

the west are small, more than 90 percent are 12 inches in diameter or smaller.

Returning receipts to the Treasury is consistent with a provision in the Wyden/Craig County payments legislation enacted 2 years ago and avoids existing perverse incentives. Numerous GAO reports reveal that existing agency trust funds provide incentives for the agency to cut large trees because it gets to keep the revenue. Cutting large trees will not reduce fire risk, therefore, we should direct receipts back to the Treasury. Jeremy Fried, a Forest Service research specialist at the Pacific Northwest Research Station, states, "If you take just big trees, you do not reduce fire danger."

The provision in our amendment stating that 70 percent of Hazardous Fuels Reduction Funds be spent within one-half mile of any community structure or within key municipal watersheds is more flexible than the President's fiscal year 2003 budget request which provides that the same percentage only be spent near communities. We in Congress must ensure that the agencies adhere to our direction that the number one priority is to protect communities at risk for catastrophic fire. To date, this has not occurred. In fiscal year 2002, only 39 percent of the areas where hazardous fuels will be treated are in the wildland/urban interface. In fiscal year 2003, only 55 percent of the acres scheduled to be treated are near communities. Finally, we need hard and fast assurance that the agencies will make its investments near communities because the National Fire Plan and the Western Governors' Association identify protecting people as the number one priority.

We are willing to provide the agencies with additional authority as set forth in our amendment but only to achieve the number of acres treated that can be accomplished without a substantial increase in funds. My amendment doubles the amount of acreage treated to reduce fire risk in the upcoming year from 2.5 million to 5 million acres whereas Senator CRAIG's amendment covers 10 million acres of Federal land.

It is impossible for the agencies, even with the expedited procedures included in Senator CRAIG's amendment, to quadruple the amount of acres treated annually. Since fiscal year 2001, Congress has provided about \$400 million annually for hazardous fuels reduction. With this level of funding, the agencies have treated approximately 2.5 million acres each year. For fiscal year 2003, the Senate Interior appropriations bill provides \$414 million for hazardous fuels reduction, fully funding the Administration's request. Again, the agencies estimate they will complete treatment on about 2.5 million acres. Senator CRAIG's amendment does not provide any additional funds, therefore, it is incorrect to purport that now, suddenly, the agencies will quadruple the amounts of acres treated.

Moreover, we do not need to treat every acre of land to reduce fire risk. New Mexicans and others living in the west want their government to quickly and intelligently address the excessive build-up of hazardous fuels. If we're going to leverage limited Government funds to solve this problem, we need to figure out in advance which forested lands need to be treated and how.

To act quickly and strategically to prevent catastrophic fires, we do not need to treat every single acre of national forest and public lands. Instead, we should create firebreaks and other strategically thinned areas to stop fires from spreading out of control over large areas. A respected Forest Service researcher named Mark Finney has estimated that treatments need only address 20 percent of the landscape, if thinned areas are strategically placed to make fires move perpendicular to the prevailing winds. The Forest Service should experiment with Finney's ideas and those of others about how to most strategically place thinning projects. The less acres the Government needs to treat, the further our existing funds will stretch.

The board feet levels in this amendment are identical to the levels previously set forth for categorical exclusions by the Forest Service. Almost 3 years ago, a Federal district court invalidated these categorical exclusions primarily because the agency literally lost its administrative record. Notably, the court left room for the agency to reinstate these categorical exclusions but for some reason the agency still has not done so. This approach also will benefit local businesses by requiring the agency to implement relatively smaller projects. Residents of Truchas, NM, tell me that the using categorical exclusions improves the ability of local Federal land managers to make site specific decisions that address community needs.

At this point in time, I do not believe we need to expedite judicial review beyond what we offer in our amendment. Prohibiting any temporary restraining orders or preliminary injunctions, which is what the Republican and administration proposals would do, makes any judicial review effectively irrelevant. In addition, on August 31, 2001, the General Accounting Office reported that, of the hazardous fuels reduction projects identified for implementation in fiscal year 2001, none had been litigated.

In conclusion, our amendment represents a thoughtful, balanced approach to expedite forest thinning in a way that truly reduces fire risk for communities and the environment.

I yield the floor.

Mr. BURNS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the hour of 11:30 a.m. having arrived, the Senate will now resume consideration of H.R. 5005, which the clerk will report.

The 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.

Byrd amendment No. 4644 (to amendment No. 4471), to provide for the establishment of the Department of Homeland Security, and an orderly transfer of functions to the directorates of the Department.

Reid (for BYRD) amendment No. 4673 (to amendment No. 4644), in the nature of a substitute.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Madam President, I ask unanimous consent that there be 1 hour for debate, equally divided, on the cloture motion.

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

Mr. THOMPSON. And the vote to occur at the end of that hour.

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

Mr. THOMPSON. I thank the Chair.

Madam President, about a year ago, we began hearings on the homeland security issue in the Governmental Affairs Committee. Other committees had hearings, but we had a series of hearings that lasted until recently.

During that time, we reached bipartisan agreement on many important factors. We reached bipartisan agreement on the notion that we need to reorganize our Government to meet the new challenges our country faces. We live in a different world, a new world, a dangerous world, and we need to reorganize our governmental agencies to deal with that world. We have very broad bipartisan agreement on that.

We also discovered in that time that we have some very important points of disagreement.

I think it was the understanding of everyone concerned that after we addressed this in the committee, after we had a full discussion, a series of hearings, after we had an extensive markup and aired all of these similarities, these points of agreement, and points of disagreement, that we would be able to take that committee product, bring it to the floor, as Senator LIEBERMAN has done, and that we would be discussing the merits of the points of agreement and the points of disagreement because we were about very important business of our country and the future safety of our country, with the full realization that we were doing something that had not been done for over half a century in this Government, in terms of the scope of the reorganization.

I believe that was the understanding, that this would be the process, and that it was one of those rare times—all too rare around here—that we would come together on both sides of the aisle and address it in that way.

It was not to be. We have spent the last 3 weeks in the afternoons supposedly on this bill and have accomplished very little.

Of course, we had the September 11 anniversary in the middle of that time period, and we had a holiday in the midst of that time period. We also had a commemoration in New York, which many of us attended, in connection with the anniversary of September 11. But we still have had 3 weeks of afternoons for consideration of this bill, and we only really considered one of the substantive areas of disagreement.

We have had a considerable period of time in the way legislative calendars go, but we have had very little time to consider these very important issues that we have been discussing in the press, in the media, on the floor, and in committee for now going on a year at least.

Instead of coming to the floor and proceeding with those issues, we have had time taken up under the rules of the Senate, as Senators have a right to do, on matters that are peripheral to the important amendments and the issues with which we know we have to deal.

Our side of the aisle has all this time been trying to get consideration of the issues that we know we have to consider. We are going to have to consider, one way or another, whether we want to diminish the President's national security authority. Could there be anything more important than that?

We are going to have to decide whether or not we are going to give this new Secretary management flexibility to deal with the new problems in any Governmental Department nowadays, especially in this one.

We are going to have to decide what kind of intelligence apparatus we are going to have within this new Department eventually.

We are going to have to decide whether we are going to give the President reorganization authority.

We are going to have to decide all these issues. All these issues have been begging for consideration all this time. This Senator has been trying to get them up for consideration. This Senator took 6 days trying to get a vote on the question of the nature of the White House person and whether or not he would be Senate confirmed. We finally, after 6 days, got a vote on that. It was a voice vote, and it was adopted. That is the only substantive amendment we have even had an opportunity to consider.

