mr. LIEBERMAN. I will come back and check the exact—

Mr. BYRD. He doesn't do it in title I, does he?

Mr. LIEBERMAN. No. Titles II and III, incidentally, are in the White House office.

Mr. BYRD. I know. These charts here, all this work the distinguished chairman is talking about, all these items, these agencies that he has on these charts, these are not the people underneath that are created by title I, are they?

Mr. LIEBERMAN. Yes. They are in fact created by title I. These are existing agencies that are brought from where they are now to be coordinated in the Department. The exception—

Mr. BYRD. How do we know those agencies are among the 28 agencies that are going to be brought into the Department?

Mr. LIEBERMAN. Responding to the Senator from West Virginia, they are quite literally transferred—I mean, literally—in the legislation that we have put before you from our committee. Each one of these is spelled out and assigned to the particular directorate

which the chart shows it is located under.

Mr. BYRD. Would the Senator from Connecticut show the Senator from West Virginia and the Senate where my amendment takes those very agencies out?

Mr. LIEBERMAN. Well, as I read your amendment, in the Directorate of Border and Transportation Protection, what your amendment would do is first remove the definition of the mission of that directorate, and then it would eliminate all this underneath and say to the executive branch: Come back—incidentally, not by February 3, but not before February 3—and tell us what you want in this directorate. The same is true of the Critical Infrastructure Directorate or the Emergency Preparedness and Response Directorate.

So everything below what I have called the attic is eliminated, and basically these are generals without soldiers. These are admirals without sailors. They are just the top executives, and they have to wait until the administration makes the recommendations—not before the dates which you have set, and until the Congress acts. And we know Congress has a lot of ways to not act, if it chooses not to.

So the Senator may disagree with the structure, obviously. That is not only his right, I understand if he does, but this was our best judgment as to how to make homeland security work.

I just say that I do believe your amendment takes the heart out of our recommendation and delays drastically the date by which we would have a Department of Homeland Security protecting the American people. That is why I oppose it.

Mr. BYRD. Well, I appreciate what the distinguished Senator says. We have only to look at some of the—let's take the agency that was created, the Transportation Security Administration, to find how quickly the train left the track, how much in error, how many mistakes were made, how that agency went awry.

It should teach us that under the proposals of the distinguished Senator from Connecticut there is liable to be much of that happen throughout this whole Government when we are talking about 170,000 employees and 28 agencies.

I don't know if anybody in the legislative branch is aware of what the 28 agencies would be, what is the full number of the 28 agencies. The Senator may be absolutely correct in that, but I think that under any legislation that is passed, it is going to take many a prayer to have it come out right at the end of 13 months.

I have read recently that it is going to be impossible to meet the deadline of December 31 with respect to some of the protections that are going to be provided to the traveling public in the air. They have already said, well, that can't be met.

So I think at the end of the day we are going to find, under the proposal of

the Senator from Connecticut, as well as under mine, if you want to make it that way, we are going to be subject to finding that we have heard that we did not provide enough time, that things are going wrong. And then when we increase the magnitude of what we have already seen go awry with reorganization proposals and find that here was 170,000 employees, I think there is going to be a lot of extending deadlines in the end.

But I am very sorry the Senator continues to believe that my amendment is taking the heart out of his proposal.

Now here is a chart. May I suggest to the Senator that all kinds of charts can be written, and all kinds of charts can be displayed.

Here, if anyone can read, with 20/20 vision, and getting up close, the number of agencies that are affected by this homeland security proposal of the administration—this is the existing bureaucratic structure we are talking about dealing with. This is the existing bureaucratic structure for all homeland security agencies. Here it is.

Well, my goodness, just to read the names of those would take even the Senator, who has good eyesight, several minutes—several minutes, I mean, 15 minutes at least, from the top down.

Look at this. Look at this chart. And all I am saying to the Senator is that we leave in his hands, in the hands of his good committee, the oversight of the creation of this Department, all of the directorates which his committee has proposed.

That is all I am saying. Let's leave it in the Senator's hands, not turn it over to the people in the executive department. I want the people to have security, real security. That is why I want to trust his committee.

Does the Senator have anything further?

Mr. LIEBERMAN. I thank the Senator from West Virginia. I want to say that it is because of the complexity of that chart that refers to the various agencies that have something to do with homeland security or the war against terrorism—you see the Department of State here, Director of Central Intelligence, the Department of Defense, it goes beyond just homeland security and security generally—it is that chart, with all its unconnected pieces, that has motivated our work on this bill.

Take, for instance, all the agencies that have something to do with border security. As we heard testimony in our committee, you go to a point of entry into the United States of America, you have three or four Federal agencies. Each one of them has their own office. Each has their own telephones. They cannot communicate rapidly with one another. The same is true of critical infrastructure protection, of the capacity of Federal, State, and local agencies to work together on emergency response, if, God forbid, there is another terrorist attack. That is the whole purpose of the Department we brought forward.

As I have said, you mentioned my use of the word "pride." It is not so much personal. It is both for the committee, and it is not to ask colleagues to support our proposal because we reported it out. I think it is the best proposal we could make at this time. Therefore, it is the most responsive to the threat of terrorism and insecurity here at home.

Is it perfect? No way. Would it benefit from amendment on the floor? It would and will. Will the Department, once it begins going, when we pass this, still require the oversight of Congress, working with the executive branch to make it work better and better? Yes, it will.

My concern about the Senator's amendment is that it doesn't build on the work we have done. It eliminates it. In that sense, it does set up a procedure which really will delay the date by which we make—let me describe it this way—our first, best effort, which is what I believe our bipartisan committee proposal represents, to create a Department of Homeland Security which will close the vulnerabilities that those evil terrorists took advantage of on September 11. That is why I have my sense of urgency about it.

Mr. BYRD. Mr. President, I will yield the floor shortly. May I just say two things. One, I respect deeply the right of the Senator from Connecticut to disagree. I respect very deeply his own deep feeling of conscience that his approach is the better. I respect that. I salute him for it. But to say that the amendment I am offering does not build on the work that he and his committee have done is borne of misperception, misunderstanding possibly, of my amendment.

It builds precisely on that rock. It uses the same superstructure.

It was not my idea that we have five directorates in title I. It was not my idea that there be six under secretaries or seven, that there be five assistant secretaries. These were not my ideas. I took the product that the distinguished Senator from Connecticut brought out from his committee, and I have attempted to build upon that good work, build upon that rock and improve it.

I shall yield the floor on that and say thank you to my friend and let someone else have the floor.

I will shake hands with him so everybody will know that we are not really angry with one another. We may use all these fighting words. We get out our oratorical knives and we flash them. And they glint in the Sun. I am ready to sit down. I am not mad. I am not angry with the Senator at all.

Mr. LIEBERMAN. I thank the Senator from West Virginia. The truth is, this was an important exchange, an important debate. It does put in clear focus and does give the Senate a decision to make about whether they are prepared to go ahead and adopt the amendment, the proposal the committee has brought out, or whether they want to basically take the super-

structure, if I may use your word respectfully, and then come back to fill it in next year or the year after.

It is not so bad to have a little emotion expressed on the floor of the Senate because we both feel strongly about our points of view. Hopefully, from that heat will come some light for all concerned.

I am honored to have participated. I thank the Senator.

I yield the floor. Senator THOMPSON has been waiting so patiently during this discussion. I regret he has left the floor. Pending his return, I yield the floor to the Senator from Michigan.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Michigan.

Ms. STABENOW. Mr. President, I appreciate Senator THOMPSON allowing me to speak for a few moments on this critical issue before he speaks. I have very much appreciated the exchange between my two friends and colleagues.

I rise in support of the Byrd amendment to the homeland security bill. I stress that I very much support a Homeland Security Department. I commend Senator LIEBERMAN, who is the first author. We speak of it now in terms of the administration's proposal, but I think it is important that we continue to recognize that it was the bill of the Senator from Connecticut originally. He is the one who brought this forward to us, and I congratulate him. I tend to support a Department. I think it is very important we do that.

It is very important that Congress have a continuing say in the creation of any Department of Homeland Security, precisely because it is so important. I believe the Byrd amendment does that.

Simply put, the mission of this new Department is just too important to be rushed into law. Senator BYRD has noted that in the past when we reorganized various military departments under one Department of Defense the planning took years. Clearly, we don't have years to create a Department of Homeland Security. I would not suggest that. But that doesn't mean we should not proceed in a thoughtful and deliberate manner to make sure we get it right. This is so important.

In fact, if I could make a historical observation, it was September 17, 1787, that our Constitution was signed by a majority of delegates to the Constitutional Convention.

When that first Congress under the new Constitution met in 1789, it took months of on-and-off debate to create the first three Cabinet posts—the Department of State, the Department of the Treasury, and the Department of War. They even considered creating a Department of the Interior but rejected it at that time.

Before those Cabinet posts were created, George Washington and his Vice President, John Adams, were pretty much the entire executive branch of Government. But that first Congress wanted to take the time to get it right. I suggest that we need to do the same.

Many questions remain, and if the public is to have confidence in this new Department, these questions must be answered. For instance, which agency should be transferred into the new Department, and why? What criteria is the administration using to determine which agencies should be transferred?

Almost all of the agencies being transferred have other functions that are unrelated to homeland security. How will those functions be affected?

In Michigan, there are concerns over whether or not the Coast Guard will have sufficient resources to deter terrorists trying to sneak into our country from Canada by boat and still fulfill its crucial role in search and rescue operations and ship inspections. The Coast Guard is critical to Michigan. These issues are very real for us.

In earlier discussions about a Homeland Security Department, the Department of Agriculture's Animal Plant Health Inspection System, APHIS, would have been moved to the new Department.

While it is reasonable that the border inspection mission of this agency be a part of the new Homeland Security Department, it is critical that the domestic mission of protecting animal and plant health and, ultimately, the health of American consumers, remain within the U.S. Department of Agriculture. If the transfer of APHIS to the Homeland Security Department were to be proposed again, I would like to have the chance to debate that and vote, because I oppose that transfer.

What about the workforce? Will our Federal employees lose the civil service protections created to keep politics out of the Federal workplace? How do we merge all of the different personnel and salary procedures of these different organizations?

Mr. President, I suggest that Senator BYRD is correct. These are huge decisions that will take time to have it done right. These are just a few of the questions that need to be answered. There are many more.

By establishing a Department of Homeland Security in well-defined phases, we will ensure that the Secretary of the new Department will have to return to the Congress and explain the rationale for the administration's decisions as they proceed. I believe that makes sense.

Here is the rough timeframe and key events to create this new Department, as Senator BYRD has outlined before. First, if the amendment passed, we could quickly pass a bill establishing the Office of the Secretary and outlining the superstructure of the new Department.

Then, early next year, the Secretary of Homeland Security will provide Congress with details for the Directorate of Border and Transportation Protection. Then, in the summer, approximately 120 days after the first presentation, the Secretary of Homeland Security would return to Congress and provide details for the Directorate of

Intelligence and the Directorate of Critical Infrastructure Protection. Then next fall—again, about 120 days after the second presentation—the Secretary of Homeland Security would again return to Congress with details for the Directorate of Emergency Preparedness and Response and for the Directorate of Science and Technology.

This more disciplined process will help us create a Department that is cohesive, responsible, and effective, with its duties and missions clearly defined.

I believe this is the best approach to make sure that an effective Department actually is created and is one that is in the best interest of our citizens. I strongly support the Byrd amendment and urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, I think the question before us is whether we will move ahead with a comprehensive reorganization plan to reorganize in a way that will greater protect our country—a plan that is supported by the administration, a plan that was approved by the Governmental Affairs Committee, or whether we go in another direction that I believe Senator LIEBERMAN is correct on, which would move us away and down the road toward delay. It would delay addressing the crucial questions that I think are before the Senate and the country with regard to how we best address our security in the future.

By nature, I tend to want to agree with the Senator from West Virginia when he says that we sometimes move too rapidly and without due consideration with regard to certain important matters that come before this body. I agree with that. I agree with it as I watch amendments to appropriations bills come forth that have not been considered by committees; that have not been subject to committee hearings; that have hardly been debated on the floor, and spend tens of billions of dollars; that grant and take away broad ranges of authority, as amendments and bills are passing through because they are deemed to be convenient vehicles. We do that all the time, unfortunately.

So what we have done with regard to this homeland security bill, in comparison to what we do on a regular basis, makes it look as if we are moving at a snail's pace—not too fast, but at a snail's pace—compared to the short shrift we give and the rapidity with which we pass sweeping amendments to these appropriations bills and other bills that come through here, circumventing the committee process as we do it.

I imagine my friend, the Senator from Connecticut, believes it somewhat ironic that it is suggested he has been giving the administration a blank check on the one hand, when so many have accused his approach as being one of micromanaging what the adminis-

tration is doing. I must agree with him that the suggestion that this is broad and sweeping, and the implication that it is somewhat unprecedented power to the administration, is unjustified. I think he is right when he talks about the creation of a new Department or the merging of departments or any other broad range of administration activity. The administration is a part of a separate branch of Government, after all. Any time we do that we are granting authority, but it is hardly a blank check.

