The conference report was agreed to.

The concurrent resolution (H. Con. Res. 483) was agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 5:15 p.m.

Thereupon,, the Senate, at 4:17 p.m, recessed until 5:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. REID).

HOMELAND SECURITY ACT OF 2002—Continued

AMENDMENT NO. 4738

The PRESIDING OFFICER. Under the order previously entered, there are 15 minutes equally divided between the two managers of the bill.

Who yields time?

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I yield myself up to 3½ minutes.

One of my favorite expressions is: Only in America, this great country of ours. I was thinking, as we approach this debate on the motion to invoke cloture, that only in the Senate, the great deliberative body we are, would we find Members about to do what I fear they are going to do, which is to vote against a proposal that they themselves have made because they want to vote on it without anyone else having a right to amend it. That is where we are.

We have had a good debate. We have the Gramm-Miller substitute amendment to the underlying Senate Governmental Affairs Committee proposal that created the Homeland Security Department. Senator GRAMM and Senator MILLER said their proposal and ours are 95 percent the same. We have a disagreement about how to protect homeland security workers in the new Department and still retain the authority of the President over national security.

Senator BEN NELSON of Nebraska and Senator JOHN BREAUX of Louisiana, working together with Senator LINCOLN CHAFEE of Rhode Island, have found common ground. They presented and crafted an amendment that gives a little bit of reassurance against arbitrary action to the Federal workers before they have their union rights, collective bargaining rights, taken away because the President determines those rights are in conflict with national security. It gives the President some new authority to reform the civil service system but encourages him to try to negotiate those changes with the unions. If that does not work out, then it is decided by a board, where the President appoints all the members. This achieves some due process and fairness for homeland security workers but does not diminish the final word of the President of the United States at all.

In short, with all respect, I say to my colleagues who support Gramm-Miller but who are going to oppose the end of a filibuster of Gramm-Miller, they do not know how to accept a yes to the question they have asked. The Nelson-Chafee-Breaux amendment says yes to the question they have asked: How can we create a Department of Homeland Security, retain the authority of the President, and still protect some fairness and due process for homeland security workers?

What they are asking for is an up-or-down vote on the Gramm-Miller proposal, the President's proposal, denying us, apparently—the majority of us, now 51—the right to vote on an amendment which, incidentally, is pretty much the exact same amendment Congresswoman CONNIE MORELLA, a Republican of the House, was allowed by the Republican leadership of the House to put on the President's proposal. We can at least offer the same courtesy and rights to three bipartisan Members of the Senate.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Mr. President, I yield such time as the Senator from Nebraska requires.

The PRESIDING OFFICER. The Senator from Nebraska has up to 4 minutes.

Mr. NELSON of Nebraska. Mr. President, I thank my colleague from Connecticut for this opportunity to speak on this amendment.

Quite frankly, I think my colleague from Connecticut is absolutely right, and I ask my friends on both sides to take yes for an answer because I truly think this amendment will be the kind of yes that has been sought in the past.

I am puzzled, as I think perhaps anybody watching and many of us here today are puzzled, by the characterization of this amendment as being in opposition to the President. Anytime you are trying to close the gap, anytime you are trying to bring about a resolution of compromise, it is hardly an exercise in opposition. I think, if anything, we should be looked at as friends of the process in trying to bring this together.

To also suggest cloture would be inappropriate now is also very startling because I always thought cloture was how we finally brought the end of debate to get a vote for or against legislation to move it forward. Right now it seems the vote against cloture is to stall and have more opportunity for debate.

So if people are a bit puzzled, I can only appreciate that fact because I am puzzled, too.

In this exercise, I have learned a lot about the spin as opposed to the appropriate characterization of letters or of comments on the floor. I thought we were giving Governor Ridge and Senator GRAMM exactly what they were asking for because that is the way I read Senator GRAMM's comments. I presided the day he was presenting them, and I thought I understood him. I am surprised to find out I did not understand what he was saying. I am surprised I cannot read a letter from Governor Ridge in which he says the same management authority that is now provided in the IRS model is what we are after. We provide that in this amendment. Now we find that is not the case, either.

This is a puzzling day for me. It is perhaps puzzling others who are watching it, because when it appears yes cannot be taken for an answer, I do not know what kind of an answer will be appropriate. If there is other language, I have said I will take a look at it, but I do not think the answer is no language. In fact, what we have is an opportunity to present something that ought to close the gap, fill in the last 5 percent, so we have 100 percent legislation that does what the President needs to be able to do and also protects national security.

National security is lost in this debate over nits and little differences of opinion about this piece of the amendment or that piece of the amendment. We can close them, but we have to be able to be in a position to know when they are closed and when enough will be enough.

Right now I would not know even how to begin to try to close this if it remains open, but it seems to me we can vote for cloture and then let's have the opportunity to finish this bill, get an up-or-down vote, as has been requested, move on and make national security the important point it is and have a Homeland Defense Department.

I yield the floor.

The PRESIDING OFFICER. Senator BURNS is under the time controlled by Senator THOMPSON. The Senator from Montana.

Mr. BURNS. I congratulate my friends from Nebraska and Connecticut who were just talking. It seems like yesterday we came to this body. You didn't get my goat, either.

We have all been involved in conferences. Anytime we pass legislation in this body and then it is passed in the House, we go to conference. In conference is where we settle our differences. It usually comes down to one or two items where there starts to be an impasse.

Basically, those one or two items were not dealt with in the amendment of my friend from Nebraska. It is still there and even adds another layer or hurdle for the President to jump in the management of this Department before a final decision can be made on the movement of money or personnel and their responsibilities in this particular national security Department.

We have not dealt with the two very important ones, and nobody puts it better than the ranking member of the committee of jurisdiction. So I caution Senators this is a bold attempt to find a compromise, but even though you pass their amendment, it does not deal with the heart of this debate.

So whenever Senators start looking at this, they should look into it deeply, and they will find a compromise was attempted, but it did not get us to where we should be if they think the President should have the flexibility to manage money and personnel in this very important new Department we are creating.

I yield the floor.

Mr. STEVENS. I am proud to be an original cosponsor of this bipartisan substitute, and I am here to urge its adoption as the most effective way to create a new Department of Homeland Security to protect our Nation from the threat of terrorism.

I take this opportunity to highlight four important provisions of the bipartisan substitute that are significant improvements to the committee-endorsed legislation before the Senate.

These provisions address the use of appropriated funds, presidential reorganization authority, and the status of the Coast Guard within the Department.

Section 738 of the bipartisan substitute includes the appropriations-related language that the committee endorsed to maintain the appropriate checks and balances between the legislative and executive branches with respect to the use of appropriated funds.