With that background, and before considering any of these other issues at all, or having any discussion, any debate, the other side has filed cloture. After taking up all this time on all these other issues—days and hours of

discussions on one thing or another—they have filed cloture. They have essentially filed cloture against themselves.

I may not have been here long enough to fully understand all of the history and the way things work around here, but I hope that it is a rare occurrence for the majority party, or anyone else, to bring up their own bill, filibuster, and then file cloture against themselves in order to cut off the other side from offering amendments, which we know have to be considered. That is the situation we have. That is the bizarre circumstance in which we are today.

That is not the proper purpose of a cloture motion. I ask my colleagues: Do they really believe there is any chance of getting a bill under these circumstances? This cloture motion is not about substance. It is not about moving the bill. Everybody knows if this cloture motion succeeds, there will be no bill this year. The President will veto this bill as sure as I am standing here. Without even having the opportunity to consider these issues concerning his own authority or the management flexibility or the reorganization or the intelligence component, or any of these other issues, they file cloture and deprive us of considering these issues?

I am not sure anybody is going to argue the amendments would be germane after cloture. The effect is to cut us off. It is not about substance. It is not about moving the bill along. It is about appearances and it is about assessing blame. I guess there is quite a bit of embarrassment around here that we have spent 3 weeks and have essentially done nothing. Now apparently we want to give the appearance we are trying to move this along so we file cloture, plus putting us in the position on this side of the aisle of opposing cloture and make it look as if we are holding up the bill, when we are the ones who have been trying to get our amendments up and considered. I do not think the American people are going to buy that.

When it comes to matters of this importance, where we could come together on a bipartisan basis and address these issues, I say to those Americans, better luck next time, because the matter has not gotten serious enough yet. We are only dealing with the security of this country, but we are going to engage in our same old games.

I have a suggestion that instead of worrying about the appearances of moving this bill, let us actually move it. We should defeat this cloture motion and get on with those issues we are going to have to address sooner or later and give us a chance of having a bill.

Therefore, I respectfully urge my colleagues to oppose cloture in this instance.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, I want to try to summarize my thoughts so the distinguished Senator from Tennessee can preserve some of his time.

When 9/11 happened, and after that terrible day when we all stood together in front of the Capitol and sang "God Bless America," I thought that coming together on a proposal to defend our country and its people was going to be about as easy as it had been after December 7, 1941. I was absolutely and totally wrong.

As strange as it sounds, as unbelievable as it is, the Lieberman bill takes power away from President Bush to declare a national emergency and, in the process, override business as usual in the Federal bureaucracy, a power that Jimmy Carter had, a power that Ronald Reagan had, a power that the first President Bush had, a power that Bill Clinton had and used.

Incredibly, after thousands of our people have died, after all of the suffering and all the trauma, we now have in a bill—a bill that is shameless enough to call itself related to homeland security—an effort to take power away from the President that he had on 9/11.

I am not sure the American people truly understand that President Bush has asked for no additional emergency powers to set aside work rules within the Federal bureaucracy. In fact, he has already agreed to reduce those powers very slightly as compared to what his four predecessors possessed. But that is not enough for the supporters of the Lieberman bill. They want to deny the President the power to declare, on a national security basis, that we change the way the bureaucracy works to allow him to put the right person in the right place at the right time.

Let me give a concrete example of it. At Logan Airport in 1987, Customs agents decided they needed to change the way a room was structured in order to do inspections and in order to improve the quality of the inspections. The Treasury employees labor union objected and filed a complaint with the Federal Labor Relations Authority that said, under their union work rules, they had to sign off on a change in the work space, and the FLRA ruled that the Customs Service could not change their inspections facility because it overrode a provision of that union contract.

Let me remind my colleagues that two of those planes that were involved in terrorist attacks flew out of Logan Airport. Are we today to allow a work agreement and the Federal Labor Relations Authority to override the President if he wants to improve security at Logan Airport? I do not think so. I do not think the American people believe that we should, but that is exactly what is being proposed.

So I urge my colleagues to reject this idea that in the name of national security we should take national security power away from the President. If this

cloture motion prevails, we will have only been allowed to offer one amendment, the Thompson amendment. A vote to kill it failed, but then for 3½ days it was held in limbo. If this cloture motion is agreed to, a substitute amendment, which perhaps is supported by between 40 and 50 Senators, would not be able to be offered.

The majority had a right to file a cloture motion—that is the way the Senate works—but with all due respect I think it was wrong to file it. I do not think it can be justified given we have had an opportunity to offer one amendment, and I do not believe the American people would be in favor of ending debate on this bill while its major feature takes power away from the President to use national security waivers instead of preserving that power. So I urge my colleagues to vote no on this cloture motion.

I conclude by reading a quote from Dwight David Eisenhower. I think it is very appropriate as we debate the Homeland Security Department and its structure. Ike said:

The right organization will not guarantee success, but the wrong organization will guarantee failure.

I believe the bill, as it is now structured, is an unworkable organization. The President has said he will veto it, that he would rather have no bill than this. When are we going to awaken and give the President the tools he needs to finish the job? I hope it is soon, and I hope we begin today by voting down this motion to deny us the ability to give the Senate an opportunity to work its will on the President's proposal.

I yield the floor.

The PRESIDING OFFICER. The Senator from California has a half hour.

Mrs. BOXER. What are the rules? Do I have to ask for a specific number of minutes or may I speak until I finish my remarks?

The PRESIDING OFFICER. The Senator from Connecticut controls 30 minutes.

Mrs. BOXER. I ask Senator LIEBERMAN if he will yield 5 minutes to me to speak in favor of cloture on his amendment, and then address the Byrd amendment.

Mr. LIEBERMAN. Madam President, I yield 5 minutes to the Senator from California for that purpose.

Mrs. BOXER. I thank the Senator very much for yielding me the time.

As I begin my remarks, I offer my thanks to both Senator LIEBERMAN and Senator BYRD for the work they have done on behalf of the American people and for the principled and deliberative approach they have brought to this very complex issue.

I have tremendous misgivings about the size and shape of this Department, which I will address. I do want to seek cloture. I do want to see some finality. I do think this is very important.

I was distressed yesterday to hear comments from the Senator from Texas, Mr. GRAMM, in which he said the American Government was the laugh-

ingstock of the world because of our work rules. That is the first time I have ever heard that the American Government is the laughingstock of the world for any reason.

This is the greatest country in the world, and I believe one of the key reason, is our people and their dedication. I know one of the big issues between both sides and some on our side of the aisle, as expressed by Senator MILLER yesterday, is we should, in fact, change some of the worker rules and strip some of those rules from this new Department. I want to say respectfully I will fight that with every bone in my body, as will the Senator from Georgia and the Senator from Texas, who will oppose what my view is.

I want to say this and not linger on it too long because we will have more time. Every single one of the heroes of 9/11—every fireman, every policeman, every emergency worker—happened to be covered by work rules. They never looked at their watch and said, oh, my God, I am working overtime, I had better get out of here, or I am in danger and I should be getting hazardous duty pay. We never saw that. We saw an incredible dedication by workers who cared about what they were doing. I found it tremendously insulting to hear those words in the Senate. I will fight for those workers.

We are creating a homeland security office that is supposed to be second to the Pentagon in defending the American people. What do we do to the people who work in that Department? Make them second class. In my opinion, that is disastrous. I have met some of the workers. They are the heroes of tomorrow. They deserve to be treated with respect, not stripped of the worker rules that protect them. We will talk more about that.