When we determine such things as there being a Secretary at the top who is answerable—and, first of all, confirmable—to this body, and is answerable under oversight, and creating under secretaries—there are, I believe, 17 individuals created by this legislation, if it passes, which are confirmable by this body, that is hardly granting broad, sweeping authority to the other end of Pennsylvania Avenue.

As my friends from West Virginia and Connecticut were talking about which end of the avenue they trusted the most, I was beginning to fear that they were going to come to agreement on an important part of this debate, but it didn't quite happen. So I feel better about that.

We have 17 confirmed positions in this bill, 6 directorates, pulling 22 agencies together, agencies that have already been created by this Congress, with their duties delineated. We give permission, as it were, for those to be brought together. We delineated in this bill the responsibilities of these directorates, the duties of these positions that we create.

We are certainly not going to lose our oversight duties and responsibilities, if we choose to exercise them. We are certainly not going to circumvent the annual appropriations process.

This bill does get into the details of our intelligence operations. Goodness knows we need improvement in that regard, and we can have a good debate as to how best to improve it. But when Congress in a bill gets down to the business of saying this particular information shall go here and this particular officer shall have the right to this officer's information and this particular information, and the President can step in here but he cannot step in there, that is hardly granting a blank check.

One could argue we need to do more of that and get into the weeds even in more detail, but one can hardly argue we are creating a blank check and certainly one that is inconsistent with what we have done, I think, as a Congress many times in setting forth other important Departments.

Reference has been made to the National Security Act, which was created in 1947. Congress acted then after due deliberation. I presume most folks think we went through the proper process and deliberated sufficiently before we created that agency in 1947.

As I understand it, Congress has subsequently acted 43 times since then. So

we should make no pretense whether we do it today or tomorrow or next year or 2 years from now that that is going to be the end of it. It is going to be the beginning of a process to do the best we can. Senator LIEBERMAN said it well when he said: Our first best effort.

The question gets back to one I posed in the beginning: Do we do it now or do we do it later? I have some difficulty with certain parts of the bill that came out of committee. I certainly cannot argue with the detail which addresses the seriousness of the component parts of this new agency that is being created. It is a 347-page bill. There is some other historic legislation that has been passed by this body that is a fraction of that amount.

In sum and substance on that particular point, I will simply conclude that we are at least in the middle of the road in exercising our congressional authority in setting up a new Department as to whether or not we are having our say about how it is to be done versus just handing it over to the executive branch and saying: You fill in all the blanks. I respectfully submit the Congress has not done that.

We get down to the practical proposition that this Congress has relatively few days remaining in this year. We all know we are not going to stay around here too much longer. It is an election year. We may be in the first week of next month; we may be in the second week of next month. Nobody knows exactly how much longer we have. We have several important pieces of legislation still pending which we have to address one way or another—appropriations bills, Defense appropriations. We are going to be considering an Iraq resolution. These are important issues, eminent issues that we cannot avoid, must not avoid, and we will not avoid. We will take up those issues.

The question becomes, again, with regard to homeland security: Do we go ahead and consider these amendments and get on about our business, have a debate on these amendments and let everybody have their say on these amendments, fashioned the best we can, or do we put it over to next year and take it up again next year? Do we really want to go into next year, after having set aside the time to consider this, after about a year, since the start of hearings? Do we really want to conclude we want to put this bill off, in many respects, until next year?

I do not think we want to conclude that, and that is what the adoption of the amendment that is the business before the Senate will do.

We started the hearings process in the Governmental Affairs Committee on September 20 of last year. From September until June of this year, the committee held 18 hearings. So it is almost a year ago we started the hearing process with regard to this bill.

It was almost a year before that very important commissions started telling us facts we did not really want to hear, and that was that we were in danger;



that our country was vulnerable; that we needed to address the issue of terrorism; and that a part of the way we must address it had to do with the way our Government was organized.

In December of 2000, the Gilmore Commission released its report. In February of 2001, the Hart-Rudman Commission released its report. Of all the many positive aspects of this body, the most disturbing aspect is how many reports and warnings and how much information we have to get sometimes before it gets our attention. We could not get in this room all the GAO reports and commission reports and other similar reports and comments over the past few years telling us and warning us, generally speaking, of what was coming and what was looming out there, not to mention intelligence information, about which we might or might not be able to talk.

Public bipartisan independent reports were coming in at least a year before we even started our hearings. So we have had the benefit of those reports.

Would that we took that much time on other important issues facing our Nation as we pass amendments to appropriations bills left and right and hardly know on what we are voting, issues on which we have had no hearings, on which we have had no committee action, and we do it helter-skelter sometimes. Compare that to the process we have been through with regard to this issue. So we are here at the end of that time and we are on the bill. We are facing important issues with regard to this bill.

We have considered one of them: the question of whether or not the person who is going to be in the White House is going to be Senate confirmed or not. We had a vote on that. The Senate expressed its opinion, expressed its will on that issue in a pretty convincing fashion, in essentially a bipartisan vote. We decided that would not be a position subject to Senate confirmation because we were creating a new Secretary who was going to be subject to Senate confirmation, and we did not need that duality.

The President deserved counsel inside the White House separate and apart from the Senate-confirmed position. We decided that, but we took it up early last week. We only got a vote on it yesterday.

We have issues concerning the President's national security authority. This bill would actually take away authority that the President has traditionally had with regard to the exercise of his power in instances concerning national security. That is a portion of the bill with which I disagree, and in one form or another I want to debate that issue on the floor of this body.

We have the issue of management flexibility, whether we want to adopt the same old management tactics and techniques and laws that were passed back in the 1950s in the paper age

where we have all of these multisteps that people go through in their careers. They go into the Government at a certain level and work their way up and stay with the Government 20 years and then they are out. That is a totally different era than we live in today.

Do we want to adopt those practices to homeland security or do we want to do it a different way? This is an extremely important issue. How are they going to be able to get anyone to take that job, without the tools that are necessary to do that job, under a system that can take years in the resolving of disputes over worker competence and things of that nature? The chance over the last 5 years of a person being dismissed and actually removed from Government because of incompetency is three-tenths of 1 percent. Government workers themselves, the overwhelming number of which are good, competent people, would like some opportunity to make better pay and have some incentive pay and to move around easily and to get hired sooner. Surveys will tell us there is more than three-tenths of 1 percent who might want to find another line of work. Do we want to address that now? We all know it is a problem.

Go down to the Brookings Institution and they will tell you—we all know it—that it is an outdated system. Do we want to address that? Do we want to address the issue of intelligence?

At the heart of all the problems we have seen, before and since September 11, is the problem we have had with the collection, analysis, and dissemination of intelligence material. What could be more important to this country than that? We have a provision in this bill that has to do with that, and we need to discuss it. What is the best thing to do about that?

These are important issues facing the country and this body at the heart of this bill. Are we going to put all of that off until a later time because we have only had a year since we have started the process in this body? I do not think we can do that.

The problem is that we have not had the opportunity to consider those issues. After we considered the issue of whether the White House person is going to be confirmed by the Senate, I stated that I wanted to ask for the yeas and nays, get a vote on it and move to the next amendment. We have not been able to move, since that time, until today. Senators have exercised their rights under the rules of the Senate, and as we came to address this issue yesterday none of those issues—national security authority of the President, management flexibility, what kind of intelligence operation we are going to have, the reorganization authority of the President—have been brought up.

I had not had the opportunity, and my colleagues have not had the opportunity, to address those issues at all, when everyone knows they are at the heart of this bill and they have to be

addressed. What happened? Cloture was filed on the bill, which if passed would cut off a vote on all of those amendments.

So on the one hand, we are saying we want due deliberation, we have not had enough time to consider all of these important issues, and then on the other hand we want to have cloture so consideration of those issues are cut off, at least for the foreseeable future. That is the dilemma we have now.

I do not think my colleagues can have it both ways. I could not agree more that we need to take an appropriate amount of time, but simply waiting and watching the clock tick-tock, tick-tock does not make us any wiser. We need to consider the substance of these issues. That might make us a little bit wiser. We need to get on with it, in other words. That is why cloture is so inappropriate on something such as this. That is why we need to discuss and consider these amendments, instead of cutting off debate and washing our hands of it. We certainly should not be putting it off until another year.

How long has it been now since we have known we have had intelligence deficiencies with regard to human intelligence, with regard to our ability to penetrate these foreign cells that wish us so much harm? How long has it been since we have known we have had problems in that area? A long time. A long time. This is not news to us. We do not have to study that problem any longer. We know we have it.

How long has it been since we have known we have had problems at the border? A long time. How long has it been since we have known we have had problems at the IRS—INS? Well, IRS, too, especially, but the INS. We have known of those problems for a long time. They still exist. It is time we did something about it. I do not think the American people want us to wait until next year.

We have spent considerable time in these 18 hearings, and dozens more in the Senate and House committees. Congress and the President have had the benefit of inclusions and recommendations of several commissions, such as the Gilmore Commission and the Hart Commission, that have studied this problem extensively.

Frankly, it is going to be years before this Department is functioning, as it is, and certainly longer if we do not fix the flexibility problems I referred to earlier. If creating this new Department is really the right thing to do, the last thing we need to do is to put off its implementation.

Some would have us wait and deliberate until we get it perfect, but I submit that day will never come. Reorganization of this size is clearly going to require further action by Congress in the future.

The National Security Act of 1947 was not perfect. According to CRS, we have had to amend it 43 times since it was passed. Continuous oversight and

legislative action is a part of the process of governing, which we should be prepared to do.

I think it is instructive to look at the chronology over the last couple of years. I mentioned the Gilmore Commission, December 2000; Hart-Rudman, February 2001; September 11, of course, our country was attacked. From September through June, our committee held 18 hearings. Other committees did the same. In October of 2001, the President established the Office of Homeland Security and charged it with creating a national strategy. In October of that year, Senator LIEBERMAN introduced S. 1534, a bill creating the Homeland Security Department. In May of 2002, Senator LIEBERMAN introduced S. 2453, a bill creating a Homeland Security Department and a White House office. In May of 2002, there was a mark-up in Governmental Affairs. I did not support the marking up of that bill at that time. I probably said some of the same things the Senator from West Virginia said at that time. The thing that I was most concerned about at that time was that we did not have a national strategy. I thought a strategy as to how to approach a problem should proceed a bill that dealt with the problem. I still feel that way.

In July of this year, the President released a national strategy. Also, in July of this year, the Governmental Affairs Committee received recommendation from several other Senate authorizing committees regarding the homeland security bill. This was a composite of the studied considerations and recommendations of other authorizing committees. It may be true that not many Members in terms of a percentage of the whole body know a great deal about the details of this bill, but there are Members and there are other committees who do and have been a part of this process.

If there is truly a structural problem with the House bill or the substitute, we ought to consider it. We ought to take it up. We ought to talk about it. See what it is. See if we can do better. See if we need to set it aside. See if we need to amend it. We can do that. But so far, with the disagreements that we have on management flexibility and national security authority and things of that nature, most Members who have looked at it are in the same structural ballpark. And the parts we have a problem with, we are trying to deal with on the floor. So it comes down to the question of whether or not we want the Department right now. I believe it is the right thing to do and the responsible course is to act while we have the momentum.

There are a couple of points that are properly characterized as "lesser" that I think are worth noting. This amendment also strikes language that allows the Department some flexibility in the procurement of temporary services of experts and consultants. This language was a compromise offered by Senator LIEBERMAN in committee. It is impor-

tant language that allows the Secretary access to the full panoply of experts he will undoubtedly need. Even under the limited structure envisioned by this amendment, he may need consultants to help determine the Department's needs for the legislative proposals or for the INS Directorate, which is not limited by the amendment we are now considering.

In addition, the amendment strikes the visa issuance force of the substitute. This is a provision that was also in the President's proposal. It provides the Secretary of Homeland Security authority to issue visas which would be exercised through the Secretary of State. All 19 of the 9/11 hijackers came to the United States with legal visas; 3 of these obtained their visas through their travel agents through the State Department's visa express office. Many people who come to this country obtain their visas through the State Department. Striking this provision takes away the ability of the Secretary to coordinate the visa issuance with the rest of the Department, maintaining consistent rules and policies.

With all due respect, I hope we will not adopt this amendment. I hope we can proceed with the important issues we have before the Senate that we have not had a chance to get before cloture was filed: The issues of whether the President's national security authority will be reduced; the issues of whether the new Secretary who is going to be taking on this broad responsibility will have the management tools with which to get the job done; the important issue of what kind of intelligence apparatus do we want within this Department; the issue of reorganization. All of these issues have been discussed in committee and have been discussed in some detail, many of them, by various commissions for some time. It is time for the Senate to discuss these issues.

I continue to mention them in passing as we are considering other amendments, but we have not had the opportunity to discuss these things. If we want more time to discuss these important issues, these aspects of the bill, I suggest we take that time. We have it. We have it right now. These are all issues that need to be debated and discussed before this body. I don't know why we would want to wait any longer with regard to that which we know is so deficient.

I suggest we get on about that and we be allowed to consider them in however much length or detail we want, with everyone exercising their full rights but talking about the substance of these issues that are before the Senate, that are staring us in the face, and are begging for our consideration.