It improves on that language by authorizing an appropriation of $160 million, and general transfer authority of $140 million, to begin operating the new Department. Both amounts would be subject to reasonable Congressional oversight and decisions.

Section 739 requires the submission of a multi-year spending plan for the Department so that Congress and the American people can fully understand, and support, the magnitude of funds needed to conduct an effective homeland defense.

Senator COLLINS and I authored the Coast Guard language in the bipartisan substitute—Section 761. This language preserves the non-homeland security missions of the Coast Guard and its capabilities to perform those missions.

The language also ensures that the Coast Guard Commandant can report directly to the homeland security secretary without being required to report through any other official of the Department.

I believe this language improves upon the Committee bill by removing the Coast Guard from the Directorate of Border and Transportation Protection—the new directorate—and by making it a freestanding organization—still the Coast Guard—operating within the department and answering directly to the Secretary.

This action ensures that there is no ambiguity about the independent and distinct status of the Coast Guard within the Department, or about the Commandant's direct reporting authority. He will report directly to the Secretary.

Finally, Section 734 provides the President with the authority to propose further reorganization plans for the Department of Homeland Security and to have those plans considered by the Congress under expedited procedures.

This language guarantees that Congress will play a significant role in deciding any further reorganizations, and that these proposals will be debated and acted upon without delay.

I would like to discuss the use of appropriated funds.

The improved appropriations related language and reorganization plan language in the bipartisan substitute recognize that the need to establish the new Department can be addressed while still preserving the Constitution, especially with respect to maintaining Congress's ''power of the purse.''

That ''power'' is the primary way Congress holds the executive branch accountable for the use of funds, and it ensures that Congress has a central role in determining how hard-earned tax dollars will be expended.

Section 738 of the bipartisan substitute reinforces existing law on how appropriated funds are used and how property is disposed of. It requires congressional approval of any plans to modify or eliminate any of the organizations being transferred to the new Department.

Congress must approve, in advance, the reallocation of transferred funds away from their originally intended purposes.

Accordingly, the proposed statutory language preserves the statutory and administrative requirements needed to ensure that any funds made available to the new Department are used effectively and efficiently and according to the will of the people as reflected through their elected Senators and Representatives.

Our amendment demonstrates that the necessary funding mechanisms and flexibility already exist to enable the new Department of Homeland Security to perform its mission.

These procedures are embodied in the appropriations process, which can provide the funds needed for the Department without delay through a combination of new appropriations, supplementals, or reprogramming actions.

We already have the opportunity to consider new appropriations to create the Department in several of the funding bills working their way through the congressional process at this very moment. These bills will be considered in some format before September 30 or at least before we recess for the election period.

Funds to continue the operations of the organizations transferring to the Department also will be provided in these appropriations measures.

The bipartisan substitute underscores the importance of providing in the appropriations process the $160 million in new appropriations and the $140 million in general transfer authority.

These allocations total $300 million, which is a very large sum of money. This amount should be more than enough to create the new Department and to provide for any initial staffing, equipment, and other expenses.

I pledge to do my very best to provide these amounts in the appropriations process as needed.

The bipartisan substitute reaffirms the regular appropriations process and that it will work to allocate the needed start-up funding and to prevent disrupting the ongoing operations of the transferred organizations.

With regard to reorganization authority the originally proposed legislation for the Department of Homeland Security would have granted the new Secretary almost unlimited authority to establish, consolidate, alter, or discontinue any organizational units within the Department after giving Congress 90 days notice.

Under the Constitution, Congress has the responsibility to appropriate funds by law for the executive branch departments, agencies, and other organizations that have constitutional responsibilities to execute our laws.

Congress should not allow the many agencies transferring to the Department to be altered, merged, disbanded, or replaced solely and unilaterally by executive branch fiat.

We have the responsibility to ensure that the people's elected Senators and Representatives are part of the process of creating, modifying, or disbanding the organizations that spend the people's hard-earned tax dollars.

Congress's constitutional role in our system of Government is to set priorities for the use of appropriated funds and to oversee their use to ensure that these funds are expended effectively and efficiently.

The creation of a new and effective Department of Homeland Security is a shared responsibility between the executive and legislative branches. For the Department to be successful, both branches of Government—really each branch of Government—must cooperate with each other.

Congress and the executive branch should forge a relationship that is based on the mutual trust and shared compromise that the Framers of the Constitution envisioned in creating a system of checks and balances. Such a relationship is necessary for the effective functioning of the Federal Government.

In section 734, the bipartisan substitute preserves Congress's rightful role in this process by requiring that both the Senate and the House of Representatives approve any proposed reorganization plans under expedited procedures.

With regard to submission of a multi-year homeland security budget plan, section 739 of the bipartisan substitute requires the submission of a multiyear, homeland security spending plan with each budget request for the new Department, beginning with the fiscal year 2005 request.

This section will enable the Congress and the executive branch to fully understand the annual and multi-year

funding requirements to make our homeland secure.

It will assist us in determining the most appropriate funding levels to protect the American people from terrorist threats.

The recommended statutory language requires that the Future Years Homeland Security Program be structured as, and include the same type of information and level of detail as, the Future Years Defense Program required by law to be submitted to Congress by the Department of Defense.

We have a section preserving the Coast Guard's mission performance. Finally, section 761 of the bipartisan substitute is highly important language Senator COLLINS and I authored to maintain the structural and operational integrity of the Coast Guard, the authority of the Commandant, the nonhomeland security missions of the Coast Guard, and the service's capabilities to carry out these missions even as it is transferred to the new Department.

In addition to transferring the Coast Guard as an independent, distinct entity reporting directly to the Secretary, the language states that the Secretary may not make any substantial or significant change to any of the nonhomeland security missions and capabilities of the Coast Guard without the prior approval by Congress in a subsequent statute.

The President may waive this restriction for no more than 90 days upon his declaration and certification to the Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver.

The language further directs that the Coast Guard's authorities, functions, assets, organizational structure, units, personnel, and nonhomeland security missions shall be maintained intact and without reduction after the transfer unless the Congress specifies otherwise in subsequent acts. This language does permit the Coast Guard to replace or upgrade any asset with an asset of equivalent or greater capabilities.

It also states that Coast Guard missions, functions, personnel, and assets—including ships, aircraft, helicopters, and vehicles—may not be transferred to the operational control of, or be diverted to the principal and continuing use of, any other organization, unit, or entity of the Department except under limited conditions.

Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary and not through any other official of the Department.

The inspector general of the Department shall annually assess the Coast Guard's performance of all its missions with a particular emphasis on examining the nonhomeland security missions. The detailed results of this assessment shall be provided to Congress annually.

None of the conditions in the recommended language shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

The Coast Guard's nonhomeland security missions—and the service's capabilities to accomplish them—are as vital to the 30 coastal and Great Lakes States as are its homeland security missions and capabilities.