Briefly, I support the Byrd amendment, and I look forward to having a chance to speak at greater length. This is a huge change in our Government. Under the current plan, much improved from the House—the Lieberman plan is much improved from the House version—we will be taking 170,000 employees and shifting them over to a new Department. Many of these agencies have multiple responsibilities—not just to protect the homeland but, for example, in the Coast Guard search and rescue missions, so important to my home State.

In the case of FEMA, when we have an earthquake, if we have a flood, or if there is a hurricane anywhere in the country, FEMA must come and deal with it, deal with the people who suffer losses, deal with the businesses that suffer losses. I don't understand why we have taken those agencies in whole cloth and placed them in the new Department.

Senator BYRD says, yes, we need this Department of Homeland Security. He moves forward with the top level people who will be bright and smart, who will be able to look at their challenge and let the Congress know in the ensu-

ing days, weeks, and months what they need to do their job. Senator BYRD is courageous to get out here and slow this train down.

I have been in government a long time. I started at local government many years ago. I was on a county board of supervisors. We ran the whole county—the court system, the emergency workforce, transit district, and the rest. One of the lessons I learned: Do not do something that just looks good; do not do something that just sounds good; do not do something just because it protects you politically; do something right. Mostly I learned, don't do something so big, so huge, that there is less accountability rather than more accountability.

I thank Senator BYRD. I support the cloture motion. I want to see a streamlined Homeland Security Department. That is what I will work for.

I yield the floor.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I yield myself such time as I may consume.

I rise to speak in favor of the cloture motion Senator DASCHLE has filed. It does seem to me that it is time to begin heading toward a conclusion of our deliberations on homeland security and to have a final vote as soon as we can. This cloture petition is a way to begin to do that. I have said before, and I will say it again, briefly, some of members on the Governmental Affairs Committee have been at this for almost a year now. In fact, a certain amount of activity began in Congress before that. Congressman THORNBERRY of Texas, a distinguished Member of the other body, introduced legislation early in 2001, months before September 11, to create a Department of Homeland Security. That was based on the work of the so-called Hart-Rudman Commission.

Our committee was carrying out hearings on this matter, held one prescheduled on September 12 on the question of how to protect the American people from terrorist assaults on our cyber-systems, a point of vulnerability that we have to organize ourselves to protect against. We held 18 hearings in our committee related to homeland security and the creation of the Department. Our committee reported out a bill in May by a 9-to-7 vote, unfortunately, a partisan split on the committee at that point.

President Bush endorsed the idea of a Homeland Security Department, and his proposed Department, most of the recommendations were quite similar—some exactly the same—as those contained in the bill that had come out of our committee in May on a partisan vote. We worked together with the White House and members of the committee.

On July 24 and 25 of this year, we had two long, thoughtful, productive days of markup in our committee and reported out the amendment before the

Senate as the underlying amendment creating a Department of Homeland Security.

We came to this bill immediately after we returned after Labor Day. This is the third week. A lot of the days have not been full days. We have had the two-tiered system with appropriations matters in the morning and homeland security in the afternoon. There has been a lot of debate and I hope a lot of consideration of the merits and demerits of the various ideas.

Some of our colleagues on the other side of the aisle have begun to complain about the pace of action; that the longer we wait to adopt a homeland security measure, the longer it will take to set it up, the more the American people will be exposed to danger from the terrorists who are clearly out there. We see it every day in the paper. We know it ourselves from briefings we have had, both open and classified. The enemy is there and not just at our door, but as we see from the arrests that occurred in Lackawanna, NY, within the last week, they are inside the house.

It is time to move forward on the 90 percent of ideas that are pretty much the same. We have some parts on which we are in disagreement. Senator GRAMM and the occupant of the chair, I gather, have a substitute amendment. We have various amendments to try to alter the underlying amendment. Let's get on with it.

I must say, I am puzzled, having heard the Senator from Texas speak a few moments ago, how those who have claimed we are not moving fast enough toward adopting a Department of Homeland Security bill because of the dangers involved are now going to vote against this cloture petition, which, of course, as all the Members know, would essentially narrow the debate, begin to move us toward germane amendments, and hopefully say to our colleagues and to our country that we are getting close to that time when we have to act.

I am puzzled why people who have complained about the pace of action on the Department of Homeland Security bill would vote against this cloture motion, against a vote on cloture. I hope they give it a second thought. Not only is there a critical urgency that we move forward to adopt this bill, get it to a conference committee with the House, get it to the President's desk, have it adopted, begin the work of creating the Department, but, Lord knows, we have a lot of other important work to do in this Senate and in the Congress generally, with appropriations bills, with matters related to potential military action against Iraq, matters related to the economy—particularly the retirement security of the American people, reactions to the corporate scandals that have occurred about which there is broad bipartisan interest in having us do something.

I think the time is now. I think each of us ought to vote for cloture and then

let's have a system for having a finite number of amendments come before the Chamber. Let's give people the opportunity to make this bill as it came out of the committee better than it is. I think we have done a pretty good job. I described it yesterday, I believe, here on the floor as obviously not perfect but the first best effort toward taking the disorganization that exists now, that is dangerous, and organizing not just our Federal Government but our national strength to meet the terrorist threat.

I just came from a meeting with some families of victims of September 11. I have met with them several times before. There were about 120 who we lost, who were residents of Connecticut—a grievous loss. From the first time I met with them, they asked the question that echoes in my mind and my heart, which is, How could this have happened? And the subquestion is, Could this have been prevented so I would not have lost a spouse, a child, a parent, a friend?

This Department proposal is an answer to that question—not fully the answer to the question of how it could have happened, but surely an answer to the plea that we take action to make sure nothing such as September 11 ever happens again. It is for that reason I support the cloture motion and hope my colleagues, on a bipartisan basis, will vote for it so we may then go forward on a bipartisan basis to adopt a bill that will, as soon as possible, create a Department of Homeland Security.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. BYRD. Mr. President, will the Senator yield briefly?

The PRESIDING OFFICER. Will the Senator withhold?

Mr. LIEBERMAN. Yes. Does the Senator wish to speak on the cloture motion?

Mr. BYRD. Not at length. Just a moment.

Mr. LIEBERMAN. I am happy to yield time to the Senator as he needs.

Mr. BYRD. Yes. Mr. President, John Stuart Mill said:

On all great issues, much remains to be said.

This is a great issue. Much remains to be said. I understand that some said that I have been filibustering and holding the floor. I would like to hear that again. I am not holding the floor.

On all great issues, much remains to be said.

I hope other Senators will say much on the pending amendment, the Reid-Byrd amendment. The floor is open.

The PRESIDING OFFICER. Who yields time? If no one yields time, time will be charged equally to each side.

Mr. LIEBERMAN. Mr. President, I suggest the absence of a quorum, and I ask the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. 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, neither side seems to be interested in saying anything at the moment. I have a statement I would like to make if both sides would allow me to have the time, 10 minutes—I might be able to make it in 10 minutes.

Mr. LIEBERMAN. I have no objection.

Mr. NICKLES. What was the request?

Mr. LIEBERMAN. The suggestion Senator BYRD raises is since neither side is using the time allocated, he has a statement he would like to make in the remaining time.

Mr. NICKLES. I have a statement to make on the vote we will have in 10 minutes, and then I will be happy to yield.

Mr. BYRD. Mr. President, the Senator may have the floor if he wishes.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I am happy to have the Senator from West Virginia speak. I do wish to speak on the issue we have before us.

Parliamentary inquiry: The unanimous consent calls for a vote at 12:30; is that correct?