Mr. BYRD. Will the Senator yield before he yields the floor?

Mr. THOMPSON. I would be happy to yield.

Mr. BYRD. I see other Senators wish to speak. I compliment the distinguished Senator on his statement. I

say again, he is an excellent lawyer, I believe. Yes, he is.

Mr. THOMPSON. The lawyer part, anyway.

Mr. BYRD. He is an excellent lawyer. I think he has made from his point of view, certainly, an excellent statement in support of a bill that he does not like. He does not like this bill. He did not vote for this bill when it was in the committee. That is what I call a good lawyer. Here he is on the floor making an impassioned speech.

Mr. THOMPSON. It will get better.

Mr. BYRD. A very careful speech. It is thoughtful and I like that about him.

I think there was one item; the Senator, I believe, asked the rhetorical question, Do we want to wait until next year? Let me just say right here that the people who are providing security for our country, and are on the job for all of us, are on the job right now. They are out there when we are sleeping, and they are good people. They are very dedicated people. They are at the ports of entry; they are at the airports; they are at the river ports; they are on the 75,000 miles of northern and southern borders in this country. They are on the job.

I believe they arranged for the arrest of six persons in New York just a few days ago. We did not have a new Department of Homeland Security. Those people are on the job right now. They are doing the work.

So I think we have time to think this thing through and try to do the job right.

Again, I compliment the distinguished Senator. There are other Senators who wish to speak. Senator GRAMM from Texas is here. May I just say I know that Senators BOXER, CANTWELL, DORGAN, JEFFORDS, SCHUMER, and others want to speak on this amendment—not necessarily tonight but maybe in the morning. I thank the distinguished Senator again.

Mr. THOMPSON. I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Texas.

Mr. GRAMM. Mr. President, I spoke earlier today under our time limit and I was grateful for the opportunity and said much of what I wanted to say on this subject today. But I wanted to come over this afternoon to talk a little bit about the Byrd amendment and to focus in on where I think our problem is, in coming to what I believe should be a bipartisan consensus.

Let me, first, say that Senator BYRD has spoken at great length on this issue. On Friday I was running on a treadmill—coming as close to running on a treadmill as an old man comes, to exercise my mind as well as my body—I listened to Senator BYRD speak for almost an hour. I had, on two occasions, listened before. I want to make the following observations.

First, there is one point that I am convinced on by Senator BYRD and that

is the point about appropriations. Senator BYRD has talked about the Constitution and talked about our responsibility as an independent and equal branch of the Government. I think nowhere has his argument been stronger and more to the point than on the issue of the power of the purse. I want to make it clear that tomorrow Senator ZELL MILLER and I will be presenting a substitute. Maybe not on the floor. I don't know where we will be, in terms of ability to offer an amendment on the floor, but in the morning we are going to put out a substitute that we have been working on intensively for some 3 weeks.

One of the changes we have made is we have eliminated this 5-percent flexibility in appropriations. I believe that for every one problem that we have in trying to deal with homeland security and deal with a massive new Government agency, for every one problem we have where the President would want to reprogram funds unilaterally, we are probably going to have 500 problems with administrative flexibility and with the ability to put the right person in the right place at the right time.

So in listening to Senator BYRD and working with Senator STEVENS, at least in terms of what we are offering as an alternative that we believe has some bipartisan appeal, that takes much of what is done in this bill and in the House bill, we have been convinced that Senator BYRD is correct in noting that a fundamental power of Congress is the power of the purse. It is a power that the Congress has to be very jealous about relinquishing, and it is something that should not be done.

I am also convinced, as we begin the process of making this new Department work, that we can come up with a process whereby efforts to reprogram funds can be dealt with on an expedited basis. I had the privilege of being a subcommittee chairman for 2 years at the Commerce, Justice, State Appropriations subcommittee. I do not think there was ever a time where any of those agencies asked for reprogramming of funds that we ended up denying them. So I think that is something that can be worked out.

I think the points that were raised were strong points. It is an area where I find myself in agreement with Senator BYRD, and it is something that I believe we can and will fix. And the administration does support this substitute.

Mr. BYRD. Mr. President, if the Senator will yield for a moment?

Mr. GRAMM. I am happy to yield.

Mr. BYRD. I thank the distinguished Senator for what he has said. I appreciate so much his good work on the Appropriations Committee when he was a member of the committee. And our loss is the Senate Finance Committee's—I believe—the Senate Finance Committee's gain. I thank the Senator. I am flattered by his remarks. But he and I both know that he agreed with the Constitution on the power of the purse

more so than with Senator BYRD. I thank him. That was part of his statement, but it was part of the Constitution that we both revere and respect, not only to that matter but certainly to that matter. And the Senator has ably addressed himself to that. I thank him.

Mr. GRAMM. I thank the Senator for his kind comments. I will say, in my 6 years on the Appropriations Committee I learned more about how Government really works than in any other of my service. Some of which I liked, how it worked. In some cases I didn't like how it worked.

Let me now turn to the other issues. I want to begin with the following point that I think in a reasoned way we all agree with. One of the interesting things about public life and public service, and serving the greatest country in the history of the world, is that it constantly comes home to me that good people with the same facts, as Thomas Jefferson observed, are prone to come to different conclusions. There are several areas where I have come to a very different conclusion than Senator BYRD, and a very different conclusion than Senator LIEBERMAN. I would like to try to explain why I have reached the conclusions I have reached. These areas have to do with what I think goes to the heart of homeland security.

I think it is very instructive to note that there have been areas where the Congress has already decided that the civil service system, in those critical areas, needed to be changed. It is not as if we have not had many warnings about the inadequacy of the civil service system.

The other day I was using some facts and there was an extra part to the story, but I want to repeat them with the rest of the story in it. I think they bring home the point.

In 2001, we had 1.8 million people working for the Federal Government. Based on the performance of those 1.8 million, we immediately terminated 3 people. Under the previous administration, 64,340 Federal workers were estimated, or at least judged by that administration, to be poor performers. Of those 64,340 out of 1.8 million, we went through the process of removal with only 434. And that process takes up to 18 months.

Currently, in OPM polls of Federal employees, the very people who many of our colleagues and many of the unions which oppose the President's bill claim to be representing, in opinion polls taken of Government employees, two-thirds of Federal workers today believe that poor performers are not adequately disciplined by the current system. That is two-thirds of the people who work for the Federal Government in random sample polling believe that job performance has little or nothing to do with their chances of promotion.

So, first, I think it is important, in looking at what we are asking in terms

of powers to promote national security and to protect it, to note that the current civil service system is far from perfect.

Second, we have had study after study conclude that we needed a dramatic change in the civil service system—the Grace Commission report in 1983 and the Volcker Commission report. As we are all aware, Paul Volcker, former Chairman of the Federal Reserve Bank, certainly no union basher in the political phrase of our era and of this bill, concluded:

The current system is slow. It is legally trampled and intellectually confused. It is impossible to explain to potential candidates. It is almost certainly not fulfilling the spirit of our mandate to hire the most meritorious candidates.

Our own colleague, Senator Warren Rudman, headed up the U.S. Commission on National Security. We all know Warren Rudman. We know he is a serious person. We know he did not enter that Commission with any ax to grind. Yet he concluded that "today's civil service system has become a drag on our national security. The morass of rules, regulations, and bureaucracy prevent the Government from hiring and retaining the workforce that is required to combat the threats we will face in the future."

Not only are people in the system registering their unhappiness, but we have consistently had commissions headed by Democrats and headed by Republicans that have called for a dramatic reform of the system. Interestingly enough, we have responded.

When we decided to federalize inspectors at airports, in that bill we gave the President power in terms of personnel flexibility to hire and fire. We gave him the ability to get around the normal procedure that requires up to 6 months to hire somebody. We gave him the ability to fire for incompetence and to promote, to some degree, on merit.

We have done the same thing in the past with the Federal Aviation Administration. But, interestingly enough, in one area we have granted a tremendous amount of flexibility, when we decided to reform the Internal Revenue Service, we gave the executive branch of Government tremendous flexibility in hiring, firing, pay and promotion, because we were so concerned about the inefficiency and the potential corruption in the Internal Revenue Service.

I ask my colleagues: If we believed that the current system was failing us in the Internal Revenue Service and that we had a problem which required a different approach and more flexibility with regard to our sensitivity at the Internal Revenue Service with people who know our intimate financial information and who look at our tax returns. If we believed that flexibility to administer that Department was necessary—and we did, and we adopted it and it is the law of the land today—I wonder what people back home would

think when we said we thought flexibility was required at the Internal Revenue Service in terms of personnel because of its sensitivity and because of the lack of efficiency, but we don't think similar or greater flexibility should be provided to the President and to the Secretary of Homeland Security.

If we thought the problems at IRS justified a new approach, a new flexibility, the ability to hire and fire and promote based on merit outside the Civil service system in terms of special procedures, how, after 9/11 and after terrorist attacks that killed thousands of our citizens, can we not believe that homeland security is at least as important as the Internal Revenue Service?

When we granted flexibility for the Transportation Security Administration in the hiring, firing, and promotion of people who inspect your carry-on bags at the airport and helping to provide security, does anybody believe it made sense to give flexibility to the Transportation Security Administration but it doesn't make sense to give even more flexibility to the Department of Homeland Security?

I don't think 1 American in 100 would agree with the thesis that the IRS is more important and that we are more concerned about its ability to do its job than we are concerned about the ability of the Coast Guard to keep a nuclear explosive from being brought into New York Harbor.

But, incredibly, I think we got off into the ditch on this bill was that, while the Congress has already granted some flexibility to the President in the Transportation Security Administration, Internal Revenue Service, and Federal Aviation Administration, for some remarkable reason—even after the terrorist attack in New York—in this bill, a decision was made that the President should have less flexibility in managing the Department of Homeland Security than he does in managing the Internal Revenue Service. I think the American people will find that virtually incomprehensible, and I think they will find they are unable to accept it.

Another place that I think we got off into the ditch on this bill was taking away power that the President now has. If you went out and did a poll, and if you asked people: Do you believe, in light of the attacks on September 11, we should give the President more power in the ability to run the Departments of Government that have to do with homeland security after the attacks than he had before?—if you posed that question, I don't believe there would be 1 American in 1,000 who would have said: No, let us take national security power away from the President. Not 1 in 1,000 would have said: No, why don't we just leave it like it is? I think probably over 900 out of 1,000 would have said: Yes, we ought to give the President more power.

But, for some remarkable, unexplainable reason, the bill that is before us actually takes power away from the President which he has today.

I remind my colleagues, when the President is asking for the ability, for national security purposes, to override union contracts in terms of work rules, that is a power the President has today—unabated in those areas that deal with intelligence and national security. The President has that power today. The current and previous Presidents have used that power, and that power is currently in effect. The waiver of collective bargaining agreements has occurred in eight Government agencies as we debate this issue about whether the President should have this power. Every President since Jimmy Carter has had this power, and they have used the power. Currently, in the following agencies, collective bargaining agreements of one form or another have been waived: The FBI, the CIA, the National Security Agency, the Secret Service, the Air Marshals Offices of the Federal Aviation Administration, the Criminal Investigation Division at the IRS, the Office of Criminal Enforcement at the Bureau of Alcohol, Tobacco, and Firearms, and the Office of Enforcement and Intelligence at the Drug Enforcement Agency. In those eight Government agencies today, we are operating under rules that the President has asked for power to use in the new Department of Homeland Security.

I would have to say that never once in the Carter administration, in the Reagan administration, in the first Bush administration, in the Clinton administration—never in any of those administrations, so far as I am aware, did anybody propose taking away those national security powers.

As I have said, these powers are currently in force in eight different Government agencies. Yet, remarkably, after the attack on 9/11, and in a bill we wrote to respond to it, this bill takes away power that President Carter had, that President Reagan had, that Bush 41 had, that Clinton had. I just would like to note that I do not remember—and I have served in Congress since the last 2 years of the Carter administration—but I do not remember, in any of those administrations: That is too much power for the President to have. He ought not to have that power, and we ought to take it away from him.

But yet, remarkably, in a bill we have written to respond to the crisis we face, and the mortal risk we face, and in a follow-on to thousands of our citizens being killed in a terrorist attack, for some unexplainable and incomprehensible reason, the bill that is before us says we are actually going to take power away from the President to have a national security waiver of work rules under this new law and in this new Department.

I do not believe, if the American people really understood that is what the bill is trying to do, there would be 1 American in 100 who would be for this bill. And the President has said he is not for it, and he will veto it.

Let me explain what we are talking about in terms of these waivers. We are

not talking about waiving worker protections in terms of the basic rights of people and their constitutional rights. We are talking about work rules that have been negotiated as part of union contracts that interfere with our ability to do the job in the new Department.

Let me, very briefly, go through a few of those work rules that have impeded our ability to do things similar to the things we would like to do in the name of homeland security. Let me do a couple of them in detail, and then I will just mention the others.

In 1987, the Customs Service in Boston decided they wanted to reorganize the inspection room. They concluded they could be more efficient in inspecting things coming into the country. So they set about the process of remodeling the inspection space.

