being processed for that offense, he had been released into the custody of a friend who drove him back to his car and allowed him to get behind the wheel, with tragic results.

We need to ensure that drunken drivers do not get back behind the wheel before they sober up. New Jersey took steps to do this when they enacted John's Law at the State level. I am pleased to offer a Federal version of this legislation today.

This bill would require States to impound the vehicle of an offender for a period of at least 12 hours after the offense. This would ensure that the arrestee cannot get back behind the wheel of his car until he is sober.

Further, the bill would require States to ensure that if a DUI offender arrestee is released into the custody of another, that person must be provided with notice of his or her potential civil or criminal liability for permitting the arrestee's operation of a motor vehicle while intoxicated. While this bill does not create new liability under Federal law, notifying such individuals of their prospective liability under State law should encourage them to act responsibly.

John's Law of 2003 is structured in a manner similar to other Federal laws designed to promote highway safety, such as laws that encourage States to enact tough drunk driving standards. Under the legislation, a portion of Federal highways funds would be withheld from States that do not comply. Initially, this funding could be restored if States move into compliance. Later, the highway funding forfeited by one State would be distributed to other States that are in compliance. Experience has shown that the threat of losing highway funding is very effective in ensuring that States comply.

Mr. President, I believe that this legislation would help make our roads safer and save many lives. I hope my colleagues will support it, and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 192

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''John's Law of 2003''.

SEC. 2. LIABILITY FOR PERMITTING AN INTOXICATED ARRESTEE TO OPERATE A MOTOR VEHICLE.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''§ 165. Liability for permitting an intoxicated arrestee to operate a motor vehicle

''(a) DEFINITION OF MOTOR VEHICLE.—In this section, the term 'motor vehicle' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated only on a rail.

''(b) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

''(1) FISCAL YEAR 2005.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2004, if the State does not meet the requirements of paragraph (3) on that date.

''(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2005, and on October 1 of each fiscal year thereafter, if the State does not meet the requirements of paragraph (3) on that date.

''(3) REQUIREMENTS.—A State meets the requirements of this paragraph if the State has enacted and is enforcing a law that is substantially as follows:

''(A) WRITTEN STATEMENT.—If a person is summoned by or on behalf of a person who has been arrested for public intoxication in order to transport or accompany the arrestee from the premises of a law enforcement agency, the law enforcement agency shall provide that person with a written statement advising him of his potential criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated. The person to whom the statement is issued shall acknowledge, in writing, receipt of the statement, or the law enforcement agency shall record the fact that the written statement was provided, but the person refused to sign an acknowledgment. The State shall establish the content and form of the written statement and acknowledgment to be used by law enforcement agencies throughout the State and may issue directives to ensure the uniform implementation of this subparagraph. Nothing in this subparagraph shall impose any obligation on a physician or other health care provider involved in the treatment or evaluation of the arrestee.

''(B) IMPOUNDMENT OF VEHICLE OPERATED BY ARRESTEE; CONDITIONS OF RELEASE; FEE FOR TOWING, STORAGE.—

''(i) If a person has been arrested for public intoxication, the arresting law enforcement agency shall impound the vehicle that the person was operating at the time of arrest.

''(ii) A vehicle impounded pursuant to this subparagraph shall be impounded for a period of 12 hours after the time of arrest or until such later time as the arrestee claiming the vehicle meets the conditions for release in clause (iv).

''(iii) A vehicle impounded pursuant to this subparagraph may be released to a person other than the arrestee prior to the end of the impoundment period only if—

''(I) the vehicle is not owned or leased by the person under arrest and the person who owns or leases the vehicle claims the vehicle and meets the conditions for release in clause (iv); or

''(II) the vehicle is owned or leased by the arrestee, the arrestee gives permission to another person, who has acknowledged in writing receipt of the statement to operate the vehicle and the conditions for release in clause (iv).

''(iv) A vehicle impounded pursuant to this subparagraph shall not be released unless the person claiming the vehicle—

''(I) presents a valid operator's license, proof of ownership or lawful authority to operate the vehicle, and proof of valid motor vehicle insurance for that vehicle;

''(II) is able to operate the vehicle in a safe manner and would not be in violation driving while intoxicated laws; and

''(III) meets any other conditions for release established by the law enforcement agency.

''(v) A law enforcement agency impounding a vehicle pursuant to this subparagraph is authorized to charge a reasonable fee for towing and storage of the vehicle. The law enforcement agency is further authorized to retain custody of the vehicle until that fee is paid.

''(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

''(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—Any funds withheld under subsection (b) from apportionment to any State shall remain available until the end of the fourth fiscal year following the fiscal year for which the funds are authorized to be appropriated.

''(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (b) from apportionment are to remain available for apportionment to a State under paragraph (1), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements, apportion to the State the funds withheld under subsection (b) that remain available for apportionment to the State.

''(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

''(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

''(B) TREATMENT OF CERTAIN FUNDS.—Any funds apportioned under paragraph (2) that are not obligated at the end of the period referred to in subparagraph (A) shall be allocated equally among the States that meet the requirements of subsection (a)(3).