The PRESIDING OFFICER. Twenty-two minutes remain, according to a subsequent unanimous consent agreement.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. May I ask how much time our side has remaining?

The PRESIDING OFFICER. There remain 10½ minutes.

Mr. NICKLES. The vote is anticipated to be at 12:30?

The PRESIDING OFFICER. It is 12:40.

Mr. NICKLES. Will the Senator yield me a few minutes?

Mr. THOMPSON. I yield such time as the Senator may consume.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I think we have had some good debate. I am not here to debate the substance of the two proposals, but I am here to debate strongly against voting for cloture. It seems like I was here yesterday doing the same thing on the Interior bill. I am going to do it again. My friend and colleague for whom I have the greatest respect, the Senator from West Virginia, knows the Senate rules better than any—I mentioned yesterday that we are getting way too frivolous about dropping cloture votes every time somebody wants to have a vote. It achieves no purpose whatsoever.

That is exactly what is going to happen here. Cloture is a very serious procedure. That limits a Senator's ability

to offer amendments. The Senate of the United States is one of the greatest institutions in the history of democracy, and we are going to have cloture. I have heard some colleagues say they hope it is invoked. If it is, that means the amendment the Senator from Tennessee, Mr. THOMPSON, is offering, along with Senator GRAMM and Senator MILLER, cannot be offered because it would be nongermane. Are we going to deny them the opportunity to offer an amendment they have worked hard on and which every colleague in this body knows they are entitled to offer? Are we going to file cloture so you can't offer amendments to it?

I am amazed at how quickly people draw their gun of cloture to deny Senators on both sides the opportunity to offer amendments. I know there are a lot of amendments that are floating around. I have heard people say, for example, I think I might do an amendment dealing with the intelligence operation. Those amendments, in almost all likelihood, would be nongermane.

I just urge my colleagues to let us respect the rights of individual Senators to offer amendments.

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

Mr. NICKLES. I would be happy to yield.

Mr. LIEBERMAN. I ask my friend from Oklahoma—I have not had an opportunity given to me to look at the substitute that may be offered by the Senator from Texas—why would it be germane if parts of it don't relate to homeland security?

Mr. NICKLES. I appreciate the question of my good friend. I am sure he is aware of the Senate rules postcloture. Germaneness requirements are so strict that they prohibit a lot of amendments; amendments that are, frankly, quite germane wouldn't be germane by the ruling of the Parliamentarian and by the history and precedents of the Senate.

We have all been around here for a while—some of us longer than others. Postcloture germaneness is very strict and would prohibit probably 90-some percent of the amendments to be offered. Any Senator could offer amendments to strike a section of the Senator's bill. I guess we have been doing that a long time, but that is not the way to do it. The Senator from Texas should be entitled to offer his amendment. Senator MILLER cosponsored the amendment. A lot of us have cosponsored the amendment. We want to have the right to offer that amendment.

I haven't asked the Parliamentarian. But I would guess, if the Parliamentarians have reviewed the language, they would find that amendment would be nongermane postcloture. It is germane to the subject. It would be germane by almost anybody's definition of germaneness because we are talking about homeland security. It would be germane because it is the President's proposal. The White House worked on it, but according to strict Parliamen-

tarian procedures, it may well be ruled nongermane.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. NICKLES. I would be happy to yield.

Mr. BYRD. Mr. President, I know what the Senator is saying. We all know the Parliamentarian gives guidance, but I hope when the Senator talks about the Parliamentarian and the aid which the Parliamentarian gives, we are talking about the ruling of the Chair. It is not the ruling by the Parliamentarian, with all due respect to the Parliamentarian. The Chair gets the guidance of the Parliamentarian. But it is still the ruling by the Chair.

Mr. NICKLES. I appreciate my colleague saying it is the ruling of the Chair. And the ruling would be following the advice most likely of the Parliamentarian who would be following the precedents of the Senate. And the precedents of the Senate would be postcloture germaneness, which is very strict, indeed. And most germane amendments would fall. We have just begun this debate.

I will tell my friend and colleague, who is also the chairman of the Appropriations Committee, that we agreed to allow two bills to go simultaneously—Interior and the Department of Homeland Security. Neither bill is moving, much to my chagrin as a person who realizes we only have 10 days left in this fiscal year, and we haven't been passing appropriations bills. We dual-tracked some bills when the Senator from West Virginia was majority leader. We dual-tracked bills under Bob Dole as well. Sometimes it works. For the last 3 weeks it has not worked.

We haven't made adequate progress on Homeland Security, and we haven't made adequate progress on Interior. Maybe it is because all of us have to fight or to wrestle with too many issues simultaneously. I am not sure. But the progress on both bills has been rather poor.

If we want to—and I want to—pass every appropriations bill by the end of the fiscal year and have them on the President's desk for his signature, or for his veto. I think that is our constitutional responsibility. We are not getting it done. That is disappointing me.

I happen to think there probably is no greater issue confronting this Congress than the Department of Homeland Security. And I think we should have the opportunity to be able to offer alternatives. If cloture is invoked, I am afraid the primary alternative authored by Senators GRAMM, MILLER, THOMPSON, and myself wouldn't be allowed postcloture.

That is why I would say in fairness that we can count votes. I know you are not going to get cloture. I do not know why we are doing it. If we gave you cloture, we could tie this place up. Nobody is filibustering this bill.

No one—at least on this side. Maybe others are. Maybe others have different

agendas, but no one on this side of the aisle wants to filibuster this bill in any way, shape, or form.

I will say the same thing for the Interior bill. We had a vote on cloture on the Interior bill. I heard the Senator from West Virginia say he wouldn't filibuster. We are not filibustering. Cloture is supposed to shut off debate. Why? We are not having extended debate. We are not stretching out debate, not on Interior—and not on Homeland Security. We are willing to vote on the amendments on the Department of the Interior, and vote. We may win; we may lose. I have won some; I have lost some. That is part of being a legislator.

The same thing for Homeland Security; let us vote on the alternative.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. NICKLES. I would be happy to yield.

Mr. BYRD. Mr. President, I wish we would get on with Interior and the other appropriations bills. The Senate Appropriations Committee, as I have said many times, has reported all 13 appropriations bills. We did that long ago. Senator STEVENS and I, and every Republican and every Democrat on that committee voted. We have 13 appropriations bills on the calendar.

If we cannot finish the Interior appropriations bill, will the Senator help us to get unanimous consent to proceed to other appropriations bills? We could take up Senate appropriations bills. We don't have all of the House appropriations bills. The House Appropriations Committee has not reported all 13 appropriations bills. But we have reported all of the 13 Senate appropriations.

Will the Senator and his side of the aisle help us to get unanimous consent to go to the other appropriations bills?

Mr. NICKLES. I would be happy to respond to my good friend and colleague. I will help you try to get the appropriations bills done. I will also tell you what I told my very good friend, Senator REID. I will object to dual-tracking on homeland security and appropriations bills simultaneously because it doesn't work. I think maybe we should have a little greater focus and stay on homeland security.

I don't care if we stay all night and all weekend, this is an important issue. We ought to finish it.

I will tell my friend and colleague from West Virginia that I will stay all night, and we will help finish these appropriations bills. I don't care if we have to work every weekend between now and the end of the year, let us do it. But I don't like this idea of dual-tracking unless we have a greater understanding on the Interior bill. Let us finish it.