The Treasury Employee Labor Union filed a complaint with the Federal Labor Relations Authority claiming that to reorganize that work space, to reconfigure it, without renegotiating the union contract, violated the union contract. It ended up going to the Federal Labor Relations Authority, and—guess what—they ruled that it violated the union contract and the Customs Service could not restructure the inspection area.

Now, look, after 3,000 people died in downtown New York, if we conclude, with this new Department, that we need to change the inspection area at the airport, are we going to go through 18 months of negotiating with the National Labor Relations Authority as to whether we can do it, when the lives of our people are at stake? Absolutely not. Nor would anybody in their right mind suggest that we should. That is the kind of waiver authority for which the President is asking.

I will give you another example.

Under the work rules that govern border inspection, Barry McCaffrey—you all will remember Barry McCaffrey, the good general who was the drug czar during the Clinton administration—he observed, in the San Francisco Examiner that under these work rules for Customs and INS, there were some things they each could and could not do under these contracts. He observed officials at one agency were actually forbidden to open the trunks of cars, a policy well known among the drug dealers. Then he talks about how actually knowing these work rules allowed the drug dealers to game the system.

Now, let me switch to the Coast Guard. Are we willing to let work rules and what some people will and will not do prevent us from searching a barge that might bring a nuclear device into New York Harbor? Does anybody really believe, in the Department of Homeland Security, the President should not have the power to waive those work rules when people's lives are at stake? Nobody believes that. But that is what we are debating here. That is what this debate is about.

Let me give you another example. In 1990, INS wanted to add an extra shift at the Honolulu Airport to deal with a surge in international flights in the afternoon. They had a backlog and had people waiting in line, so they wanted to add another shift in the afternoon to do their inspections.

But there was only one problem. The American Federation of Government Employees said: No, you are not going to add that shift because we have a union contract that says we get a say in whether more personnel come on board to do part of our job. And you have already guessed it: The union took the case to the Federal Labor Relations Authority and, they ruled that the INS could not add the shift.

Now fast forward through 9/11. Take into account that people died at the Pentagon and the World Trade Center. Are we really going to allow a union agreement that would make us go back and renegotiate the contract before we could put more INS agents in an area where we believe there is a clear and present danger to the lives of our citizens? Obviously, some people think we should. That is what the debate is about. But I cannot believe most Americans would think the President should not have the power to say: Now look, this is no Sunday picnic we are going through here. People's lives are at stake. We need more people here, and we need them today, and we are putting them here. And if you don't like it, go work somewhere else.

Now, that may seem extreme to some people, but I don't see it as extreme. If somebody is coming through Customs in Savannah, and they might kill my mother, I feel pretty strongly about it. And when we are dealing with homeland security, these kinds of issues have to be taken on and addressed.

Now, I have gone through enough of them in detail. Let me just touch briefly on a few of others: Prohibitions against special task forces operating in the Border Patrol. Listen to this, we have union agreements that prohibit us from stationing Border Patrol agents, for any period of time, where there are not suitable eating places, drug stores, barbershops, places of worship, cleaning establishments, and similar places necessary for the sustenance and comfort and health of employees. And I generally agree with that. We have a lot of great people who work in the Border Patrol. But when lives are at stake, when you have extraordinary circumstances, we cannot be required to go back and renegotiate a union work rule because an area where terrorists might cross the border does not have a dry cleaner. Dry cleaning is important, but it isn't that important.

You get the idea, in listening to some of our colleagues, that when the President is asking for the right to suspend these work rules, it is just willy-nilly, wholesale, we don't like your looks, you are out of work.

We are talking about being able to put a Border Patrol agent where there

is no dry cleaner in an emergency; not that we want him to go off and live in a tent. But if he has to live in a tent for a few weeks or a few months to protect our citizens from being killed, I think they would willingly do it. I don't think it is asking too much to ask people to do it.

I will touch very briefly on the others. Body searches of detainees: You would think we would have the right to determine, in terms of our Border Patrol and our INS, what the body search policy would be based on the threat. But we really don't have that right because, under a union work agreement, the union has to sign off on a change in policy. And in 1995, when we tried to change the policy, the Federal Labor Relations Authority overruled the Department and set aside the new search policy.

We have had similar things happen with firearms. We have had similar things happen with what offices could be opened and closed.

This is not some idle concern. This is not some theoretical power the President wants. This is something that is a real-world problem today. It is something that the Congress gave the President in the Transportation Security Administration, the Internal Revenue Service, and the Federal Aviation Administration. But yet, remarkably, in the bill before us the majority in the committee decided that, you don't want to give the President the same flexibility with regard to the Department of Homeland Security where you are talking about lives. I don't think people understand that, and I don't think they accept it.

As another example of how out of focus with reality the current bill is, you might ask yourself, when we have had the Federal Government put up tens of billions of dollars to pay for what happened in New York to try to comfort the people who were hurt, to rebuild the Pentagon, to indemnify people, and as we begin the rebuilding process, you might ask yourself, in light of the new reality after 9/11, should Congress artificially make it more expensive for Government to help people rebuild something that is destroyed? Should they leave it the way it is, or should they make it less expensive?

I think if you ask the American people, in light of 9/11, do you think Congress should add a provision that will raise construction costs for FEMA for emergency assistance to people who have had their property destroyed, their lives uprooted, should we pass a law that requires the Government to pay an artificially high wage to people working in those areas, or should we rebuild those things competitively so we can help more people, I think if you ask the American people, they would say, why should we pay a premium when we are trying to help people?

Yet remarkably, almost unbelievably, in a bill that is supposed to be responding to 9/11, there is a provision

which says that on any construction that we undertake in responding to a disaster, we have to pay an artificially high wage that numerous outside groups and groups within the Government have estimated would raise the cost of that construction in emergency assistance by 20 percent. Why in the world would you have a provision such as that in this bill? Why would you apply this provision called Davis-Bacon?

It is explained in one way; it operates in another. The way it operates is, you look at the highest wage paid anywhere in that region, which can be a huge swath of the country, and then anything that the Government does in emergency construction in that area, it has to pay that wage, whether there are good people willing to work for less or not, whether everybody else is paying less or not.

Why in the world would you put that provision in this bill? How could it possibly make any sense? The obvious answer is it doesn't make any sense. Nor are you going to hear people stand up and defend it.

I have talked longer than I meant to talk. Let me conclude by simply making a couple points.

A bill that is supposed to respond to an attack on our country and the great vulnerability we have as a result of that threat, that actually takes power away from the President to provide security and takes power away in the name of security concerns, is totally unacceptable. That is what this bill does.

The President of the United States, if this bill became law, would have less power to use national security waivers to promote homeland security than Jimmy Carter had or than Ronald Reagan had or than Bill Clinton had and that Bill Clinton used. Eight Government agencies today are operating under those rules. Yet in a bill that is supposed to be promoting homeland security, we say: It was all right for Bill Clinton to do it prior to 9/11, but now we are going to take that power away from George Bush.

No, you are not. That is not going to happen—not in this life. That is just not going to happen. And there is not going to be a deal cut on it. We are not going to adopt a bill that gives the President less power to respond to 9/11 than he had the day before it happened. It is just inconceivable and totally unacceptable.

No. 2, the President has asked for some flexibility in putting the right person in the right place at the right time. He doesn't want to have to wait 6 months to hire somebody.

The FBI agent, Colleen Rawley, who sent the cable into the home office of the FBI saying, we have people with terrorist links taking flight training and maybe somebody ought to look at it. Don't you think that maybe the President ought to be able to go back and promote that agent and give her a good pay raise? Also, I would have to

say that after the picture of these people who flew these planes in the World Trade Center was on every television set in America with their names, for the INS to turn around several weeks later and grant them a visa to come into the United States, I think the President should have had the power to say: Look, guys, we can't live with that, and you are fired.

Now, you may think you should have those powers. I do. You may think you should not. But how do you justify that we gave similar powers to the Internal Revenue Service and to President Clinton but we will not give at least the same powers to the Department of Homeland Security under President Bush?

Finally, there is just a lot of piling on in this bill. This Davis-Bacon provision is piracy; it is just piracy. When we are spending more money on emergencies than we have ever spent, the idea that we are going to make the Government pay a 20 percent premium—something we didn't have to do before this bill passed but now we are going to make them do it—it is absolute piracy. I think people ought to be ashamed that it is in there. I haven't heard many people bragging about it being there, but sure enough, there it is.

I wonder if we could not have had a bipartisan bill, if we had just started out with a set of principles: No. 1, whatever power the President had before 9/11 he would still have when this bill was written; No. 2, any flexibility we have ever given the President with regard to the Internal Revenue Service and its operation, the President ought to have, at a minimum, that flexibility, and No. 3, provisions that actually make the job harder ought to be debated another day. I believe if we had started with a set of principles—those 3—we would have had a bipartisan bill and 95 Members of the Senate would have voted for it. But for some reason, which I do not understand and cannot comprehend, we now have an issue which has become largely partisan. It all revolves around an effort to take away from the President powers he had before 9/11.

The real stumbling blocks on this bill boil down to three things: An effort to take power from the President in terms of national security waivers, which is not going to happen; then, a refusal to give the President personnel flexibility greater but similar to what we have already done in the IRS; finally, gratuitous provisions, I guess, in this piling-on mentality such as putting Davis-Bacon requirements onto FEMA something we have never done before.

Those things represent our problem, and I think as people understand them, I don't believe the provisions of this bill can be sustained. I do not believe that, if the public really understood what was going on here, they would put up with it.

I am hopeful that we can have an opportunity to vote on these issues. I

think we will have a substitute that will try to deal with them. I am sure the vote is going to be very close. But I think it is important that people understand the issues. Something is really wrong when we cannot even get an amendment accepted that says the President cannot have less power than he has today. I mean, that is almost unimaginable, but this bill does that. I think when people understand it, they are going to be very unhappy about it.

I think the President's position is not perfect. I think he went a little too far on appropriations, but I think that can be fixed. I think on the key elements we are talking about now, the President is on the side of the angels. It is clear to me he is not going to budge, and so if we are unwilling to let the President have the power that every President since Jimmy Carter has had, then I guess we will have an opportunity to explain it to people, and I am sure they will ask for the explanation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. First of all, the discourse of the Senator from Texas has really pointed out the primary problems here. They are both political and substantive. The political problem is that there are those who have a different agenda than the President of the United States, who is simply trying to reorganize Government to deal with the threat of terrorism, to create homeland security for the American people.

Instead of cooperating in that effort, there are those who would settle old scores, create new agendas, or add new things. Everybody's motives are pure in this. The problem is that by getting the legislation so complicated, so convoluted, and so loaded down with other things, they are going to destroy the original intent, which was to streamline the process and make it easier to deal with the threat of terrorists.

My grandmother had great sayings, and one was: Too many cooks spoil the broth. It is not that we all should not have a hand in the drafting of the legislation, but I do think when you are trying to create something such as a new Homeland Security Department, you have to give some deference to the people in the executive branch who have painstakingly put this together, who have experience with making executive offices work, and to the President who has an idea of what he wants to do here. Instead, we have a lot of extraneous ideas floating around that I think, in the end, complicate it and add extraneous matters that don't have to be in there, such as Davis-Bacon requirements, which will add costs to construction.

Ironically, they have the effect—I cannot believe this is the intent of the authors, but it has the effect of giving the President less power to deal with these problems than he has today. Right now, the President would be bet-

ter off with the agencies as they exist, coupled with his authority, from an administrative or executive point of view, to move people around within those agencies; he would be better able to achieve his goals than by adopting the legislation that is before us.

Let me point out a couple of other examples of why this is true. Senator GRAMM had several examples in areas of the bill he was looking at. Let me refer to another area. For some time, there has been an appreciation of the fact that in dealing with border and immigration issues, we really have two separate types of issues, and while both are dealt with as a part of the Immigration and Naturalization Service, which is under the Justice Department, I think some consensus has been developing that, in some way, we need to separate the border control function, which includes entities such as the Border Patrol, and the investigative services, and so on.

To separate those out—those are sort of law enforcement, border protection functions—to separate those from the more customer-oriented—I don't like that word, but that is the word in vogue now—customer-oriented services of immigration visas, student visas, and the legal immigration into the country, in other words—there is some sense to that division of responsibility.

This is something the President had offered. Initially, it looked as if the legislation that would be written here contained a version of that division of authority. But as it turns out, under the Lieberman proposal, it gets a lot more complicated than that. I don't know whether this is really intended, and there doesn't seem to be any particular rhyme or reason why it is done this way, but it ends up being convoluted, very complicated, unnecessarily bureaucratic, ineffective, and confusing at end of the day.

Let me describe precisely what I am talking about. Division B of the Lieberman bill creates the Immigration Affairs Directorate. That includes all immigration functions of the U.S. Government. So far so good.

Division A of the bill creates, among other things, the Border and Transportation Affairs Directorate. So far so good. That is supposed to be the entity that deals with the Border Patrol—basically controlling illegal immigration and terrorism threats on our border.

Under the Lieberman bill, it goes off track right after that because this Immigration Affairs Directorate is supposed to handle the visas, citizenships—all immigration functions, including all immigration enforcement functions, intelligence, investigations, detention, Border Patrol, and border inspections. All of those are moved into this immigration affairs box.