No state is better than Alaska for demonstrating the importance of the Coast Guard's nonhomeland security missions.

The United States has a coastline of 96,000 miles. Alaska has a coastline of 47,300 miles, or almost 50 percent, of our Nation's total.

Alaska's fisheries are a billion dollar industry that delivers food to tables all across America and around the world. We harvested 5 billion pounds of seafood last year.

The Coast Guard plays an indispensable role in protecting and supporting this industry, and in promoting the safety of its participants. Just this summer, the Coast Guard dispatched additional assets to the maritime boundary line in the Bering Sea to guard against intrusions by Russian trawlers.

The Coast Guard's nonhomeland security missions are marine safety, search and rescue, aids to navigation, living marine resources—including fisheries law enforcement, marine environmental protection, and ice operations. They all are critical to the well-being of Alaskans, and we rely on the Coast Guard virtually every day for protection and assistance in these mission areas.

The service's homeland security missions are ports, waterways and coastal security, drug interdiction, migrant interdiction, defense readiness, and other law enforcement.

The language in the bipartisan substitute is intended to assure that the important homeland security priorities of the new Department will not eclipse the Coast Guard's crucial nonhomeland security missions and capabilities.

This language modifies the committee provisions to reflect suggestions made by the Commandant and his senior staff after they analyzed the original language at my request.

Our additional language allows the Coast Guard to conduct joint operations more effectively with other entities in the Department, to assign a limited number of Coast Guard military members or civilian employees to these entities for liaison, coordination, and operational purposes, and to replace or upgrade assets or change nonhomeland security capabilities with equivalent or greater assets or capabilities.

With the Bipartisan Substitute, I believe the Coast Guard will be in an even stronger position to carry out both its vital non-homeland security missions and its important homeland security responsibilities.

Finally, there have been claims that the improved statutory language I have highlighted today still may restrict the President's flexibility to establish and operate the new Department.

It is my understanding that the White House was a key participant in the crafting of the Bipartisan Substitute, and that any significant language was reviewed for acceptability by the President's advisors.

The President has stated repeatedly that he supports the language in the Bipartisan Substitute.

In his Radio Address to the Nation last Saturday, September 21, the President specifically stated that the Bipartisan Substitute would, and I quote, ''provide the new Secretary of Homeland Security much of the flexibility he needs to move people and resources to meet new threats.''

I ask unanimous request to insert into the RECORD at the conclusion of my remarks the recent statements by the President and his spokesman that strongly endorse the bipartisan substitute.

I also ask unanimous request that an explanation of the start-up funding authorized in the bipartisan substitute be inserted in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See Exhibit 1).

Mr. President, the bipartisan substitute underscores Congress's legitimate role in the ongoing process to meet our Nation's homeland security requirements responsibly and effectively. It is a significant improvement over the committee legislation which I did vote for.

I urge the Senate to adopt it without delay.

I thank my friend from Texas, Senator GRAMM, for working with us so closely in adopting the portions of the bill from the substitute I just described. I thank the leadership for their cooperation.

EXHIBIT 1

PRESIDENT ENDORSES GRAMM-MILLER BIPARTISAN SUBSTITUTE

President urges Congress to pass Iraq resolution promptly, September 24, 2002, White House:

It's time to get a homeland security bill done, one which will allow this President and this administration, and future Presidents—give us the tools necessary to protect the homeland. And we're working as hard as we can with Phil Gramm and Zell Miller to get this bill moving. It's a good bill. It's a bill that both Republicans and Democrats can and should support.

President Bush calls on Congress to act on Nation's priorities, September 23, 2002, Army National Guard Aviation Support Facility, Trenton, New Jersey, September 23, 2002:

Senator Gramm, a Republican, Senator Miller, a Democrat, are working hard to bring people together. And the Senate must listen to them. It's a good bill. It's a bill I can accept. It's a bill that will make America more secure. And anything less than that is a bill which I will not accept, it's a bill which I will not saddle this administration and future administrations with allowing the United States Senate to micro-manage the process. The enemy is too quick for that. We

must be flexible, we must be strong, we must be ready to take the enemy on anywhere he decides to hit us, whether it's America or anywhere else in the globe.

Radio address by the President to the Nation, September 21, 2002:

In an effort to break the logjam in the Senate, Senator Miller and Republican Senator Phil Gramm have taken the lead in crafting a bipartisan alternative to the current flawed Senate bill. I commend them, and support their approach. Their proposal would provide the new secretary of homeland security much of the flexibility he needs to move people and resources to meet new threats. It will protect every employee of the new department against illegal discrimination, and build a culture in which federal employees know they are keeping their fellow citizens safe through their service to America.

I ask you to call your senators and to urge them to vote for this bipartisan alternative. Senators Miller and Gramm, along with Senator Fred Thompson, have made great progress in putting the national interest ahead of partisan interest.

Press briefing by Ari Fleischer, September 19, 2002:

Mr. FLEISCHER. The President today is going to announce his support for a bipartisan compromise, the Miller-Gramm compromise.

BASIS OF COST ESTIMATE INCLUDED IN BIPARTISAN SUBSTITUTE

The authorization of $160 million to begin departmental operations is based primarily on a CBO cost estimate. That estimate is the best estimate we have.

OMB's position is that no new funds are needed because start-up costs will be paid with funds diverted from agencies transferred to the Department.

However, the transferred agencies will need these funds to accomplish their missions.

Also, Congress should not relinquish its authority and oversight over funding reallocations in the Executive Branch.

Most of the CBO's estimate for FY03 would be spent on one-time costs to hire, house, and equip key personnel to manage the new Department.

There are four major cost categories:

$50 million for salaries and other personnel expenses;

$50 million to rent new space or renovate existing space for about 500 personnel;

$50 million for a basic computer network and telecommunications system; and

$10 million to plan for a more sophisticated computer/communications system to operationally integrate major agencies in the Department.

The 140 million estimate for general transfer authority was created by Committee staff to give the Department a $300 million total for first year operations.

The personnel costs assume that the new management team and its support structure will be phased in over the next two years.

These include the Secretary, his Deputy, the Under and Assistant Secretaries, and key managers such as the General Counsel and Inspector General.

It also includes ''corporate'' personnel, such as those needed for policy development, legislative affairs, and budget and finance activities.

The office space estimate is based on GSA experience in housing new agencies.

The basic computer, date processing, and telecommunications systems will perform the Department's administrative functions—budgeting, accounting, personnel records, etc.

A more sophisticated and interoperatble computer and communications network to integrate the major operational entities, such as the Coast Guard, INS, Customs, Secret Service, and the Border Patrol, may cost more than $1 billion in later years.