I used to manage the Interior bill. I worked with my colleague. I was chairman of the committee. I was chairman, and I was ranking. We did the Interior bill year after year, I might mention, with my colleague, Senator REID, also

assisting on the floor. We did that bill generally in 3 days. We got it done. It is usually a bipartisan bill, and it would usually pass with 90 votes.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. NICKLES. I would be happy to yield.

Mr. BYRD. Mr. President, Shakespeare said the Senator "is a man of my own kidney." Some would say "a man after my own heart." The Senator said he is willing to stay here all night and get these appropriations bill done. Let us do that.

I believe the objections from the other side of the aisle on moving those bills is the word out of the White House. I am just thinking—I am presuming, some things which I have seen and heard are to that effect—that the word has come out of the White House. Has it come out of the White House to the Speaker of the other body?

That is where appropriations bills generally originate. Appropriations bills generally and customarily originate in the House.

Can the Senator inform me as to whether the word has come down from on high to the House to hold up those appropriations bills? The House has not moved those appropriations bills, and it is not because of the House chairman, Mr. YOUNG. He would eagerly move those bills.

Can the Senator elucidate on this question?

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

Mr. BYRD. I hope the Senator will have a minute at least to respond. Will the Senator from Connecticut yield?

The PRESIDING OFFICER. The Senator from Connecticut controls 11 minutes.

Mr. LIEBERMAN. Does the Senator wish unanimous consent for an additional moment?

Mr. REID. Mr. President, we are not going to extend the time for the vote. I don't mind Senator LIEBERMAN yielding him some of his time.

Mr. LIEBERMAN. Mr. President, I yield the Senator a minute of my time.

Mr. NICKLES. Mr. President, I appreciate my good friend from Connecticut doing that.

I just say, since I have taken all of Senator THOMPSON's time, I hope Senator THOMPSON, if he wishes, will be able to speak on the issue. We have had an interesting colloquy. And I am happy to extend that time.

I am happy to work with my friend and colleague. I happen to be one who thinks the Senate does not have to wait on the House. It is tradition. It is not constitutional. But the Senate has not been setting records. Well, maybe we are setting records on Interior. We have been on it for 3 weeks and have not finished it. So we are not doing our job. Maybe the House isn't getting its job done, either. Hopefully, both will get it done.

I would hope my colleague from Connecticut would yield some time to the

Senator from Tennessee on the issue at hand. I appreciate the consideration of the Chair and my friends.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I wish to speak very briefly, and then I will yield. The Senator from Nevada has withdrawn his request to speak. Let me say a few words.

My friend from Oklahoma has talked about his concern that the substitute that the Senator from Texas, Mr. GRAMM, has fashioned would not be ruled germane. I don't know because I have not seen it. But, of course, there is another alternative here, which is the normal course.

I refer back to our Governmental Affairs Committee's deliberations on the bill in which, after we put our mark down, Senator THOMPSON, as ranking member, offered several amendments going to powers of the President to reorganize, the latitude over appropriations, obviously much interest in civil service, collective bargaining questions, some dispute over the exact powers of division of intelligence in the new Department that all of us agree ought to be created, but we disagree on what powers it should have.

Again, I am not the Parliamentarian, but picking up on what the Senator from West Virginia has said, it certainly would seem to me there would be ample basis for whomever the Presiding Officer is at the time to rule that the kinds of amendments that the Senator from Tennessee offered in committee—which put it in issue and give the Senate a choice of what I think are the remaining relatively small number of issues in controversy—would, in fact, be ruled germane. So that is the way to get this moving.

Mr. NICKLES. Will the Senator yield?

Mr. LIEBERMAN. For a question.

Mr. NICKLES. Just knowing postcloture, if the Senator from Tennessee offered the substitute section dealing with collective bargaining, dealing with Presidential flexibility, I can assure you—or my guess is—that 90 percent of those would be ruled non-germane. And that is just the facts of the postcloture rules in the Senate.

I understand what you are saying. One way we can nibble, we can strike. We can always strike, but if we wanted to have strike-and-insert language, most of those amendments would be ruled nongermane. That is the reason why I am urging my colleagues to vote no.

Mr. LIEBERMAN. I thank my friend.

My answer would be, again, I have not seen the exact components of the substitute from the Senator from Texas, but as my staff has heard it described, it follows pretty closely after the House bill, which, again, if I were in the chair I would think are germane.

I want to yield a few moments—as much time as he would like—to the distinguished Senator from Nevada.

Mr. REID. I thank the Senator.

Mr. President, I simply want to say this. It is obvious there are efforts made for us to do nothing in the Senate. And that is being accomplished almost 100 percent because we basically are accomplishing nothing.

The majority leader has attempted to invoke cloture on the Interior bill so we could move on. We are hung up with an amendment dealing with firefighting, which is too bad; Neither side has 60 votes. The rules have been in effect for 215 years, basically, with some minor changes. Those are the rules of the Senate. You need 60 votes on controversial issues. So we cannot move on Interior. That is too bad.

And on homeland security, the President has talked to every Senator in this room about the importance of that piece of legislation. Why can't we move on? If cloture were invoked on this, it would narrow the time with which we have to work on this bill. It would go to conference, of which the President has tremendous clout in the conference, and get this bill down to him.

I am seriously thinking that there are efforts being made here that we don't finish this bill, and then that we, the majority, can be blamed for not completing the homeland security bill. We want to complete this bill. Even Senator BYRD, who, as everyone knows—because he stated it on the floor—has problems with this piece of legislation, signed a cloture motion.

We all know we have to move on with this piece of legislation.

Mr. NICKLES. Will the Senator yield?

Mr. REID. I am happy to yield for a question.

Mr. NICKLES. Does the Senator think it would expedite completion of homeland security if we allow Senator GRAMM's and Senator MILLER's amendment to be adopted, or at least be voted on? Let's have an up-or-down vote on the Gramm-Miller substitute, let's have an up-or-down vote on Lieberman, and maybe a couple other amendments, and we can complete this bill.

Mr. REID. Well, Mr. President, we have spent days here. People are blaming Senator BYRD for slowing things down. All anyone has to do, when Senator BYRD sits down, is move to table his amendment, or what is going on at the time. There has been unending stalling on this piece of legislation.

I repeat, the President has talked to me. He has talked to the Presiding Officer. He has talked to the managers of the bill. He has talked to Senator NICKLES—everybody—about this bill. He believes this is important. Let's move on with it. If this bill comes out of the Senate, and it is not perfect, what he wants, he controls the House of Representatives. He has tremendous, I repeat, clout with the Senate.

We want to get this bill done. Let's move on.

Mr. NICKLES. Will the Senator yield?

Mr. REID. I am happy to yield for another question.

Mr. NICKLES. I don't think I heard an answer to the question. Shouldn't Senators GRAMM and MILLER be entitled to offer their amendment? And you also said there are some people stalling. There is nobody on this side of the aisle who is stalling this piece of legislation. And either side can move to table Senator BYRD's amendment. I am happy to do that. But I am going to always insist that our colleagues have a right to offer their amendment.

Won't you agree with me to give Senator GRAMM and Senator MILLER a vote on their amendment?

Mr. REID. Nobody is stopping them from having a vote on their amendment. Who says their amendment is not germane?

Mr. NICKLES. Cloture would stop them from having a vote.

Mr. REID. I would doubt that it is. But whatever are the rules of the Senate are the rules of the Senate.

Mrs. FEINSTEIN. Mr. President, as this Nation wages our war against terrorism, I rise today in support of the Lieberman substitute amendment to H.R. 5005, the Homeland Security Act. We must take this critical step now, in a way that protects both our liberties and our lives.