One might say: What is left in the other box? I cannot find much that is left there.

The problem is, we thought we had a solution to a problem. I thought everybody agreed to it. Now we are going



right back to the problem we had in the first instance by putting all of the law enforcement, antiterrorism, Border Patrol, investigations, detention, inspections—all of that—right back into the Immigration Affairs Directorate.

One of the biggest priorities of the President, in addition to dealing with terrorism, in the homeland security bill is to streamline the process at the border. Coming from a border State, I can tell my colleagues this is critical, and it goes all the way from Customs, which has a significant responsibility here, to INS and all the related agencies.

We have two somewhat contradictory needs that come together at the border. We have a big security need. We want to make sure no illegal immigrants, no illegal contraband, drugs, weapons, and the like are smuggled into the country. We saw recently how we were able to check out a ship that we suspected had cargo that was radioactive. It checked out OK, but we were able to have it stand offshore until we had an opportunity to run the equipment over it to make sure there was not a bomb or something radioactive on board. That happens every day at our land borders, at our seaports, and at our airports many hundreds of times—in fact, thousands of times. There is specialized equipment to make sure nothing is brought in that should not come into this country. That is critical to both the security of the country from a terrorism standpoint, as well as a law enforcement standpoint.

At the same time, we want to enhance commerce. We do not enhance commerce by having long lines of trucks or cars or people waiting to be checked out before they can come into the country.

On my border in Arizona, we have a huge problem with long lines, with trucks having to literally park on the Mexican side of the border and wait overnight to come through customs. That is detrimental to trade, commerce, to people and their lives.

I was reacquainted with a former staffer from Tucson, AZ, whose family lives in both Nogales, AZ, and Nogales, Mexico—two towns on either side of the border. She told me how hard it was going back and forth visiting family and friends. She had to wait in line literally hours. Therefore, we have these two competing needs, and we have to streamline the process.

Kudos to the Bush administration. They were coming up with a lot of good ideas about how to expedite the process of crossing for family and trade, while also making sure that we protect against contraband, illegal immigration, and terrorists entering the country.

The Lieberman bill, by contrast, gets us all the way back to where we started by refusing to move the enforcement function out of the immigration affairs box and into the Border Affairs Directorate where it belongs. Instead of

streamlining our activity at the border, I fear it will be the same mess it has been in the past. I hate to describe it that way, but that is exactly the way it is.

The administration's proposal, by contrast, created this separate Border Transportation Protection Directorate, and that is where all of the Border Patrol activity, investigations, and the like, is embodied. As I said, under the Lieberman bill, all of that has been put into this immigration affairs box.

At the very least, it seems to me the Border Patrol and border inspections functions should be included in the border and transportation affairs box. One might ask: Can't reasonable adults work on this and get this straight? We have tried.

What I am saying, Mr. President, is there will be a substitute offered. Senator GRAMM has mentioned this, as has Senator THOMPSON. The substitute is a compromise of what the President proposed and features of the Lieberman bill and, I suspect, also features of the Byrd amendment. I believe this issue is pretty well straightened out in this compromise substitute that is going to be offered. It puts most of these functions that are law-enforcement-related functions, the antiterrorism-related functions back into the right box.

If we do not do this, the bottom line is security is going to be compromised. This is not something that is irrelevant and unimportant. It is very important to the whole purpose of developing the homeland security bill.

One might ask why this border transportation affairs box was created. What is left in it? The primary function that is left is Customs. Yet it describes the Customs Service still as a separate entity. So I am not exactly sure how that is going to work. Presumably, Customs will continue to operate almost independently from the Under Secretary of the Border and Transportation Directorate, which is not what was intended. It has the Coast Guard. Again, that is deemed a distinct entity. And it has the Animal and Plant Health Inspection Service and the Federal Law Enforcement Training Center, but the Federal Law Enforcement Training Center trains what? Border Patrol agents. We have a division there that does not make sense at all.

This is very confusing, it is unnecessarily complicated, and it is just another example of what Senator GRAMM was talking about.

Let's get back to the simple, direct approach that has been presented by the administration. That is a much wiser approach. It moves all the immigration affairs, with an emphasis on the importance of immigration services, to the Border and Transportation Protection Directorate, and it sends a message that we are serious about streamlining all of our activity at the border, whether it be the immigration-related activity or the law enforcement activity, and still effectively fights terrorism.

Let me mention one other problem before I finish. It is a related problem with this division B, the immigration affairs. It has language included which would abolish the Executive Office for Immigration Review and create within the Department of Justice what amounts to an independent agency for immigration judges.

Immigration law is complicated enough. There are a whole series of precedents. There is a process by which you have a decision made, a review of that decision, and eventually the final review all the way up the chain in the Department of Justice by the Attorney General of the United States. There is a body of case law built around this. There are procedures that are built around it. As far as I know, those procedures are working. I do not know of any reason, for homeland security, why we would want to change that. This legislation fundamentally alters the INS administrative process.

It seems at the very least the language, which designates when and how this new Executive Office for Immigration Review operates, needs to be changed so the checks and balances that exist today in the Department of Justice will either continue to exist there or in the new Homeland Security Department.

Unfortunately, this simply has not been written in a way that will guarantee we have the same kind of review and fairness and justice in the immigration process.

There are other things. I have a 5 o'clock engagement, so I am not going to go into more detail at this time. As I said, I do not question at all the motives of those who come up with different ideas on how to do different functions.

The problem is we all have our own wonderful ideas about how everything should be fixed, and if we try to do that all in the homeland security bill, we may be biting off more than we really need to chew. We may need to get back to the basic task, which is to ensure we can protect against terrorism and have real homeland security and have a reorganization of Government that enables us to do that and not take on every other issue that people have that they have wanted to deal with and settle up over the years and use this bill for the opportunity to do that.

Those things that work well enough the way they are, leave well enough alone. But with respect to this question of border security, I think we have to pay a lot of attention to the experts who have suggested it is critical the emphasis on border security be recognized and that we understand what happens when we put the group of people who do that work in a box or a division or directorate which has other responsibilities.

This is arguably one of the most critical functions of the reorganization of homeland security, and we have to get it right. I am hoping my colleagues will consider, when we offer the substitute that I believe fixes this and gets

it back more to the original intention, that whatever else they may think about aspects of the Byrd amendment or the Lieberman bill, they will recognize this is an improvement and support that feature of the substitute.

The PRESIDING OFFICER. The Senator from Connecticut.

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

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

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, earlier I spoke at some length expressing my opposition to the amendment introduced by Senator BYRD. Members have come to the floor and have spoken not so much on the amendment offered by the Senator from West Virginia as they have on another question which engages some considerable debate among Members of the Senate, and that is the question of civil service and management flexibility. I want to respond to the statements of the Senator from Texas and the Senator from Arizona and, to some extent, my friend, the Senator from Tennessee.

I have been disturbed and disappointed by the criticisms of the legislation that came out of our Governmental Affairs Committee, which are based on the claim that it fails to give the President and the new Secretary of Homeland Security the authority they need to manage an effective Department. That is a serious charge and one that I respectfully say is simply not right.

Those who have followed the development of this proposal through our committee know my intention since the beginning has, in fact, been the opposite, which is to give the President and the Secretary all the power they need to build a strong, efficient, and effective Department; in fact, more power to do so than this President wanted for some period of months. Ever since last October, along with other Members of the Senate, I have been asking for a Cabinet Department with authority and accountability precisely because I was convinced the President's initial creation of an Office of Homeland Security, headed by Governor Ridge, without statutory authority or budget authority, was too weak to get the job done.

It seems ironic to me now that the President, who for months resisted the idea of a Department of Homeland Security and said that the Office of Homeland Security, headed by a coordinator, was all we needed to safeguard the Nation, now says that the Department we would create gives him inadequate authority. I think this debate is really a detour from what should be

our urgent common cause, and that is the creation of a new Department that will protect the security of the American people, about which we agree on the majority of its components.

This is a debate that is being conducted in a kind of inside-the-beltway vocabulary and not in good old, plain spoken English.

On civil service rights, union rights, appropriations, and transition authority, the President claims he deserves flexibility and that our legislation denies him flexibility by threatening to handcuff him and the Secretary from exercising their rightful authority, but the President's pleas for flexibility are, in fact, a request, in my view, for broad and unchecked authority in this regard. If we in the Congress do not provide that broad and unchecked and, in my opinion, often unprecedented authority to this President and Secretary, we are being branded as inflexible.

Congress has a duty to the American people in this case to write the civil service laws. If we in the Senate turn over all that responsibility and authority to the executive branch, simply because the President urged us to do so, I suppose one could say it might streamline things somewhat but we would be very much like a board of directors yielding all authority to the management—and we have seen in recent times what can happen when boards of directors do that.

President Bush and Governor Ridge suggest our legislation will create an ineffective Department of Homeland Security because we decided not to give them the authority they requested in the President's bill to unilaterally waive and rewrite civil service law. That is what they want. Extraordinary new powers. And they claim that without that authority this Department is somehow not even worth creating, and they are threatening a veto if they do not get exactly their way on these provisions. That, in my opinion, is a distortion of the facts and a confusion of priorities.

The fact is, the Department of Homeland Security our legislation envisions will be a modern, performance-driven Federal agency, one that the Secretary and the President will have extensive authority to manage. The committee-endorsed bill contains flexible civil service provisions, including a broad, bipartisan civil service reform package, provisions that strengthen the administration's hand when it comes to managing the new Department.

But we have incorporated these reforms responsibly, not haphazardly, preserving the central idea of the civil service system, which is accountability in the workplace. That is at the core of the civil service system that was codified in law more than 20 years ago. It would preserve the appropriate authority in the legislature to write those laws.

I ask my colleagues to look carefully and honestly at what the civil service

system is, what kinds of reforms we provide in our legislation, and what the amendments being discussed to alter the civil service and collective bargaining rights of Federal employees, as protected in our committee's work, would do.

The civil service system, first, is often derided, but rather than taking the road of caricature, let's try to understand what it does and why it was developed. Once upon a time in government the rule used to be to the victor goes the spoils—all the spoils. Most of us know about the age of the spoils system officially ushered in by Andrew Jackson, in which elected officials used the Federal payroll to reward their friends and supporters who, not surprisingly, were not always the most prepared people to fulfill those particular functions. That may have been good for the politicians of their day, but it wasn't good for the American people because it produced a government with minimal institutional memory, minimal incentive for meritorious employees to work hard, to rise through the ranks, and with both of those, minimal public trust.

The civil service system changed that, moving the executive branch from a spoil system to a merit system with limits on favoritism and cronyism and to a transparent framework for attracting and retaining the most talented public servants. That system has evolved over time, but at the core it is still designed to shield most public servants and the public they serve—from the forces of partisanship and favoritism and special interest influence that can erode the merit-based workplace in any administration. When the opponents of this legislation deride the civil service system, these are the principles they deride. When they mock the system, these are the values they mock.

Today, the top echelons of Departments are subject to political appointment, as they should be, to allow a President to select the loyal agency leadership he needs and deserves. But the bulk of public employees are protected against the whims of changing political climates. We now understand that effective Departments are made up of both types of employees, working closely together and depending on one another. Career civil servants who develop expertise, know the ins and outs of Government, and carry on the vital work of our Government from one administration to the next, on the one hand; and political appointees who lead the Departments, set high-level policy and advance the agenda of the President's administration.

I will not stand here and defend every phase or clause of the civil service system, just as I doubt anyone would stand and defend every clause of the Tax Code. At times the system has been too slow or too rigid to adapt to the changing workplace, to recognize and reward excellence and to root out failure. Some of the flaws have been

fixed over time. Others have not and remain challenges.

I strongly support the system's fundamental principle which is to provide a check on the politicalization and patronage to which Government agencies will otherwise be susceptible in any administration. Civil service laws not only assert that personnel decisions should be based on considerations of merit, but they provide procedures and remedies if those principles are violated.

Think for a moment what it could mean to lose the public accountability assured by the civil service system. Talented senior managers, who dedicated their careers to public service, could be pushed out and replaced with patronage appointees. Potential whistleblowers at all levels of the organization would know they have little or no real protection against retaliation. Remember, we all praised Colleen Rowley when, in the courageous memo, she exposed the FBI's weaknesses so we could repair them. Those who would dismantle the civil service system make it more likely that the Colleen Rowleys of tomorrow and the Department of Homeland Security would be silenced, not heard.

There was an actual case following exactly that pattern that occurred with a Federal employee who became a whistleblower after September 11, crying out that there was inadequate protection on our northern border. In fact, he was suspended by his Department. His union came to his defense and he was given back his job because a suspension for blowing a whistle in pursuit of the public interest was irrational, unfair.

Employees' union representatives, if allowed at all, could be stripped of much of their ability to protect rank-and-file workers against abusive or self-protective political appointees.

Veterans and minorities under the proposals made by the President for so-called management flexibility can see their statutory rights ignored or left with insufficient remedies. That is why our committee did not just deride the system. We tried to fix it, and I think made some real progress. Rather than just handing the President the authority to eliminate whole chunks of existing civil service protections, we developed the details for the key reforms we need to make this new Department work well.