Mr. CORZINE. Mr. President, I rise today in strong opposition to the labor provisions in the Gramm-Miller substitute amendment. This approach to homeland security undermines longstanding labor protections and a national commitment to the right to organize.

This amendment seems to rely on the unsupported premise that workers rights are somehow incongruous with national security. There is no objective basis for that view. In fact, I would argue labor protections are directly in our national interest.

The people of the United States trust federal employees to stand at the frontlines in the war on terrorism and protect our nation against the myriad vulnerabilities that we may confront in the years to come. Border guards, INS workers, and customs agents are people who have the patriotic interest of our nation at heart. They guard our waterways and now protect our airports. Just as we are emphasizing the United States' increasing reliance on these workers, it would demonstrate tremendous chutzpah for the United States to remove essential labor protections and question the commitment and responsiveness of these workers to our national challenges. Working Americans have often sacrificed much to save our nation and to subject them to political and unchecked managerial discretion is an abdication of America's long held belief in the political independence of our government operations.

But that is precisely what this amendment would do: eliminate hard fought labor protections as America calls on its employees to take on even greater responsibilities in the War on Terrorism.

For instance, in the name of management flexibility, the substitute amendment being considered here would eviscerate the civil service system, and I fear put all Americans at risk.

The new Department we are discussing today should not be a Republican Department or a Democratic Department but an American Department from start to finish. There is no room for partisan politics when it comes to defending the American people. This cabinet department is being created for security, a truly nonpartisan objective and its operation after its creation should stay that way.

In the event that this substitute amendment is accepted by the Senate, employees of the Department of Homeland Security whose views are out of sync with the official line could be dismissed or transferred with little of no justification. This would have a chilling effect on the ability of employees in this critically important department to perform their jobs with the competence and creativity that everyone would expect.

Furthermore, this amendment could undermine vital whistleblower protections designed to ensure that the Congress and the American public are kept aware of severe problems that might develop in the new Department. The so-called ''management flexibility'' provisions would have the effect of silencing criticism in official forms, criticism that is desperately needed to improve America's ability to defend its borders and protect its people. In fact, incentives to leak critical views would be drastically increased as official forms would no longer be easily available.

Let us be clear: the primary supporters of this amendment have never been supportive of the various labor protections provided to government employees. They never liked the civil service system, despite the fact that it prevents bureaucratic decisions from getting mired in politics. They oppose the application of Davis-Bacon laws to the new Department, despite the fact that requiring federal government contractors to pay the prevailing wage encourages higher quality work. And they oppose collective bargaining agreements, despite the fact that the underlying legislation allows broad authority for the president to waive collective bargaining rights for job activities directly related to national security. The driver behind this amendment appears to be a political and philosophical view opposing the concepts embedded in the right to organize, not in protecting national security.

The fact is, that this Governmental reorganization provided opponents of labor rights with a golden opportunity to undermine the very protection that they have long opposed. This is not a new approach to a new situation, but an old familiar refrain from opponents of labor policies that empower our federal employees. Supporters of this amendment claim the whole purpose of the change is to increase management flexibility in the interests of national security, but make no mistake: this debate is about an ideological opposition to fundamental components of American labor law.

With all the waiver authority provided the President in Senator LIEBERMAN's bill, it is difficult to see just how this legislation would tie the hands of the President. Few reasonable analyses believe it will.

When tragedy struck on September 11, thousands of firefighters and police officers rushed to the world trade center. They risked life and limb to save their fellow Americans. Their union membership did not make them any less patriotic. Union membership of law enforcement and firefighters across the nation is unquestioned and standard procedure. Their collective bargaining rights did not undermine national security. And their work rules did not stop them from demonstrating a high level of professionalism on that horrific day or any other day.

Mr. President, I for one, do not believe we should allow American workers to lose hard-fought labor protections while we are asking them to take

on even greater responsibilities and to assimilate into a new department. Clearly the authors of the Gramm-Miller amendment disagree.

I urge my colleagues to oppose the Gramm-Miller amendment.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). Who yields time?

Mr. GRAMM. Mr. President, I will be brief. By using cloture, this is an effort to put us into a straitjacket that will guarantee the President will not get an up-or-down vote on his program.

Now one may be against the President; they may believe there are some priorities higher than the life and safety of our citizens. I do not. But whether one agrees with the President or not, when thousands of our citizens have been killed, when we are at war with terrorism, the President of the United States has the right to have an up-or-down vote on his program. That is what we insist on. We will not get that if cloture is voted for.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Could I inquire as to how much time we have remaining?

The PRESIDING OFFICER. Three and a half minutes.

Mr. THOMPSON. Mr. President, before we vote, it is important we understand the parameters of the Nelson-Chafee-Breaux amendment. Two points: One has to do with the President's national security authority, and the other has to do with flexibility. This amendment is purported to be a compromise. Senator GRAMM has worked diligently, and he and Senator MILLER have made about 25 changes. They have a compromise that is a good one and one the President supports. The compromise represented by the Nelson-Chafee-Breaux amendment is not really a good compromise, with all due respect to those who have made this effort, because of those two areas I mentioned. With regard to the President's national security authority, it changes the current law which says if the President makes a determination the primary function of an agency has to do with national security, he can act under that law to protect the national security.

The changes in the Nelson amendment would make it so the President would have to make a determination the activity involved would have to be related to terrorist activities, and then this additional requirement that the new position to which the people in the agency have been transferred, the majority of those people have essentially had a change in the function of their job and those things are reviewable by courts.

I understood my friend from Louisiana to say and debate awhile ago this court case we were all talking about basically did not give any judicial review. Maybe I misunderstood him because when I look at the case, it is quite clear there is judicial review under current law and under the Nelson amendment. However, under current law, the President only has one hurdle. He has to make a determination with regard to national security.

Under the Nelson amendment, he has to make a determination with regard to terrorism, but he also has to make a determination with regard to the nature of the actual work being carried out by the various employees—the President of the United States. Two challenges now can be made to the President's activity. Now when you go to court, the President has a rebuttable presumption of regulator. There is still jurisdiction there, there is still an additional hurdle. Why in the world do we want to impose an additional hurdle for this President that we have not imposed on prior Presidents? That is No. 1.

Second, with regard to flexibility, the House sent over six areas of flexibility. The Nelson amendment takes two of those areas off the table altogether. The Nelson amendment says the new Secretary cannot touch the labor-management chapter. It says the new Secretary cannot touch the appeals chapter. Both are areas we know need changing. Both are areas we know need improvement. We cannot even negotiate with regard to those areas. They are totally off the table.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THOMPSON. I appreciate the attentiveness of the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, the Senator from Texas has asked us to consider what is best for the security of the American people. What is best for the security of the American people is to quickly adopt legislation that creates a Department of Homeland Security to protect them, and not to maintain a stubborn insistence that before you are willing to do that, the President must have an up-or-down vote on his proposal. That is something on which the Republican House did not insist. They gave Members the opportunity to introduce amendments, including one just like this.