I commend my colleague, Senator LIEBERMAN, and the entire Committee on Government Affairs for drafting such meaningful and comprehensive legislation.

The Government Affairs Committee reported the bill on a strong bipartisan vote of 12 to 5—a clear sign of substantial support. It is unfortunate that the President has threatened to veto this legislation.

It fills me with a deep sense of sadness that it took the tragedy of 1 year ago to bring us this far. The deaths of nearly 3,000 people showed us, beyond a shadow of a doubt, that our Government was ill-prepared to tackle the multifaceted threat of terrorism.

We would be doing a great disservice to the memory of those that perished on September 11—and to the citizens this new department will be sworn to protect—if we fail to adopt a more effective system to combat terror.

As a member of the Senate Select Intelligence Committee and chairman of the Judiciary Subcommittee on Technology, Terrorism, and Government Information, I have been immersed in the debate on homeland security for a long time now.

I believe that we need to reorganize agencies to better fight the war on terror and I think that the creation of a Department of Homeland Security is a good first step.

This belief grew largely out of extensive hearings. In the 107th Congress alone, the Technology and Terrorism Subcommittee has held 16 hearings with 79 witnesses on counterterrorism.

Other subcommittee hearings covered narcoterrorism, seaport security, the National Guard, cyberterrorism,

critical infrastructure, weapons of mass destruction, bioterrorism, biometric identifiers, and identity theft.

Above all, what stood out at these hearings was the lack of coordination among specific agencies involved in homeland security, bolstering the need for fundamental reorganization of our counter-terrorism effort.

For example, we dealt with the problems at the National Infrastructure Protection Center, NIPC, the chief body for coordinating the Federal response to cyber-terrorism attacks.

The hearing revealed that NIPC had strong investigative capabilities but was weak in analysis, warning and outreach.

Now, under the homeland security legislation, NIPC's investigative responsibilities will remain at the FBI but the other functions will be transferred to the Homeland Security Department.

These overall shortcomings in counterterrorism led me to introduce appropriate legislation.

Following the terrorist attack on the U.S.S. *Cole*, Senator KYL and I introduced the Counterterrorism Act of 2000. This legislation would have implemented a number of recommendations made by the congressionally-mandated National Commission on Terrorism.

The Senate passed this Counterterrorism Act unanimously, before the end of the 106th Congress. Unfortunately, the House did not act on the bill before it adjourned.

But we are in a dramatically different world now—and we are facing an enemy capable of any striking out anytime, anywhere, and by a wide variety of methods. The need for a Department of Homeland Security could not be greater.

More important than getting it done, however, is getting it done right.

There are four key areas that I would like to address: the overall structure of the new department, the critical role of immigration to homeland security and the future of the INS, my concerns about intelligence sharing, the need for strong oversight over the money we spend fighting terrorism, and the importance of protecting our civil servants.

The task before us is enormous—the largest restructuring of the federal government in half a century.

It come as no surprise that this last reshuffling was in response to a new and unexpected war—the cold war. The Department of Defense, the CIA and the National Security Council were created by the National Security Act of 1947.

Begun in the immediate aftermath of World War II, the restructuring took years of work and compromise between the executive and legislative branches. To think we could undertake a similar operation in a matter of days or weeks is simply not practical.

We are talking about some 200,000 federal jobs, from over 20 agencies, to be shuffled around. Add to this a large

chunk of the federal budget—at least \$40 billion, not counting transition costs.

As we begin this massive reorganization, it is critical to do everything we can to stay focused and organized in the fight against terrorism.

Nothing could be worse than if this reorganization effort distracted from the real work of the good people in these agencies—people who are continuing the difficult, complex, and ongoing fight to prevent future acts of terrorism.

We must also be sure to strike an appropriate balance regarding which agencies to move and why.

Nowhere is this more critical, in my mind, than with the Immigration and Naturalization Service.

One of the most alarming facts about September 11 is how the terrorists used our visa system to enter the United States with impunity. They lingered here, undetected and under the radar, while some were even reissued visas after the attacks.

Because of this—and because I have long believed our borders to be sieves—last year I introduced the Border Security and Visa Reform Entry Act, with Senators KYL, KENNEDY and BROWNBACK.

Now that this legislation is law, the Congress must work closely with the administration to ensure that its provisions are properly and timely implemented.

The main thrust of this legislation was to prevent terrorists from entering the United States through gaping loopholes in our immigration and visa system.

Yet there is still much more to do, because the future of the Immigration and Naturalization Service is critical to our homeland security efforts.

To do this means ensuring that the immigration agency has the sufficient personnel and resources to get the job done. Without doubt, this is a daunting task.

When the President first released his proposal to create a new Department of Homeland Security, I had major concerns about transferring all immigration functions into a department made up of more than 25 different agencies and burdened with 120-plus different missions. But if such a transfer is to take place, the Lieberman substitute would implement it in the best possible way.

The President's proposal contained a mere two and a half pages of legislative language abolishing the INS and permitting the administration to divide the immigration system.

The White House would divide the INS with little direction as to how the agency would meet its new homeland security mission, and with little input from Congress. It would also establish a weak executive to oversee the immigration functions.

Finally, the administration's proposed new structure fails to adequately respond to intelligence failures at the hands of our front-line agencies.

For example, the General Accounting Office and the Justice Department's Office of the Inspector General has repeatedly criticized the INS for its failure to adequately train its officers to properly analyze intelligence information it collects from the field and from other agencies.

Yet the administration's bill fails to create a mechanism by which Federal authorities can share critical information with INS more quickly, so that the agency's officers and adjudicators can make the right decisions about whom to admit and whom to deny entry into the United States.

The Lieberman substitute, on the other hand, would establish two separate enforcement and service bureaus with clear lines of authority. This would ensure that: the agency's missions are straight-forward, that they are properly managed and staffed, and that policies handed down from the Director or the deputy directors of the two bureaus are implemented and followed in the field offices.

The Lieberman substitute would also elevate the stature of the new immigration agency executive—the Under Secretary for Immigration Affairs—and put into place a strong agency executive.

Right now, the Commissioner's office is too low in the Justice Department hierarchy to hold much weight with other federal agencies.

It has little meaningful authority over the District Directors, who wield enormous power, but are difficult to hold accountable. This would not necessarily change under the administration's proposal.

The Lieberman substitute would also separate the enforcement and service functions of the INS, but place them within the same Directorate.

This would allow both bureaus to coordinate such functions as investigating visa fraud, and conducting background checks of applicants for visas, naturalization, other immigration benefits, and entry.

I am particularly pleased that the Lieberman substitute contains the Unaccompanied Alien Child Protection Act, bipartisan legislation I introduced in January 2001.

I also believe that this illustrates how important it is, given this enormous restructuring, that we be very careful not to lump every role of every agency under the umbrella of homeland security.

Unaccompanied children represent the most vulnerable segment of the immigrant population.

Clearly, most unaccompanied alien children do not pose a threat to our national security, and must be treated with all the care and decency they deserve, outside the reach of this new department.

More specifically, this measure, comprising Title XII of the Lieberman substitute, would make critical reforms to the manner in which unaccompanied alien children are treated under our immigration system.

It would also preserve the functions of apprehending and adjudicating immigration claims of such children and repatriating a child to his home country when the situation warrants within the Immigration Affairs Agency, under the larger umbrella of homeland security.

The unaccompanied alien child protection provisions would transfer the care and custody of these children to the Department of Health and Human Services. Its Office of Refugee Resettlement office has real expertise in dealing with both child welfare and immigration issues.