I believe existing laws also give the President and Secretary far more authority and flexibility to run an efficient, effective, and performance-based Department of Homeland Security than the President and Governor Ridge have acknowledged. The administration says that the new Department cannot function without ripping up the civil service system and starting from scratch. That is a myth. The General Accounting Office reported a few years ago describing the civil service law as codified in title 5 of the United States Code:

We found that, over the years, Title 5 has evolved to give federal agencies more flexibility than they once had—and often, more than they realize—to tailor their personnel approaches to their missions and needs.

In a similar vein, last year the Bush administration's own Office of Personnel Management issued a handbook entitled "Human Resources Flexibilities and Authorities in the Federal Government." That handbook painted a much different picture of the civil service law than we are now hearing from the administration:

We have designed this handbook to communicate with you about the myriad human resources (HR) flexibilities and authorities currently available and how they can be used to manage your human capital challenges. We serve as a resource for you as you use existing HR flexibilities to strategically align human resources management systems with your mission. Through this handbook, you may be surprised to discover how flexible Title 5 is in meeting your organizational needs.

I respectfully suggest to the White House that perhaps, if they looked at this handbook put out by their own Office of Personnel Management, they, to use the words of the handbook, would be:

... surprised to discover how flexible title 5 is in meeting your organizational needs.

If we in Congress were to believe the administration's recent claims that the civil service system is a hidebound anachronism, we, too, might be surprised to discover how flexible title 5 actually is.

There is substantial flexibility in existing law, as I have said. But to rise to the challenge of the war against terrorism, we wanted our legislation to go further. So we have incorporated sensible consensus reforms to improve the way Government manages personnel. We have updated the civil service system to give the Secretary of Homeland Security and the President all the tools they could conceivably need to build the most effective Department of Homeland Security without compromising the underlying values of the civil service system. In fact, if our legislation, as currently before the Senate from our Governmental Affairs Committee, is adopted, the Secretary of Homeland Security will literally have more management flexibility than any Secretary has today.

Incidentally, I want to give special credit to Senators VOINOVICH and AKAKA, who worked together over a long period of time to develop the reforms in our bill. We have adopted these significant and governmentwide improvements in the civil service system.

To support research and development, we also authorized the Secretary to use innovative techniques to hire personnel in the new Science and Technology Directorate, for instance. Taken together, this package gives the Secretary the ability to speed up staffing of new employees, to recruit and retain top science and technology talent, to reshape the Federal workforce,

to procure temporary services outside the civil service system when there is a critical need, to provide more effective bonuses for exemplary service, and to make other valuable changes to help the new Department attract, maintain, and motivate the best employees.

Senator VOINOVICH has been a tireless advocate on behalf of a principle and a reality that does not get much attention around here but is critically important to the functioning of the Federal Government and that, again, is described in a Washington beltway term, "human capital management."

The point is, how do we get the best people to come to work for the Federal Government and then get them to have the widest latitude for their talents and encouragement to continue in Federal service? Part of that clearly is the protections offered by the civil service system.

I cannot emphasize enough that the provisions contained in our legislation have been hammered out over time with many contentious issues being carefully and, I might say, cooperatively resolved in a bipartisan fashion. We all know how detailed this can be and how much care rewriting the law demands. The reforms we have incorporated, the Voinovich-Akaka reforms, reflect collaboration, consensus building, and the input of countless experts.

I want to say particularly that Senator AKAKA, our distinguished colleague from Hawaii who is chair of the Governmental Affairs Subcommittee on International Security Proliferation and Federal Services, has now been working hard for 3 full years, with Senator VOINOVICH of Ohio and others, to adapt the civil service system to the demands of the modern workforce and contemporary Government. They are unsung heroes in bringing human capital management into the 21st century. Out of their collaboration has emerged this bipartisan package of bold but sensible civil service reforms that are incorporated in the bill that came out of the Governmental Affairs Committee.

Now, on the other hand, the administration wants to throw everything out. Our bill has done, I think, the difficult work—but the work that Congress has an obligation to do—of separating the good from the bad, discarding the chaff and keeping the wheat. In fact, our reforms do more to constructively change what is commonly viewed as one of the most inflexible areas of civil service law—namely, the ability to swiftly hire top-flight talent—than any other proposal I have seen, and certainly any other that is on the table.

The President would wreak havoc on the current framework and put nothing in its place. I hope critics of the approach the committee has taken will look carefully at these flexibilities I have described, which are substantial indeed. Let me elaborate just a bit more on what some of those authorities are.

First, we give the administration the power to put the right people in the

right place at the right time. Existing law allows the Secretary to move employees around in the Department, either by permanent reassignment or temporary detail. I would guess that most Members do not appreciate that. Existing law allows the Secretary to move employees around the Department, either by permanent reassignment or temporary detail. Collective bargaining agreements may not affect the authority of a manager to assign employees and to assign work. Again, in all the discussion about collective bargaining and national security, this is a fact that is being overlooked. It reminds us how limited are collective bargaining rights of Federal employees. They can't strike—that is prohibited by law. But collective bargaining agreements actually may not deal with the authority of a manager to assign employees and to assign work. Any employee who refuses to be reassigned can be fired, and existing law allows managers to offer recruitment bonuses, special salary rates, and even high critical pay levels to attract high-quality employees.

New provisions in our legislation significantly simplify hiring so that employees can be hired with little or no red tape. A government-wide amendment offered by the aforementioned Senators VOINOVICH and AKAKA allows for the direct appointment of candidates to positions that have been publicly noticed when it has been determined by OPM that there is a severe shortage of candidates and a critical hiring need.

A second Voinovich-Akaka amendment will allow agencies to select employees without applying the rule of three, under which agencies may not look beyond the three top-scoring candidates for a competitive position.

To accommodate special needs of the Department, the Secretary may procure personnel services whenever necessary, due to an urgent homeland security need, for periods of not more than a year, without regard to the usual pay caps. Let me go back. Our legislation says to the Secretary of the new Department of Homeland Security: You can actually enter into a contract with people for services for not more than a year without regard to the usual pay caps when you say there is an urgent homeland security need to do that.

Finally, in this regard, to support research and development, the Secretary, as I mentioned, is authorized to use innovative techniques to recruit top science and technology talent.

In fact, the bipartisan package of flexibilities in our legislation offers more in the area of hiring than does even the bill that passed the House, which does not include the direct hire authority in cases of critical need.

Second, the Governmental Affairs Committee legislation amendment before the Senate gives the Secretary new authority to reward good performance so we can create a Department

that encourages excellence among all its employees. Starting under existing law, the civil service law provides managers numerous avenues for providing incentives and rewards for good performance. Managers can decide, for instance, whether employees have earned raises known as step increases based on performance, and can award further "quality step increases" for exceptional performance. Managers can also grant incentive awards for overall high performance or for exceptional work on a particular assignment.

Managers can pay special bonuses to help with retention or relocation of particularly desirable employees.

Contrary to what some in the Administration have been saying, civil service rules impose no cumbersome process for managers to gain approval of a pay raise. President Bush and the new Secretary will be free to fashion as streamlined a process for giving merit raises as they can.

The bipartisan Voinovich/Akaka amendments included in our legislation strengthen performance bonuses for senior managers, by revising outdated rules that had required that bonuses for senior employees be spread over two years.

Finally, it is critical to recognize that under existing law, the administration has the power it needs to discipline and remove poor performers.

Under civil service law, during the first year of employment, a Federal worker may be fired for virtually any reason without notice. Following the one-year probationary period, under civil service statutes, an agency must grant the employee a reasonable time to improve performance, after which the agency owes the employee 30 days' notice of a decision to demote or fire. And contrary to stereotype, outside appeals are handled after an employee is off the payroll.

If a manager is sufficiently concerned about an employee's poor performance or misconduct, the employee can be pulled from duty immediately, without hesitation or red tape. If necessary for national security, the employee may be suspended without pay immediately. After investigation and review, if necessary, the employee can then be fired without appeal. The President can authorize any agency head to suspend and fire where necessary for national security, and the President is free to give this power to the new Secretary of Homeland Security.

The allegations which have been made on the floor that we will limit the powers of the President regarding national security just do not take into consideration this provision in the law. The President can authorize any agency head to suspend and fire where necessary for national security immediately and without pay.

I have seen some opponents of our approach contend that under our legislation, incompetent, irresponsible, or even intoxicated employees couldn't be

removed from duty. This is simply wrong. And I regret that this myth is being stated as fact occasionally by one or another representative of the administration. The truth is, under current law, such an employee can be removed from duty immediately, without hesitation or red tape. And the employee can be taken immediately off the payroll if the Secretary determines that he or she might endanger national security.

But that is not all. We understand the Secretary may need more authority down the road. That is why we explicitly leave the door open for the executive branch to get more power, as needed—because neither we, nor, I believe, the administration, yet knows what the experience of assembling this big new Department will teach its managers about the specific modifications to the Department's personnel system that may prove necessary. We want to give the Congress and the administration the opportunity to tailor additional authorities and flexibilities to the specific circumstances we face.

And they are free to come back and make that case to us. During the initial 18-month startup period for the new Department, our legislation specifically requires the Secretary to submit to Congress semi-annual legislative recommendations that will help integrate the disparate personnel systems in the new Department and will provide any further personnel authority that is necessary to meet the needs of the new Department.

All we ask is that these requests are based on some experience, not on ideology or assumption. We want them to be specific, not hopelessly broad. And we want the process to respect the proper role of Congress to consider the proposals and write that law.

It is not appropriate for Congress—it has a familiar ring to it, I say to Senator BYRD—to write a blank check for a new Department regarding the civil service law allowing them to disregard that law—no more appropriate than it would be for us to write a blank check for it to give a new Department blanket exemption, for instance, from environmental law, civil rights law, or protection of the rights of the disabled. Rather, what we should do—and what we do do in our bill—is to provide a swift and acceptable mechanism to provide more authorities if and when the administration makes the case that they need them.

In developing the provisions of our bill that invite the Secretary to come back to Congress with requests for further personnel flexibility if he deems it necessary, our committee was influenced by my experience working with the Comptroller General when he asked a couple of years ago for additional personnel authority at GAO. He advised the Governmental Affairs Committee that the legislative flexibilities he received might not be appropriate for other Federal agencies, but that the process he and Congress undertook to

justify that legislation would be appropriate. I would like to read an excerpt from Mr. Walker's testimony on that subject:

Congress can play a defining role in determining the scope and appropriateness of additional human capital flexibilities agencies may seek through legislation. For agencies that request legislative exceptions from current civil service constraints, Congress can require that they make a sound business case based on rational and fact-based analyses of their needs, the constraints under which they presently operate, and the flexibilities available to them. For example, before we submitted human capital legislative proposals for GAO last year, we applied the due diligence needed not only to identify in our own minds the flexibilities we need to better manage our human capital, but also to give Congress a clear indication of our needs, our rationale, and the steps we were committed to taking in order to maximize the benefits while managing the risks. The process we followed included a thorough analysis of our human capital needs and flexibilities, clear standards of implementation, and multiple opportunities for employee involvement and feedback.

GAO's advice on this subject was even clearer in another submission to the committee, which said, "agencies should be required to prepare a business case and take steps to address their challenges within existing law before being granted any additional legislative flexibility."

In other words, Comptroller General Walker laid out the case for what reforms he needed. He asked for specific authorities—not for a blanket exemption. We considered his request, and we gave him what he wanted.

That is the way it ought to work. That is the way our committee's proposal regarding civil service would have it work.

Some of my colleagues have claimed that in our bill, we gave less personnel flexibility and authority to the Secretary of Homeland Security than we in Congress gave to the heads of the FAA, the IRS, and the TSA. That is just wrong. It is not true that Congress simply granted personnel flexibility to the heads of those agencies. To the contrary, the personnel flexibilities that Congress provided for those agencies is shared through a collective bargaining process between agency managers and the Federal employee unions at those agencies.

And in the best companies in our country today, following modern management techniques, the old labor-management divisions have ended. People are working together in a cooperative fashion.

I visited an automobile parts company in Ypsilanti, MI, a couple of years ago. There are remarkable changes. The workers on the floor elect the foreman for a set period of time. They can reelect him or not. The executives moved out of their offices and turned their office space into a fitness center for all employees. Management moved their desks right out on the floor where they are working together.

That is the standard for modern management practice. That is what we

adopted for the IRS. For example, we granted several authorities that can be applied to unionized employees. There is real management flexibility—where there is a written agreement between the union and the IRS.

I have heard references from some of our colleagues who say they are upset about our civil service provisions which basically protect existing law and ask for more reforms. They have cited the IRS as an example of what good can be done when an agency is given authority.

But, again, we gave the IRS authority to carry out management flexibilities with the written agreement of their employees' union, and it has worked. At the FAA, for instance, agency managers must bargain with Federal employee unions over wages, and also must negotiate with the unions in developing and making any changes to the agency's personnel management system.

So in some ways the IRS and the FAA follow much more of a private sector model today, which is very progressive, with lessening of civil service controls in certain areas, and with a corresponding increase of the role of unions and collective bargaining in establishing the terms and conditions of employment.