I urge my colleagues, vote for cloture. Let's adopt this bill.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. The majority leader asked me to announce this is the last vote today. The next vote will occur at approximately 5 or 5:30 on Monday afternoon.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to Rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The bill 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 Gramm-Miller amendment No. 4738 to H.R. 5005, the Homeland Security legislation:

Harry Reid, Ben Nelson of Nebraska, Hillary Rodham Clinton, Debbie Stabenow, Mark Dayton, Patrick Leahy, John Breaux, Tom Carper, Tom Daschle, Byron L. Dorgan, Jack Reed, Jim Jeffords, Tim Johnson, Mary Landrieu, Max Baucus, Daniel K. Inouye.

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the Gramm-Miller amendment numbered 4738 to H.R. 5005, the homeland security bill, shall be brought to a close? The yeas and nays are required under rule XXII.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Louisiana (Ms. LANDRIEU) is necessarily absent.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI), and the Senator from North Carolina (Mr. HELMS) are necessarily absent.

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

The yeas and nays resulted—yeas 44, nays 53, as follows:

[Rollcall Vote No. 227 Leg.]

YEAS—44

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

NAYS—53

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

NOT VOTING—3

Domenici	Helms	Landrieu

The PRESIDING OFFICER. On this vote the yeas are 44, the nays are 53. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. DASCHLE. Mr. President, I enter a motion to reconsider the vote by which cloture was not invoked on the Gramm-Miller amendment No. 4738.

The PRESIDING OFFICER. The leader has that right. The motion is entered.

CLOTURE MOTION

Mr. DASCHLE. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented

under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Gramm-Miller amendment No. 4738:

Joseph Lieberman, Max Baucus, Ben Nelson of Nebraska, Dianne Feinstein, Tim Johnson, Patrick Leahy, Jeff Bingaman, Jack Reed, Hillary Rodham Clinton, Jim Jeffords, Debbie Stabenow, Daniel K. Akaka, Harry Reid, Maria Cantwell, Byron L. Dorgan, Herb Kohl.

Mr. LEVIN. Mr. President, I would like to say a few words about the Freedom of Information Act compromise that Senators BENNETT and LEAHY and I were able to achieve and which is included in both the Lieberman and Gramm-Miller amendments.

One of the primary functions of the new Department of Homeland Security, DHS, will be to safeguard the nation's infrastructure, much of which is run by private companies. The DHS will need to work in partnership with private companies to ensure that our critical infrastructure is secure. To do so, the homeland security legislation asks companies to voluntarily provide the DHS with information about their own vulnerabilities; the hope being that one company's problems or solutions to its problems will help other companies with problems they may be having with their own critical infrastructure.

Some companies expressed concern that current law did not adequately protect their confidential business information that they are being asked to provide to the new DHS from public disclosure under the Freedom of Information Act. They argued that without a specific statutory exemption they would be less likely to voluntarily submit information to the DHS about critical infrastructure vulnerabilities. However, the Freedom of Information Act and the case law developed with respect to it already provide the protections these companies seek.

The language of our amendment protects from public disclosure the records of concern to these companies while preserving the existing rights of public access under FOIA. The amendment would protect from public disclosure any record furnished voluntarily and submitted to DHS that: No. 1, pertains to the vulnerability of and threats to critical infrastructure, such as attacks, response and recovery efforts; No. 2, the provider would not customarily make available to the public; No. 3, are designated and certified by the provider as confidential and not customarily made available to the public.

The amendment makes clear that records that an agency obtains independently of DHS are not subject to the protections I just enumerated. Thus, if the records currently are subject to disclosure by another agency under FOIA, they will remain available under FOIA even if a private company submits the same information to DHS. The language also allows the provider of voluntarily submitted information to change a designation and certification and to make the record subject to disclosure under FOIA. The language requires that DHS develop procedures for the receipt, designation, marking, certification, care and storage of voluntarily provided information as well as the protection and maintenance of the confidentiality of the voluntarily provided records.

The amendment defines the terms ''critical infrastructure'' and ''furnished voluntarily.'' ''Critical infrastructure'' is the same as that found in the USA Patriot Act. The term ''furnished voluntarily'' excludes records that DHS requires an entity to submit and that are used to satisfy a legal obligation or requirement or obtain a grant, permit, benefit, or other government approval. This means that records used to satisfy a legal obligation or requirement or to obtain a grant, permit, benefit or other government approval are ineligible for protection under this amendment. In addition, this language does not preempt state or local openness laws. Finally, the language requires the General Accounting Office to prepare a report tracking the voluntarily submitted information to DHS, the number of FOIA requests for voluntarily submitted information and whether those requests were granted or denied, and recommendations for improving the collection and analysis of information held by the private sector.

It is important to protect the public's right to access information as the White House's recent national strategy for homeland security points out. The White House report also notes that any limitation on public disclosure must be done ''without compromising the principles of openness that ensure government accountability.'' I agree. We must move cautiously when enacting any legislation to withhold information that is not already exempt from disclosure under FOIA and national security classifications.

The principles of open government and the right-to-know of the people are cornerstones upon which our country was built. We cannot and will not hastily and foolishly sacrifice them in the name of protecting them. This compromise achieves the balancing that is needed between openness and security. I thank Senators BENNETT and LEAHY for their work on developing this amendment.

Mr. LEAHY. Mr. President, in the wake of the terrorist attacks of September 11, bipartisan support in the Senate grew for the concept of a Cabinet-level officer with a new department to coordinate homeland security. In fact, Chairman LIEBERMAN of the Governmental Affairs Committee and Senator SPECTER must be commended for their hard work and prescience in introducing legislation within weeks of the attacks to create a new Department of Homeland Security.

The administration initially differed with this approach. Instead, the President invited Governor Ridge to serve as the Director of a new Office of Homeland Security. I invited Governor Ridge in October, 2001, to testify before the Judiciary Committee about how he would improve the coordination of law enforcement and intelligence efforts, and his views on the role of the National Guard in carrying out the homeland security mission, but he declined.

Without Governor Ridge's input, the Judiciary Committee continued oversight work that had begun in the summer of 2001, before the terrorist attacks, on improving the effectiveness of the U.S. Department of Justice, the lead Federal agency with responsibility for domestic security. This task has involved oversight hearings with the Attorney General and with officials of the Federal Bureau of Investigation and the Immigration and Naturalization Service. In the weeks immediately after the attacks, the Committee turned its attention to hearings on legislative proposals to enhance the legal tools available to detect, investigate and prosecute those who threaten Americans both here and abroad. Committee members worked in partnership with the White House and the House to craft the new antiterrorism law, the USA PATRIOT Act, which was enacted on October 26, 2001.