These provisions would also establish minimum standards for the care of unaccompanied alien children; provide mechanisms to ensure that unaccompanied alien children have access to counsel, and have a guardian ad litem appointed to look after their interests; and provide safeguards to ensure that children engaged in criminal behavior remain under the control of immigration enforcement authorities at all times.

Roughly 5,000 foreign-born children under the age of 18 enter the United States each year unaccompanied by parents or other legal guardians. Some have fled political persecution, war, famine, abusive families, or other life-threatening conditions in their home countries.

They often have a harder time than adults in expressing their fears or testifying in court, especially given their lack of English language proficiency. Despite these circumstances, the Federal response has fallen short in providing for their protection.

No immigration laws or policies currently exist to effectively meet the needs of these children. Instead, children are being forced to struggle through a complex system that was designed for adults.

The Immigration and Naturalization Service detains some 35 percent of these children in juvenile jails. There they are subject to strip searches, shackles and handcuffs.

Even worse, their experiences of detention and isolation are often as traumatic as the persecution they fled in their home countries.

These problems are emblematic of our immigration system. It is managed by a bureaucracy ill equipped to help the thousands of unaccompanied children in need of special protection.

This is why I urge my colleagues to support these important measures.

These changes would guarantee that the proposed Department of Homeland Security is not burdened with functions that do not relate to its core mission.

Second, it would ensure that the INS dedicate itself to its central functions and not suffer mission overload. And finally, the move would ensure that the interests of unaccompanied alien children are protected.

The future of the INS highlights two distinct questions, which relate to the larger issue of homeland security.

First, how we protect innocent civilians, immigrants and citizens alike, while uprooting terrorists and preventing terrorist attack, and second, how we organize such a large department in a way that avoids duplication and inefficiency.

With respect to this last question, the Lieberman bill is a marked improvement from the present situation, where more than 100 Federal agencies across the government play some role within homeland security, not to mention all 50 states and literally thousands of localities.

On one level, success depends on how the federal merges with State and local government—the so-called “first responders”—and from the cooperation of citizens.

This is true on a variety of issues, from preventing possible attacks, through shared intelligence, to reacting to when an attack strikes, and also how any emergency or rescue operations are able to respond.

Success also depends on the need to improve the collection, analysis and dissemination of intelligence on homeland security. To do this right, we must not side-step possible failures within the intelligence community that occurred before the attacks of September 11.

Understanding past problems is key to future successes. We cannot afford to make the same mistakes twice, especially mistakes of such consequence.

Earlier this year, FBI Agent Coleen Rowley's startling testimony before the Senate Judiciary Committee was a real wake-up call.

Her accounts of the many layers of bureaucracy at the FBI, and the many frustrations faced in reaching superiors to authorize investigations, point to a critical need to revamp the existing structure of key agencies outside the Homeland Security Department—a task as complicated as it is sensitive.

It has been suggested that this new Department of Homeland Security is destined to failure if it cannot gain access to all relevant raw intelligence and law enforcement data.

I for one agree with such a scenario. We can't be fixing major kinks in the system a few years down the road, in the wake of another intelligence failure and another nightmarish attack. We've got to get it right, as best as possible, the first time around.

This will require answers to some tough questions.

For starters: What kind of intelligence would the new department get? And what recourse will it have if it does not get the information it needs?

Both of these have yet to be adequately answered.

I want to emphasize a point that many commentators have overlooked: billions of taxpayer dollars are at stake in this debate over homeland security.

As a member of the Appropriations Committee, I have studied what we spend on combating terrorism and will spend in the near future—are the numbers staggering. We must ensure

that this money is spent properly and not wasted.

According to the preliminary results of a General Accounting Office investigation of the terrorism budget requested by me, Senators KYL, GRAHAM, and SHELBY, Congressmen SENSENBRENNER and CONYERS, the combating terrorism budget increased 276 percent in just 1 year—and is going to increase even more. Consider the following figures: a \$40 billion supplemental appropriation bill was passed shortly after September 11 last year; the August 2002 emergency supplemental amounts to \$29 billion; and the fiscal year 2003 budget request is \$45 billion.

The GAO also found that counterterrorism missions are spread over multiple agencies and appropriations, but no real cross-agency terrorism budget exists. Neither the President nor Congress has a clear idea of how much we are spending to fight terrorism.

The GAO recommends that extensive interagency coordination and oversight is needed not just to determine how much we are spending to fight terrorism but to figure out where our priorities are.

In addition, the GAO found a number of areas of potential overlap—areas where money seems to be wasted through duplication of efforts.

These areas cut across every agency and include law enforcement, grant programs for State and local government, weapons of mass destruction training, critical infrastructure protection, research and development to combat terrorism, and terrorist-related medical research.

The creation of a new Homeland Security Department alone will do nothing to solve these problems. Simply moving agencies into a new organization is insufficient to minimize duplication and waste.

We need to be sure that the President, his Homeland Security Adviser, and the Secretary of the new department work with Congress to assist agencies in consolidating terrorism programs, eliminating duplicate efforts, and coordinating complimentary agency functions.

The issue of how best to ensure oversight over funds to combat terrorism does not stand in the way of our getting this legislation passed. The same cannot be said for the labor provisions.

As we know, these provisions remain the major barrier between the White House and Congress.

I do not see any inherent clash between collective bargaining rights for Federal employees and homeland security.

And I support civil service protections at the new Department of Homeland Security.

I support management flexibility, and I think that the Lieberman bill provides it. Under the bill, the new Secretary will have broad powers to hire and fire whom he wants.

The bill also includes a number of new flexibilities in recruitment, hiring, training, and retirement.

The Lieberman bill gives the administration flexibility in these areas. While the collective bargaining rights of federal employees in the new department will be grandfathered in, the President will be free to strip them of their collective bargaining rights if the job of those employees changes.

To me, I could not imagine a more ill-timed attack on the Federal employee unions. After all, Department of Defense civilians with top secret clearances have long been union members and their membership has not compromised national security.

And many of the heroes of September 11 were unionized. The New York City firefighters who ran up the stairs to their deaths did not see any conflict between worker rights and emergency response.

At a time of such massive restructuring of the Federal Government, we must maintain as much continuity as possible. By weakening workers' benefits, the government risks losing many highly qualified individuals to the private sector. There is also a large percentage of workers who, if push comes to shove, can option for early retirement.

This is no time for the Federal Government to suffer a so-called "brain drain," and be forced to train individuals from scratch.

The last thing we want to do in the middle of our war on terrorism is lose experienced employees on the front lines of this war—employees at the Coast Guard, the Department of Defense, the Federal Emergency Management Agency, the Border Patrol, the Federal Aviation Administration, and other agencies that work around the clock to prevent another attack.

In closing, I would like to emphasize my belief that, in this age of uncertainty, in these uneasy times, the United States deserves a unified, streamlined, and accountable Department of Homeland Security.

Equally important, is the need to guarantee that our efforts to combat terrorism, much of which will come under the jurisdiction of this new department, remain consistent to our democratic values and our commitment to an open and free society.

We must protect legal immigrants and innocent children, who have no part in this war. We have always been a nation of immigrants—and to change this fundamental truth would undermine one of the pillars of our society.

If we fail on either of these fronts, the forces of terror would triumph without another attack.

I believe that the Lieberman substitute amendment accomplishes this in a thorough and just way. A Department of Homeland Security under its guidelines will go a long way in making us more secure from terrorist attacks.