It is true that our legislation does not in fact go down that road, but of course neither does the administration's proposal for the Department of Homeland Security. Some of the proposals I have seen, from the White House and elsewhere, including from colleagues in the Senate, would empower the Secretary to cut back on the rights and roles that Federal employees and their unions would have at this new Department.

I have not seen a proposal from the administration for the Department that would replace civil service protections with an enhanced statutory role for collective bargaining and the unions. So I ask, why do administration supporters, on the floor in this debate, keep referring to the IRS and FAA precedents as though they were advocating anything like them now? If they were really advocating something like them, I think we might have the basis of a bipartisan agreement.

Let's give the Secretary of the Department of Homeland Security broad authority to enact further civil service reforms with the written agreement of the unions representing his or her employees. It has worked at the IRS and the FAA, and it might well work at the Department of Homeland Security.

As I said, President Bush does not seek to seriously reform the civil service system or make a solid business case for any new authorities. Instead, he really seeks to rip out big chunks of civil service law and to push that change through in the context of this urgent common cause of creating a new Department of Homeland Security.

Though the House, in its bill, has done a bit more homework, it still fails

the test. The House bill states that several fundamental civil service provisions will apply to the new Department. Those include requirements to provide a preference in hiring and retention of veterans, which the President's proposal would eliminate; the protection of whistleblowers, which the President's proposal would eliminate; it prohibits nepotism, favoritism, and other forms of discrimination, which the President's proposal would eliminate; and it protects the right to unionize, which the President's proposal would also eliminate.

However, almost all of these rights are provided in name only in the House bill, unfortunately. In major areas, the House bill would then turn over, again, a blank check to this administration to waive or rewrite civil service protections and procedures, with the administration having given us no indication of how they will use this extraordinary power.

Second, the House bill states that employees would be able to join unions, but then allows the administration to unilaterally rewrite all the statutory rules of collective bargaining that give unionization whatever significance it has under existing Federal law.

Third, the House bill would also turn over power to the administration to rewrite other central elements of the civil service system, including performance appraisal, discipline, and job classification and pay. These aspects of civil service provide for fairness across Government, avoid destructive bidding wars among agencies, and provide employees protection, most importantly, against unfair, arbitrary, or discriminatory decisions. The House bill essentially throws out all of those.

Finally, under the House bill, as the proposed new rules are developed for the Department, the bill relegates union representatives to the role of receiving notice and making recommendations for the Secretary's consideration. This is far more constrained than the traditional function of unions, limited as they are under Federal law, which is to bargain over matters where management has discretion.

When Congress enacted legislation, again, allowing the FAA and IRS to develop alternative personnel rules, we specified that the unions would have a place at the bargaining table regarding those rules. That is fair, that is progressive, that is productive, and that is modern. The House provision limiting the role of employees and their representatives is unfair and unacceptable.

Finally, the choice before us on civil service is simple: Improve it or remove it. Make it better or rip it up. While our legislation lives up, in my view, to Congress's responsibility to improve the civil service system, the alternatives proposed by the administration and in the House bill don't meet that responsibility. They, to use a word familiar to us during this season, punt. They leave it all to the administration.

They would have Congress leave it all to the administration to rewrite the law.

That would be problematic in just about any realm, but it is particularly problematic here, as the administration represents management, one of the parties directly affected by the law.

Powers are strictly separated in our constitutional system for a reason. I have not hesitated to make clear that I believe the President, in his role as Commander in Chief, for instance, should have substantial powers to determine when and how we take military action to protect national security. But rewriting laws is the job of Congress, the responsibility of Congress. Indeed, the separation of powers is especially important in the case of civil service law, again, for the reason I have stated: Because the administration is the management, it is one of the two parties directly affected by the law. Congress, in effect, must play the role of a fair and honest mediator, broker, and legislator. Only Congress should change the law.

So we have two choices here: To embrace significant reforms, as included in our bill, and leave additional changes that may seem to be necessary, after some experience, for consideration in the future, based on a solid business case made by the Secretary is one choice. On the other hand, we can simply abdicate and give the administration the right to rewrite the current civil service system by administrative fiat. That, of course, is an easy choice for me.

Also, I would state, in response to the underlying amendment the Senator from West Virginia has proposed, what we have done here in civil service is very much similar to what we have done in most of the rest of the bill; that is, we have tried to dispatch Congress's responsibility to write the law, not to give the administration a blank check in any area, to respect the executive branch and the need for authority in the executive branch, but to understand that constitutionally we have the responsibility to legislate. That is exactly what we have done in a progressive fashion with regard to the civil service laws for our Federal workers.

I had not intended to speak on this this afternoon, but those of our colleagues who have come to speak not on the Byrd amendment but against the civil service provisions in the committee's proposal required a response on this day.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST—H.R. 5093

Mr. REID. Mr. President, today we have tried to come up with some type of resolution of the fire suppression amendment that has been holding up this Interior appropriations bill for some time. We have been unable to do that. As a result of that—and I have spoken with Senator BYRD—I do not think the Interior appropriations bill is going to move forward.

Until there is some way to resolve that amendment, I ask unanimous consent that the order with respect to consideration of the Interior appropriations bill be modified so that the bill may be temporarily laid aside and that it recur upon the disposition of the homeland security bill.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I appreciate the frustration the assistant leader is going through at this moment trying to resolve an issue on the Interior appropriations bill about which he and I are concerned and move it forward and at the same time move homeland security forward.

Today we have worked to facilitate both of those bills, and I have encouraged the majority leader and the assistant leader to allow a vote on my amendment, which is pending on the Interior appropriations bill or, if not, a stand-alone vote, and then to allow a side by side, with their alternative, by a majority vote of either. That is not what they apparently want to do at this moment.

I do not want to see the Interior appropriations bill laid aside. We have critical fire money in the bill. We have critical drought money in the bill for agriculture. The Interior appropriations bill is very key to my State.

At the same time, we must bring this Senate together on some way of dealing with the crisis in our forests today that has resulted in devastating fires across the West. I feel very strongly about that. At the same time, I know the leader has worked hard to facilitate homeland security. Certainly it is very evident this side is not holding up that bill at this moment. We want the votes. We want to move the issue, deal with it, and get it to the President's desk before we adjourn or recess for the November elections. Under those considerations, dual track is important.

I say to the leader, give me a vote. Give me a vote on the Craig-Domenici amendment up or down—however. But I do believe we deserve a vote. I do believe it is critically important that the Senate of the United States express its will on a 6.5-million-acre loss to wildfire this year and thousands of homes and well over 25 lives. We must deal with the issue.

This situation has cost us—and I think Senator REID will agree—\$800 million extra in this budget, to fight

fires or to pay the debt of the fires that have already been fought. We will spend well over \$1 billion of extra money this year. With that, I must object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Nevada.

Mr. REID. Mr. President, I am disappointed in that I believe we need to move forward with homeland security and stop treading water on this Interior appropriations bill. The Interior appropriations bill is as important to Nevada as any appropriations bill we do. There are many provisions in this bill that will help Nevada, and other issues that are waiting to be approved by the two managers. I would love to have the Interior appropriations bill done.

For my friend, the distinguished Senator from Idaho, to say he wants a vote on his amendment, we agreed, more than a week ago, to have side-by-side amendments: their amendment, our amendment. There would have to be a 60-vote threshold because, whether we like it or not, the rules of the Senate are here, and on matters of importance—I should not say of importance. We have a lot of matters that are important that do not require 60 votes. Matters that are in controversy take 60 votes. This is one of those matters that are in controversy. We simply have to go forward on that basis. That is why we are unable to have a simple majority vote on their amendment or our amendment, because we cannot get 60 votes on our amendment and they cannot get 60 votes on their amendment.

It is hard for me to comprehend why, when just a few days ago we approved money for drought assistance, which received 79 votes. As we speak, ranchers and farmers throughout America are in deep need of these moneys, and until this legislation passes, they are not going to get that money. So those people who voted for that drought assistance are now preventing us from going forward.

That does not mean, Mr. President, if we get off this bill, we will not somehow be able to do the Interior appropriations bill. Maybe we can. Also, what it does not mean is, if we do not do the fire amendment, as my friend from Idaho thinks it should be done this year in this bill, that it will not be done in some other form, some other bill. I hope that as time goes on, we are going to be able to spend full time on homeland security. If we do not, it is going to be hard to finish that bill, especially if on the Interior appropriations bill we are treading water and accomplishing nothing. We have all these other appropriations bills we need to do.

I, frankly, see the picture very clearly. It seems to me the minority does not want us to pass any appropriations bills. They are looking forward to a continuing resolution. That may be what it comes to. That will be the decision of the two leaders. At least, if



they do not want to complete any appropriations bills, let us finish homeland security. We will not dual-track anything else if we do not want it. We will stay off the appropriations bills at least until we finish homeland security. If we have to spend a half a day every day doing nothing, it is going to be extremely hard to finish homeland security.

I spoke with the two managers of the bill yesterday. Both sides have amendments they want to offer. They are credible amendments. No one at this stage is trying to stall the bill. I think we would be well advised to do what the majority leader has indicated and vote to invoke cloture on this bill tomorrow. From the word I have received, that does not appear to be what the minority is going to let us do. Again, it requires 60 votes. We would take a simple majority vote on that. But that will not happen. Things do not work that way here. We require 60 votes on matters of controversy.

So unless my friend has more to say, 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. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENTS NOS. 4554, 4599, 4623, 4552, 4588, AND 4563, EN BLOC

Mr. LIEBERMAN. Mr. President, I am pleased to report that Senator THOMPSON and I have been working with various other Members of the Senate, and we have reached agreement on a series of amendments that both sides have cleared.

Before I make the actual motion, I will indicate what they are. The first is amendment No. 4554 on behalf of Senators SARBANES, MIKULSKI, WARNER, and ALLEN, which would create within the Department of Homeland Security an office for national capital region coordination which would provide a single Federal point of contact to help integrate the plans and preparedness activities of the Federal agencies and entities in the District of Columbia with the efforts of State, local, and regional authorities in the Greater Washington area.

The second amendment is No. 4599 on behalf of Senators HARKIN and LUGAR. This amendment more effectively transfers the border inspection functions of the Animal and Plant Health Inspection Service to the new Department.

Next is amendment No. 4623, which would, on behalf of Senator THOMPSON and myself, add the E-Government Act of 2002 to this legislation. This would give the Federal Government the tools and structure to reform its information technology systems, one of the greatest vulnerabilities of agencies now tasked with homeland security mis-

sions. This E-Government Act, I note for the record, was originally cosponsored by Senator BURNS and many others. It is the result of months of productive negotiations with Senator THOMPSON and the administration.

Next is amendment No. 4552 on behalf of Senators CLINTON and SPECTER. This would require the Directorate of Critical Infrastructure Protection to assess the vulnerabilities of, identify priorities and support protective measures for and develop a comprehensive national plan to secure not only the critical infrastructure in the United States but also its key resources. This is an attempt to make clear that key resources include National Park sites identified by the Secretary of the Interior that are so universally recognized as symbols of the United States that they would likely or might possibly be identified as targets of terrorist attacks.

Also, amendment No. 4588, on behalf of Senator ROCKEFELLER, which consists of a series of technical changes to existing law to ensure that the Coast Guard members retain all of the benefits they are now entitled to under the Montgomery GI bill, once the Coast Guard is moved to the new Department.

And finally, amendment No. 4563, on behalf of Senators BAYH, SHELBY, and others, which would improve the protection of the Department of Defense storage depots for lethal chemical agents and munitions by strengthening temporary flight restrictions on the airspace near these depots.

I, therefore, ask unanimous consent that it be in order to consider the following amendments: 4554, 4599, 4623, 4552, 4588, and 4563, and that Senator THOMPSON be added as a cosponsor of amendment No. 4623; that these amendments be considered and agreed to, and that the motions to reconsider be laid upon the table.

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

The amendments were agreed to, as follows:

#### AMENDMENT 4554

(Purpose: To create an Office of National Capital Region Coordination within the Department of Homeland Security)

On page 114, between lines 20 and 21, insert the following:

#### SEC. 141. OFFICE FOR NATIONAL CAPITAL REGION COORDINATION.

##### (a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10, United States Code.

(2) DIRECTOR.—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) COOPERATION.—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland,

and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) RESPONSIBILITIES.—The Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Homeland Security Liaison Officers for Maryland, Virginia, and the District of Columbia within the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) ANNUAL REPORT.—The Office established under subsection (a) shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) LIMITATION.—Nothing contained in this section shall be construed as limiting the power of State and local governments.

#### AMENDMENT NO. 4599

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

#### AMENDMENT NO. 4623

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

#### AMENDMENT NO. 4552

(Purpose: To identify certain sites as key resources for protection by the Directorate of Critical Infrastructure Protection, and for other purposes)

On page 67, insert between lines 15 and 16 the following:

In this subsection, the term "key resources" includes National Park Service sites identified by the Secretary of the Interior that are so universally recognized as symbols of the United States and so heavily visited by the American and international

public that such sites would likely be identified as targets of terrorist attacks, including the Statue of Liberty, Independence Hall and the Liberty Bell, the Arch in St. Louis, Missouri, Mt. Rushmore, and memorials and monuments in Washington, D.C.