We were prepared to include in the new anti-terrorism law provisions creating a new cabinet-level officer heading a new Department of Homeland Security but did not, at the request of the White House. Indeed, from September, 2001 until June, 2002, the Administration was steadfastly opposed to the creation of a Cabinet-level Department to protect homeland security. Governor Ridge stated in an interview with National Journal reporters on May 30 that if Congress put a bill on the President's desk to make his position statutory, he would ''probably recommend that he veto it.'' That same month, the White House spokesman also objected to a new Department and told reporters, ''You still will have agencies within the federal government that have to be coordinated. So the answer is: Creating a Cabinet post doesn't solve anything.''

In one respect, the White House was correct: Simply moving agencies around among Departments does not address the problems inside agencies such as the FBI or the INS—problems like outdated computers; hostility to employees who report problems; lapses in intelligence sharing; lack of translation and analytical capabilities; along with what many have termed, ''cultural problems.'' The Judiciary Committee and its subcommittees have been focusing on identifying those problems and finding constructive solutions to fix them. To that end, the Committee unanimously reported the FBI Reform Act, S.1974, to improve the FBI, especially at this time when the country needs the FBI to be as effective as it can be in the war against terrorism. Unfortunately, that bill has

been stalled on the Senate floor by an anonymous Republican hold.

The White House made an abrupt about-face on June 6, 2002, on the issue of whether our national security could benefit from the creation of a new Department of Homeland Security. This was the same day that the Judiciary Committee was continuing its oversight responsibility and was scheduled to hear from FBI Director Robert Mueller and FBI Special Agent Coleen Rowley, who was highly critical of the manner in which FBI Headquarters handled the investigation of Zacarias Moussaoui.

Thirty minutes before the nationally televised testimony from an FBI agent about intelligence failures before the September 11 terrorist attacks, word emerged from the White House that the President had changed his position and announced that he supported the formation of a new Homeland Security Department along the lines that Senator LIEBERMAN and Senator SPECTER had suggested, though the draft of the President's proposal was not yet completed. Indeed, press reports that day indicate that ''Administration officials said the White House hoped to use the reorganization to deflect attention from the public backbiting that broke out among federal agencies as Congress began investigating intelligence failures surrounding the Sept. 11 attacks.'' Washington Post, June 6, 2002, at 12:52 PM.

Two weeks later, on June 18, 2002, Governor Ridge transmitted a specific legislative proposal to create a new homeland security department. It should be apparent to all of us that knitting together a new agency will not by itself fix existing problems. In writing the charter for this new department, we must be careful not to generate new management problems and accountability issues. Yet the Administration's proposal would have exempted the new department from many legal requirements that apply to other agencies. The Freedom of Information Act would not apply; the conflicts of interest and accountability rules for agency advisors would not apply. The new Department head would have the power to suspend the Whistleblower Protection Act, the normal procurement rules, and to intervene in Inspector General investigations. In these respects, the Administration asked us to put this new Department above the law and outside the checks and balances these laws are put there to ensure.

Exempting the new Department from laws that ensure accountability to the Congress and to the American people makes for soggy ground and a tenuous start—not the sure footing we all want for the success and endurance of this endeavor.

Specifically, the administration's June proposal contained, in section 204, a new exemption requiring nondisclosure under the Freedom of Information Act, FOIA, of any ''information'' ''voluntarily'' provided to the new Department of Homeland Security by ''non-Federal entities or individuals'' pertaining to ''infrastructure vulnerabilities or other vulnerabilities to terrorism'' in the possession of, or that passed through, the new department. Critical terms, such as ''voluntarily provided,'' were undefined.

The Judiciary Committee had an opportunity to query Governor Ridge about the Administration's proposal on June 26, 2002, when he testified in his capacity as the Director of the Transition Planning Office for the proposed Department of Homeland Security. At that hearing, a number of Senators made clear that the President should not play politics with the proposal to create a new Department. One senior Republican member of the Judiciary Committee put it bluntly that action on the new Department should take place ''without political gamesmanship,'' I share that view.

We all wanted to work with the President to meet his ambitious timetable for setting up the new department. We all know that one sure way to slow up the legislation would be to use the new department as the excuse for the Administration to undermine or repeal laws it did not like or to stick unrelated political items in the bill under the heading of ''management flexibility.'' We all want the same end goal of an efficiently operating Homeland Security Department, but as the same senior Republican member of the Judiciary Committee advised at the June 26 hearing, for the sake of getting the new department underway, ''[t]here may well be areas of debate or issues that we in Congress need to save for another day.''

At that hearing, I cautioned the administration not to use the proposal for the new Department of Homeland Security to: No. 1, increase secrecy in government by creating a huge new exemption to the Freedom of Information Act for private sector security problems; No. 2, weaken whistleblower protections for dedicated Government workers who help fight Government waste, fraud and abuse; or No. 3, cut wages and job security for hardworking Government employees.

Governor Ridge's testimony at that hearing is instructive. He appeared to appreciate the concerns expressed by Members about the President's June 18th proposal and to be willing to work with us in the legislative process find common ground to get the legislation done. On the FOIA, he described the Administration's goal to craft ''a limited statutory exemption to the Freedom of Information Act'' to help ''the Department's most important missions [which] will be to protect our Nation's critical infrastructure.'' Governor Ridge explained that to accomplish this, the Department must be able to ''collect information, identifying key assets and components of that infrastructure, evaluate vulnerabilities, and match threat assessments against those vulnerabilities.''

The FOIA already exempts from disclosure matters that are classified; trade secret and commercial and financial information, which is privileged and confidential; various law enforcement records and information, including confidential source and informant information; and FBI records pertaining to foreign intelligence or counterintelligence, or international terrorism. These already broad exemptions in the FOIA are designed to protect national security and public safety.

Indeed, the head of National Infrastructure Protection Center, NIPC, testified over 5 years ago, in September, 1998, that the private sector's FOIA excuse for failing to share information with the Government was, in essence, baseless. He explained the broad application of FOIA exemptions to protect from disclosure information received in the context of a criminal investigation or a ''national security intelligence'' investigation, including information submitted confidentially or even anonymously. This is from the Senate Judiciary Subcommittee on Technology, Terrorism, and Government Information, ''Hearing on Critical Infrastructure Protection: Toward a New Policy Directive,'' on March 17 and June 10, 1998. The FBI also used the confidential business record exemption under (b)(4) ''to protect sensitive corporate information, and has, on specific occasions, entered into agreements indicating that it would do so prospectively with reference to information yet to be received.'' NIPC was developing policies ''to grant owners of information certain opportunities to assist in the protection of the information (e.g., by sanitizing the information themselves) and to be involved in decisions regarding further dissemination by the NIPC.'' In short, the former administration witness stated:

> Sharing between the private sector and the government occasionally is hampered by a perception in the private sector that the government cannot adequately protect private sector information from disclosure under the Freedom of Information Act (FOIA). The NIPC believes that this perception is flawed in that both investigative and infrastructure protection information submitted to NIPC are protected from FOIA disclosure under current law.