I stand in support the Lieberman bill. And I remain confident that the executive and legislative branches will be able to work out any existing differences.

We must be patient and thorough, and we must get this done right. Present and future generations depend on us.

Mr. LIEBERMAN. Mr. President, how much time is remaining?

The PRESIDING OFFICER. Three minutes.

Mr. LIEBERMAN. Senator THOMPSON asked me to yield him up to a minute, and then I ask that Senator AKAKA, a member of our committee, be allowed to close the debate with the remainder of our time.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, I thank my friend from Connecticut.

The Senator from Oklahoma is exactly right. I go back to what I said when I made my opening statement a few minutes ago. The bottom line is, the important issues of national security authority for the President, management authority for the new Secretary, what kind of intelligence component we are going to have in this bill, what kind of reorganization authority we are going to give the President—all that would be wiped out if this passed. None of that is going to be germane.

Take the management part, for example. To be germane, it would have to be narrowing. If we struck the management structure from the current bill, that perhaps would be germane, but we don't do that. We suggest a different kind of management structure. I don't see how in the world that could be considered germane.

What it would do would be to take that whole debate of management flexibility—

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

Mr. THOMPSON. And do away with it. I respectfully suggest that is not a good idea.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, today I rise to discuss the current flexibilities available to agencies in the Federal Government and urge my colleagues to vote for cloture on this bill. The President has called for flexibility to manage the workforce. I agree and have said repeatedly that we must have the right people with the right skills in the right places. I have long been a proponent of providing agencies with tools they need to better manage their workforce. I agree with the President that agencies need flexibilities to carry out agency missions. However, according to David Walker, Comptroller General of the United States, agencies currently have many of the flexibilities they need. Current law allows managers to remove a Federal employee from his post and suspend him immediately without pay if the head of the agency finds that action necessary in the interests of national security, 5 USC 7532;

Swiftly reassign Federal employees to fight terrorism and reassign Federal

employees to similarly graded positions or detail them from other agencies or within the Department and the employees who refuse reassignments or details may be terminated, 5 CFR part 335;

Retrain, reassign and reshape their workforce;

Choose whether to fill a vacant position from the outside or the inside, eliminate positions due to changes in programs, lack of funding, reduction in workload, reorganizations, privatization, "divestiture," or contracting out; establish personnel ceilings, or decide to re-employ a returning worker; determine the job or jobs to be eliminated in the context of a reduction in force, and unilaterally reassign employees to vacant positions in the agency;

Have additional management rights including: promotions; adverse actions, suspensions for 14 days or less; suspension for more than 14 days; removals; demotions, reductions in grade or pay; permit the return of a career appointee from the Senior Executive Service, SES to the GS or another pay system; the power to reassign, transfer, and detail or fire of a career SES employee; determine the substance of a position description, its performance standards of an employee's position, and award, or not award, performance payments;

Decide whether employees have earned pay increases known as "step" increases, based upon performance, and are able to grant employees additional financial "incentive awards" such as performance-based cash awards, special act or service awards, and quality step increases; and

Decide whether to award recruitment, retention, and relocation bonuses worth up to 25% of base salary.

In addition, the Lieberman substitute provides additional flexibilities Governmentwide. The Voinovich-Akaka amendment, which was included in the Lieberman substitute unanimously by the Governmental Affairs Committee, allows agencies to hire candidates directly and bypass the current requirements under Title 5 once OPM has determined that there is a severe shortage of candidates for the position.

This provision allows agencies to streamline its staffing procedures by authorizing use of an alternative method for selecting new employees instead of the traditional rule of three. This will make the Government more competitive with the private sector by improving the Federal hiring process. Under the new system, the agency may divide applicants into two or more quality categories based on merit and select any candidate from the highest category while maintaining veterans hiring preference.

The amendment provides Governmentwide authority for Voluntary Separation Incentive Payments and Voluntary Early Retirement Authority, two provisions currently in place in limited situations. The expansion of

this authority would give agencies the flexibility required to reorganize the workforce should an agency need to undergo substantial delayering, transfer of functions, or other substantial workforce reshaping. The provision would allow agencies to reduce high-grade, managerial, or supervisory positions, correct skill imbalances, and reduce operating costs without the loss of full time positions.

To address the impending human capital crisis, the government will need to retain Federal employees with institutional knowledge. To assist in this effort, the amendment increases the cap on the total annual compensation of senior executive, administrative law judges, officers of the court, and other senior level positions to allow career executives to receive performance awards and other authorized payments.

The Akaka-Voinovich amendments also helps ensure that we have a world-class Federal workforce and can retain talented Federal employees who wish to continue their education. This provision reduces restrictions on providing academic degree training to Federal employees and requires agencies to facilitate online academic degree training.

As a result of the current flexibilities and those provided in the Lieberman substitute, it is curious why the President continues to demand additional flexibilities. As I have previously stated, studies indicate that the flexibilities at the Federal Aviation Administration and the Internal Revenue Service have not provided the intended results and employee morale is very low. With such uncertainty in additional flexibilities and the great importance of this new agency, I question the need for such a broad grant of power. I believe the existing flexibilities and the Voinovich-Akaka provisions provide agencies the tools that they need to manage effectively their workforce. I urge my colleagues to support the Lieberman substitute and vote for cloture.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Lieberman substitute amendment No. 4471 for H.R. 5005, Homeland Security legislation.

Jean Carnahan, Herb Kohl, Jack Reed (RI), Richard J. Durbin, Kent Conrad, Paul Wellstone, Jim Jeffords, Max Baucus, Tom Harkin, Harry Reid (NV), Patrick Leahy, Jeff Bingaman, Barbara Boxer, Byron L. Dorgan, Mark Dayton, Debbie Stabenow, Robert Torricelli, Mary Landrieu, Joseph Lieberman, Robert C. Byrd.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the Lieberman amendment No. 4471 to H.R. 5005, an act to establish the Department of Homeland Security, and for other purposes, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Idaho (Mr. CRAPO) is necessarily absent.

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

The yeas and nays resulted—yeas 50, nays 49, as follows:

[Rollcall Vote No. 218 Leg.]

YEAS—50

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Graham	Nelson (NE)
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carnahan	Inouye	Rockefeller
Carper	Jeffords	Sarbanes
Cleland	Johnson	Schumer
Clinton	Kennedy	Stabenow
Conrad	Kerry	Torricelli
Corzine	Kohl	Wellstone
Daschle	Landrieu	Wyden
Dayton	Leahy	

NAYS—49

Allard	Frist	Nickles
Allen	Gramm	Roberts
Bennett	Grassley	Santorum
Bond	Gregg	Sessions
Brownback	Hagel	Shelby
Bunning	Hatch	Smith (NH)
Burns	Helms	Smith (OR)
Campbell	Hutchinson	Snowe
Chafee	Hutchison	Specter
Cochran	Inhofe	Stevens
Collins	Kyl	Thomas
Craig	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	McCaIn	Voinovich
Ensign	McConnell	Warner
Enzi	Miller	
Fitzgerald	Murkowski	

NOT VOTING—1

Crapo

The PRESIDING OFFICER. On this vote, the yeas are 50, the nays are 49. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that Senator REED of Rhode Island be recognized for up to 10 minutes to speak as in morning business; that when he has completed his remarks, a quorum call be entered, and that when the quorum call is ended, the Senator from Connecticut, as manager of the pending legislation, be recognized.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Rhode Island.

THE ECONOMY

Mr. REED. Mr. President, I thank the Senator from Connecticut for his gracious intervention on my behalf. We