AMENDMENT NO. 4588

(Purpose: To amend various laws administered by the Secretary of Veterans Affairs to take into account the assumption by the Secretary of Homeland Security of jurisdiction of the Coast Guard)

At the end of subtitle D of title I, add the following:

**SEC. 173. CONFORMING AMENDMENTS REGARDING LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS.**

(a) TITLE 38, UNITED STATES CODE.—

(1) SECRETARY OF HOMELAND SECURITY AS HEAD OF COAST GUARD.—Title 38, United States Code, is amended by striking “Secretary of Transportation” and inserting “Secretary of Homeland Security” in each of the following provisions:

- (A) Section 101(25)(D).
- (B) Section 1974(a)(5).
- (C) Section 3002(5).
- (D) Section 3011(a)(1)(A)(ii), both places it appears.
- (E) Section 3012(b)(1)(A)(v).
- (F) Section 3012(b)(1)(B)(ii)(V).
- (G) Section 3018A(a)(3).
- (H) Section 3018B(a)(1)(C).
- (I) Section 3018B(a)(2)(C).
- (J) Section 3018C(a)(5).
- (K) Section 3020(m)(4).
- (L) Section 3035(d).
- (M) Section 6105(c).

(2) DEPARTMENT OF HOMELAND SECURITY AS EXECUTIVE DEPARTMENT OF COAST GUARD.—Title 38, United States Code, is amended by striking “Department of Transportation” and inserting “Department of Homeland Security” in each of the following provisions:

- (A) Section 1560(a).
  - (B) Section 3035(b)(2).
  - (C) Section 3035(c).
  - (D) Section 3035(d).
  - (E) Section 3035(e)(1)(C).
  - (F) Section 3680A(g).
- (b) SOLDIERS’ AND SAILORS’ CIVIL RELIEF ACT OF 1940.—The Soldiers’ and Sailors’ Civil Relief Act of 1940 is amended by striking “Secretary of Transportation” and inserting “Secretary of Homeland Security” in each of the following provisions:

(1) Section 105 (50 U.S.C. App. 515), both places it appears.

(2) Section 300(c) (50 U.S.C. App. 530).

(c) OTHER LAWS AND DOCUMENTS.—(1) Any reference to the Secretary of Transportation, in that Secretary’s capacity as the head of the Coast Guard when it is not operating as a service in the Navy, in any law, regulation, map, document, record, or other paper of the United States administered by the Secretary of Veterans Affairs shall be considered to be a reference to the Secretary of Homeland Security.

(2) Any reference to the Department of Transportation, in its capacity as the executive department of the Coast Guard when it is not operating as a service in the Navy, in any law, regulation, map, document, record, or other paper of the United States administered by the Secretary of Veterans Affairs shall be considered to be a reference to the Department of Homeland Security.

AMENDMENT NO. 4563

(Purpose: To improve the protection of Department of Defense storage depots for lethal chemical agents and munitions through strengthened temporary flight restrictions)

On page 211, between lines 9 and 10, insert the following:

**TITLE VI—STRENGTHENED TEMPORARY FLIGHT RESTRICTIONS FOR THE PROTECTION OF CHEMICAL WEAPONS STORAGE DEPOTS**

**SEC. 601. ENFORCEMENT OF TEMPORARY FLIGHT RESTRICTIONS.**

(a) IMPROVED ENFORCEMENT.—The Secretary of Defense shall request the Administrator of the Federal Aviation Administration to enforce temporary flight restrictions applicable to Department of Defense depots for the storage of lethal chemical agents and munitions.

(b) ASSESSMENT OF USE OF COMBAT AIR PATROLS AND EXERCISES.—The Secretary shall assess the effectiveness, in terms of deterrence and capabilities for timely response, of current requirements for carrying out combat air patrols and flight training exercises involving combat aircraft over the depots referred to in such subsection.

**SEC. 602. REPORTS ON UNAUTHORIZED INCURSIONS INTO RESTRICTED AIRSPACE.**

(a) REQUIREMENT FOR REPORT.—The Administrator of the Federal Aviation Administration shall submit to Congress a report on each incursion of an aircraft into airspace in the vicinity of Department of Defense depots for the storage of lethal chemical agents and munitions in violation of temporary flight restrictions applicable to that airspace. The report shall include a discussion of the actions, if any, that the Administrator has taken or is taking in response to or as a result of the incursion.

(b) TIME FOR REPORT.—The report required under subsection (a) regarding an incursion described in such subsection shall be submitted not later than 30 days after the occurrence of the incursion.

**SEC. 603. REVIEW AND REVISION OF TEMPORARY FLIGHT RESTRICTIONS.**

(a) REQUIREMENT TO REVIEW AND REVISE.—The Secretary of Defense shall—

(1) review the temporary flight restrictions that are applicable to airspace in the vicinity of Department of Defense depots for the storage of lethal chemical agents and munitions, including altitude and radius restrictions; and

(2) request the Administrator of the Federal Aviation Administration to revise the restrictions, in coordination with the Secretary, to ensure that the restrictions are sufficient to provide an opportunity for—

(A) timely detection of incursions of aircraft into such airspace; and

(B) timely response to protect such agents and munitions effectively from threats associated with the incursions.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the actions taken under subsection (a). The report shall contain the following:

(1) The matters considered in the review required under that subsection.

(2) The revisions of temporary flight restrictions that have been made or requested as a result of the review, together with a discussion of how those revisions ensure the attainment of the objectives specified in paragraph (2) of such subsection.

AMENDMENT NO. 4623

Mr. LIEBERMAN. Mr. President, I would like to make some additional comments regarding the inclusion of amendment number 4623 in this legislation.

The E-Government Act of 2002 is vitally needed to enhance our homeland security, and is directly relevant to the goal of ensuring improved homeland security. The bipartisan bill, originally cosponsored by Senator BURNS, is the

result of months of productive negotiations with Senator THOMPSON and the administration. It passed the Senate as S. 803 by unanimous consent in June. The Committee on Governmental Affairs produced an extensive report, Report No. 107-174, to which I refer my colleagues for more information about the bill.

The E-Government Act will give the Federal Government the tools and structure to transform its IT systems, one of the greatest vulnerabilities of agencies now tasked with homeland security missions. As we’ve seen through dozens of depressing revelations over the last year, we have a desperate need for more effective and systematic information sharing between agencies like the FBI, CIA, Department of State, the INS, and state and local authorities. The E-Government Act will help the federal government get that job done, by establishing more effective IT management, establishing mandates for action, and authorizing funding.

The bill will also substantially enhance the ability of the Federal Government to quickly provide information and services to citizens to help them prepare for, and respond to, terrorism, natural disasters, and other homeland threats. In the hours and days after the terrorist attacks of September 11, Americans flooded Government’s websites in record numbers, seeking information more targeted than what the media was providing: what was happening; how they should respond to protect themselves from possible future attacks; how they could help victims; and how people who were victims themselves could seek assistance. The E-Government Act will substantially enhance the ability of the Federal Government to quickly provide information and services to citizens to help them prepare for, and respond to, terrorism, natural disasters, and other homeland threats.

Finally, the bill will make permanent the Thompson-Lieberman Government Information Security Reform Act, which is about to expire. Weak computer security has been a widespread problem in the Federal Government, with potentially devastating consequences. In response, the Senate passed this important information security legislation last Congress, but that legislation is scheduled to expire in November.

I thank the Chair, Senator THOMPSON, staff, and all others who have cooperated to allow us to move forward with these amendments. Noting my friend and colleague on the floor whom we all welcome back to Washington after some surgery, he looks younger and more knowledgeable than ever, I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I rise to commend my chairman, Senator LIEBERMAN, for his outstanding work and his extraordinary leadership in the

committee, and to mention that it was after Senator LIEBERMAN began his initiative to create such a Department that it began to pick up, not only in the Senate but with the administration, too. He has crafted, I believe, a strong piece of legislation for the Department of Homeland Security.

This evening I rise to express my strong support for Senator LIEBERMAN's substitute. I have strong respect for the senior Senator from West Virginia but I will vote against his amendment. Senator LIEBERMAN has done a great service to his country by holding hearings and debating extensively the structure of a Department of Homeland Security. Without his determined effort, the President might never have conceded the need for such a department. As Senator THOMPSON has noted, the Governmental Affairs Committee debated in great deal the structure of such a department. Numerous changes were made to the President's proposal which have substantially improved it.

I rise to discuss the flexibilities available at the Federal Aviation Administration and the Internal Revenue Service. My colleagues have criticized the legislation before us for not providing the same flexibilities available to the FAA and the IRS. The most important factor in the personnel systems at these two agencies is the involvement of federal employee unions.

In April 1996, at Congressional direction, FAA was allowed to develop its own personnel and compensation systems, to give the agency more flexibility because of its daily interaction with the fast-paced and rapidly-growing aviation industry. The Secretary of Transportation argued strongly that the agency needed flexibility to pay people what the job required and to move them where the work was needed, without the restrictions of standard government personnel procedures.

While the FAA was given wide authority to develop their personnel system, the FAA still must negotiate with its federal employee unions in developing and making changes to the personnel management system. The FAA system contains provisions protecting a large portion of the rights of federal workers. These include whistleblower protections, including the provisions for investigation and enforcement; veterans' preference; anti-discrimination; compensation for work injury; retirement, unemployment compensation, and insurance coverage; and review of employee matters by the Merit Systems Protection Board.

In addition, employees subject to major adverse personnel actions may contest the action through any contractual grievance procedure.

And because the FAA is not subject to federal pay rate regulations, the federal employee unions are allowed to bargain over wages at the FAA as they do in the private sector.

Such bargaining rights are not provided in the President's original Homeland Security bill or the House passed

bill. In fact, both bills would allow even current collective bargaining rights to be waived.

Despite this praise of FAA flexibility, just last year, the Republican-led House Appropriations Committee concluded that FAA's personnel reform has been a failure. At that time, the most recent FAA employee attitude survey showed severe levels of employee dissatisfaction, even as compensation levels rose to make DOT the highest-paid cabinet level agency in the Federal Government.

Fewer than one in ten employees felt that personnel reform had been successful at eliminating bureaucracy or helping accomplish FAA's mission. Fewer than one in five felt the agency rewards creativity and innovation—even though personnel reform allows the agency great flexibility in this area.

A review of staffing at air traffic control facilities indicates that reform has not been used to place employees where they are needed. These findings were supported by an independent study conducted by the National Academy of Public Administration, which found that FAA hasn't met many of the key goals of personnel reform.

In addition, the House Committee believed that Congress should carefully review the effects of personnel reform leading up to reauthorization of AIR 21 in fiscal year 2004 to gauge whether the experiment should be continued.

According to the GAO, the decentralized personnel structure that resulted from FAA's reform has caused moral problems, communication gaps and inconsistencies in technical advice and leadership within FAA organizations, and insufficient understanding throughout the workforce about the intent of reforms. As a result of these problems, FAA lacks a broad base of support and accountability for reform initiatives among employees below the highest management levels.

More recently, TSA, which uses the FAA's pay banding system, has caused great concern with the high salaries given to federal law enforcement officers that are higher than those currently earned at other federal agencies. Such a system has contributed to the loss of law enforcement officers at the Capitol Police, the U.S. Park Police and the U.S. Secret Service.

The IRS was granted additional flexibilities to address its unique workforce as well. The IRS personnel flexibilities include: critical pay authority; enhanced recruitment, retention, and relocation authority; enhanced authority for performance awards to senior executives; and exceptions to Title 5 rules in filling Senior Executive Service positions which are reserved for career employees.

Additional flexibilities are granted to the IRS which can only be applied to union represented employees subject to a written agreement between the union and the IRS. This includes streamlined demonstration project authority; vari-

ations to the performance appraisal and awards sections of Title 5; variations from Title 5 pay and classification systems for pay banding; and variations from Title 5 hiring rules.

However, the IRS' progress on reform seems welcome to all but those who work inside the agency. In response to the agency's 2001 employee climate survey, 42 percent of employees said the organizational changes have had a negative effect on them, compared with 24 percent who reported positive effects and 34 percent who reported no effect. Such dissatisfaction does nothing to help retain employees when the federal government is facing a human capital crisis.

While there has been an increase in customer satisfaction with the IRS, the widespread personnel reshuffling has yet to guarantee that the IRS is matching its workforce to its workload appropriately. Over the past four years, the backlog of taxpayer requests for compromise settlements with the IRS on the amount of back taxes they owe tripled, even though the staff devoted to the backlog has doubled. A General Accounting Office review found that putting staff on the compromise program may be hurting other collection programs. The large percentage of bad information given to taxpayers by IRS employees also shows that the right people with the right skills are not in place in customer service jobs—though the IRS is retraining customer service representatives to improve accuracy.

As we are debating the creation of a new Department of Homeland Security, we must make sure that providing new flexibilities does not compromise the mission of the agency. In providing the agency with the tools to effectively manage their workforce, we must make sure that agencies have a strategy in place to meet their missions and keep employees satisfied. If our dedicated workers do not feel valuable to the agency, the mission will fail. Without sufficient union participation and civil service protections, our homeland will not be secure.

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

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

#### MORNING BUSINESS

Mr. REID. I ask unanimous consent the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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