Nevertheless, businesses have continued to seek a broad FOIA exemption. I expressed my concern that an overly-broad FOIA exemption would encourage government complicity with private firms to keep secret information about critical infrastructure vulnerabilities, reduce the incentive to fix the problems and end up hurting rather than helping our national security. In the end, more secrecy may undermine rather than foster security.

Governor Ridge seemed to appreciate these risks and said he was ''anxious to work with the Chairman and other members of the committee to assure that the concerns that [I had] raised are properly addressed.'' He assured us that ''[t]his Administration is ready to

work together with you in partnership to get the job done. This is our priority, and I believe it is yours as well.''

Almost before the ink was dry on the Administration's earlier proposal, on July 10, the Administration proposed to substitute a much broader FOIA exemption that would (1) exempt from disclosure under the FOIA critical infrastructure information voluntarily submitted to the new department that was designated as confidential by the submitter without the submitter's prior written consent, (2) provide limited civil immunity for use of the information in civil actions against the company, with the likely result that regulatory actions would be preceded by litigation by companies that submitted designated information to the department over whether the regulatory action was prompted by a confidential disclosure, (3) preempt state sunshine laws if the designated information is shared with state or local government agencies, (4) impose criminal penalties of up to one year imprisonment on government employees who disclosed the designated information, and (5) extend antitrust immunity to companies that joined together with agency components designated by the President to promote critical infrastructure security.

Despite the Administration's promulgation of two separate proposals for new FOIA exemption in as many weeks, in July, Governor Ridge's Office of Homeland Security released The National Strategy for Homeland Security, which appeared to call for more study of the issue before legislating. Specifically, this report called upon the Attorney General to ''convene a panel to propose any legal changes necessary to enable sharing of essential homeland security information between the government and the private sector.''

The need for more study of the Administration's proposed new FOIA exemption was made amply clear by its possible adverse environmental, public health and safety affect. Keeping secret problems in a variety of critical infrastructures would simply remove public pressure to fix the problems. Moreover, several environmental groups pointed out that, under the Administration's proposal, companies could avoid enforcement action by ''voluntarily'' providing information about environmental violations to the EPA, which would then be unable to use the information to hold the company accountable and also would be required to keep the information confidential. It would bar the government from disclosing information about spills or other violations without the written consent of the company that caused the pollution.

At the request of Chairman LIEBERMAN for the Judiciary Committee's views on the new department, I shared my concerns about the Administration's proposed FOIA exemption and then worked with Members of the Governmental Affairs Committee—and in particular, with Senator LEVIN and Senator BENNETT—to craft a more narrow and responsible exemption that accomplishes the Administration's goal of encouraging private companies to share records of critical infrastructure vulnerabilities with the new Department of Homeland Security, without providing incentives to ''game'' the system of enforcement of environmental and other laws designed to protect the nation's public health and safety.

I commend Chairman LIEBERMAN and Senators LEVIN and BENNETT and their staffs for diligently working with me to refine the FOIA exemption in a manner that satisfies the Administration's stated goal, while limiting the risks of abuse by private companies or government agencies.

Specifically, section 198 on ''Protection of Voluntarily Furnished Confidential Information'' of the Lieberman Amendment to H.R. 5005 reflects the compromise solution we reached with the Administration and other Members interested in this important issue. This section exempts from the FOIA certain records pertaining to critical infrastructure threats and vulnerabilities that are furnished voluntarily to the new Department and designated by the provider as confidential and not customarily made available to the public. This provision improves on the Administration's July 18 proposal in the following ways:

First, section 198 limits the FOIA exemption to ''records'' submitted by the private sector, not ''information'' from the private sector. Therefore, if companies provide information to the new Department that is documented in an agency-created record, that record will be subject to the FOIA and not exempt simply because private sector information is referenced or contained in the record. Moreover, this section makes clear that portions of records that are not covered by the exemption should be released pursuant to FOIA requests, unlike the Administration proposals which would have allowed the withholding of entire records if any part is exempt.

Second, section 198 limits the FOIA exemption to records pertaining to ''the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts)'' not all ''critical infrastructure information.''

Third, section 198 does not provide any civil liability or antitrust immunity that could be used to immunize bad actors or frustrate regulatory enforcement action.

Fourth, section 198 limits the FOIA exemption to records submitted to the new Department of Homeland Security, as in the administration's initial June 18 proposal, since the stated goal of the exemption is to help that Department provide a centralized function of collection, review and analysis of critical infrastructure vulnerabilities. Records submitted by private companies to other agencies are not covered by the new exemption, even if the same document is also submitted to the new Department.

Fifth, section 198 does not preempt state or local sunshine laws.

Sixth, section 198 narrowly defines ''furnished voluntarily'' to ensure that records submitted by companies to obtain grants, permits, licenses or other government benefits are not exempt, but are still subject to the FOIA process.

This section is a significant improvement over both versions of the Administration's proposed new FOIA exemptions.

Unfortunately, other critical areas that were mentioned at the June 26 hearing with Governor Ridge, on which he assured us he would work with us to find common ground, remain stumbling blocks. The Administration has threatened a veto over the issue of ''management flexibility.'' At the same time we are seeking to motivate the government workers who will be moved to the new Department with an enhanced security mission, the Administration is insisting on provisions that threaten the job security for these hardworking government employees. The Administration should not use this transition as an excuse to cut the wages and current workplace security and rights of the brave employees who have been defending the nation. That is not the way to encourage retention or recruitment of the vital human resources on which we will need to rely, and it is a sure way to destroy the bipartisanship we need.

Mr. ALLEN. Mr. President, I rise to speak in support of an amendment that I have offered to assist Federal employees who have been injured on the job. My good colleagues, Senator WARNER of Virginia and Senators CLINTON and SCHUMER of New York, join me in this important effort. This provision was inspired by Mrs. Louise Kurtz, a Federal employee who was severely injured in the September 11 attack on the Pentagon. She suffered burns over 70 percent of her body, lost her fingers, yet fights daily in rehabilitation and hopes to return to work one day. Current law does not allow Mrs. Kurtz to contribute to her retirement program while she is recuperating and receiving Office of Worker's Compensation Programs disability payments. As a result, after returning to work she will find herself inadequately prepared and unable to afford to retire because of the lack of contributions during her recuperation period.

As Mrs. Kurtz's situation reveals, Federal employees under the Federal Employees Retirement System who have sustained an on-the-job injury and are receiving disability compensation from the Department of Labor's Office of Worker's Compensation Programs are unable to make contributions or payments into Social Security or the Thrift Saving Plan. Therefore, the future retirement benefits from both sources are reduced.

The provision I have offered corrects this shortfall in the Federal Employees Retirement System, FERS. By increasing a Federal employee's FERS direct benefit by 1 percent for a period of extended convalescence resulting from a work related injury, the future reductions on Social Security and Thrift Savings Plan, TSP, benefits that result from the inability to make contributions during periods of disability are offset.

The retirement program for Federal Employees Retirement System employees has three distinct parts: Social Security, Federal Employees Retirement System Defined Benefits, and Thrift Savings Plan. Social Security taxes and benefits are the same for all participants. The Federal Employees Retirement System Defined Benefit and the Thrift Savings Plan are similar to defined benefit and 401(k) plans in the private sector. Unlike the impact on Social Security and the Thrift Savings Plan, periods during which an individual is receiving Office of Worker's Compensation Programs disability payments have no impact when calculating the length of service for determining the Federal Employees Retirement System Defined Benefit retirement payments. To explain how the provision will work, I offer the following illustration.

As you know, Mr. President, the goal of the Federal Employees Retirement System is to provide retirement pay totaling about 56 percent of their ''high three'' annual salary. Under the old Civil Service Retirement System, a direct benefit plan, two percent of a person's salary was set aside to provide the retirement benefit of 56 percent employees did not pay into Social Security or a vested savings plan. Under Federal Employees Retirement System, one percent of a person's salary is set aside to provide the Federal Employees Retirement System Direct Benefit retirement payment of 26 percent of their ''high three'' annual salary with Social Security and Thrift Savings Plan retirement pay contributing the remaining 30 percent for a total of 56 percent. But increasing the Federal Employees Retirement System Direct Benefit calculation by one percentage point for extended periods of disability, one can adequately offset reduction in Social Security and Thrift Savings Plan payments resulting from the lack to payments into the systems during periods of disability caused by one the job injuries.

Louise Kurtz has earned our appreciation for the role she and her husband Michael have played in identifying this shortfall in Federal Employees Retirement System and in persevering in getting legislation introduced to address the problem. Indeed, Mrs. Kurtz continues to serve the American public even while recuperating from injuries sustained in the terrorist attack upon the Pentagon.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Senator from Wisconsin has been waiting for a long time. The Senator from Pennsylvania is here to offer a unanimous consent request. It is my understanding that it would take 2 minutes. So I appreciate the courtesy of the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Pennsylvania.

UNANIMOUS CONSENT REQUEST—H.R. 4695

Mr. SANTORUM. Mr. President, I thank the Senators from Wisconsin and Nevada.

I rise to offer a unanimous consent request for the Senate to consider the partial-birth abortion bill that passed the House recently. We have been working diligently for the past 18 months, since the Supreme Court decision, to craft a partial-birth abortion bill that meets the constitutionality muster of the Nebraska decision. We think we have accomplished that, and I would argue that the House agrees with us.

The House recently passed this legislation 274 to 151. I understand time is short, and we have held this bill at the desk. I am hopeful and have been working to try to get a unanimous consent agreement that we can bring up this legislation for debate and discussion. We are willing to do it on a very limited time agreement, limited amendments, or as many amendments as the other side thinks is necessary.

This is an important piece of legislation. It is one the President said he would sign. It is one that received an overwhelming bipartisan vote in the House. I believe it will have a very strong bipartisan vote in the Senate.

While I understand this unanimous consent will be objected to this evening, I am hopeful we can continue to work together to try to bring up this very important piece of legislation that has been voted on here at least in the last three sessions of Congress with very strong majorities. Unfortunately, it was vetoed by President Clinton. We now have a President who will sign it. We have language that will meet constitutional muster. We will continue to work and seek the unanimous consent request to bring this up.

I now offer that request. I ask unanimous consent that at a time determined by the majority leader, after consultation with the Republican leader, the Senate proceed to the consideration of Calendar No. 521, H.R. 4965, a bill to prohibit the procedure commonly known as partial-birth abortion. I further ask unanimous consent that there be one relevant amendment on each side, with 1 hour of debate equally divided on each amendment, and that there be 2 hours for debate equally divided between the two leaders or their designees; provided further that following the use or yielding back of time, the bill be read the third time and the Senate proceed to a vote on passage of the bill, with no further intervening action or debate.

Mr. REID. Reserving the right to object, Mr. President, the Senator from Pennsylvania is absolutely right. Time is so critical. Separate and apart from the time involving this matter, there are a number of Senators who have spoken to me personally about their objection to proceeding to this matter, if it came to the floor while I was here. Senator FEINSTEIN was the last to have spoken to me in this regard.

I note an objection.

The PRESIDING OFFICER. Objection is heard.

The Senator from Wisconsin.

IRAQ

Mr. FEINGOLD. Mr. President, I rise to comment on the administration's ''discussion draft'' of a resolution authorizing the use of force against Iraq.

This proposal is unacceptable. The administration has been talking about war in Iraq for quite some time now. Surely they had the time to draft a more careful, thoughtful proposal than the irresponsibly broad and sweeping language that they sent to Congress.

Apparently the administration put forward such broad language as a negotiating tactic—asking for everything in the hopes of getting merely a lot.

But we are not haggling over a used car. We are making decisions that could send young Americans to war and decisions that could have far-reaching consequences for the global campaign against terrorism and for America's role in the world in the twenty-first century.

To put forth such irresponsible language is to suggest that the President actually wants the authority to do anything he pleases in the Middle East—and that suggestion is likely to raise tensions in an already explosive region. To pepper the resolution with so many completely different justifications for taking action signals a lack of seriousness of purpose, and it obscures the nature of the mission on the table. And then to insist on immediate action while remaining largely incapable of pointing to any imminent threat and unwilling to flesh out the operation actually being proposed reveals a troubling approach to our national security.

The administration has a responsibility to define what the threat is. Is it a link between the Iraqi Government and al-Qaida, or is it Iraq's pursuit of weapons of mass destruction?

So far I certainly would conclude that there is insufficient evidence to support the first charge about al-Qaida, but the administration keeps using it whenever they feel like without information. Why? Are they trying to gloss over the real possibility that this focus on Iraq, if not managed with diplomatic skill, will, indeed, do harm to the global campaign against terrorism?

The threat we know is real—Iraq's pursuit of weapons of mass destruction or WMD—is unquestionably a very serious issue. What is the mission? Is the mission on the table disarmament or is it regime change? Has anyone heard a credible plan for securing the weapons of mass destruction sites as part of a