''(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (b) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), the funds shall be allocated equally among the States that meet the requirements of subsection (a)(3).''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''165. Liability for permitting an intoxicated arrestee to operate a motor vehicle.''.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. STEVENS, Mr. MILLER, Mr. CAMPBELL, Mr. MCCAIN, Mr. BREAUX, Mr. CRAIG, Mr. ENSIGN, Mr. LUGAR, Mrs. LINCOLN, Mr. BAUCUS, Mr. BOND, Mr. LOTT, Mr. HOLLINGS, Mr. DAYTON, Mr. SESSIONS, Mr. NELSON of Nebraska, Mr. INHOFE, Mr. BUNNING, Mr. ALLARD, Ms. COLLINS, Mr. CRAPO, Mr. DEWINE, Mr. FRIST, Mr. GRASSLEY, Mr. HAGEL, Mrs. HUTCHISON, Mr. ROBERTS, Mr. WARNER, Mr. ALLEN, Mr. BROWNBACK, Mr. BURNS, Mr. DOMENICI, Mr. GREGG, Mr. SANTORUM, Mr. SHELBY, Ms. SNOWE, Mr. GRAHAM of South Carolina, Mr. CORNYN, Mr. TALENT, and Mr. ALEXANDER):

S.J. Res 4. A joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, it is with profound honor and reverence that I,

together with my friend and colleague, Senator FEINSTEIN, introduce a bipartisan constitutional amendment to permit Congress to prohibit the physical desecration of the American flag.

The American flag serves as a symbol of our great Nation. The flag represents, in a way nothing else can, the common bond shared by an otherwise diverse people. As a sponsor and longtime supporter of the proposed constitutional amendment to protect the American flag, I am very pleased, but not surprised, by the way Americans have been waving the flag as a symbol of solidarity following the September 11 attacks of 2001. The emotion that Americans feel when they see the stars and stripes confirms my view that the flag is much more than a piece of cloth—it is a unifying force that represents the common core ideals all Americans share. Whatever our differences of party, race, religion, or socio-economic status, the flag reminds us that we are very much one people, united in a shared destiny, bonded in a common faith in our nation.

More than a decade ago, Supreme Court Justice John Paul Stevens reminded us of the significance of our unique emblem when he wrote:

A country's flag is a symbol of more than nationhood and national unity. It also signifies the ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas. . . . So it is with the American flag. It is more than a proud symbol of the courage, the determination, and the gifts of a nation that transformed 13 fledgling colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations.

Throughout our history, the flag has captured the hearts and minds of all types of people—ranging from school teachers to union workers, traffic cops, grandmothers, and combat veterans. In 1861, President Abraham Lincoln called our young men to put their lives on the line to preserve the Union. When Union troops were beaten and demoralized, General Ulysses Grant ordered a detachment of men to make an early morning attack on Lookout Mountain in Tennessee. When the fog lifted from Lookout Mountain, the rest of the Union troops saw the American flag flying and cheered with a newfound courage. This courage eventually led to a nation of free men—not half-free and half-slave.

In 1941, President Franklin Roosevelt called on all Americans to fight the aggression of the Axis powers. After suffering numerous early defeats, the free world watched in awe as five Marines and one sailor raised the American flag on Iwo Jima. Their undaunted, courageous act, for which three of the six men died, inspired the Allied troops to attain victory over fascism.

In 1990, President Bush called on our young men and women to go to the Mideast for Operations Desert Shield and Desert Storm. After an unprovoked attack by the terrorist dictator Saddam Hussein on the Kingdom of Kuwait, American troops, wearing arm patches with the American flag on their shoulders, led the way to victory. General Norman Schwarzkopf addressed a joint session of Congress describing the American men and women who fought for the ideals symbolized by the American flag:

[W]e were Protestants and Catholics and Jews and Moslems and Buddhists, and many other religions, fighting for a common and just cause. Because that's what your military is. And we were black and white and yellow and brown and red. And we noticed that when our blood was shed in the desert, it didn't separate by race. It flowed together.

General Schwarzkopf then thanked the American people for their support, stating:

The prophets of doom, the naysayers, the protesters and the flag-burners all said that you wouldn't stick by us, but we knew better. We knew you'd never let us down. By golly, you didn't.

The pages of our history show that when this country has called our young men and women to serve under the American flag from Lookout Mountain to Iwo Jima to Kuwait, they have given their blood and lives. The crosses at Arlington, the Iwo Jima memorial, and the Vietnam Memorial honor those sacrifices. But there were those who did not.

In 1984, Greg Johnson led a group of radicals in a protest march in which he doused an American flag with kerosene and set it on fire as his fellow protestors chanted: ''America, the red, white, and blue, we spit on you.'' Sadly, the radical extremists, most of whom have given nothing, suffered nothing, and who respect nothing, would rather burn and spit on the American flag than honor it.

Contrast this image with the deeds of Roy Benavidez, an Army Sergeant from Texas, who led a helicopter extraction force to rescue a reconnaissance team in Vietnam. Despite being wounded in the leg, face, back, head, and abdomen by small arms fire, grenades, and hand-to-hand combat with vicious North Vietnamese soldiers, Benavidez held off the enemy and carried several wounded to the helicopters, until finally collapsing from a loss of blood. Benavidez earned the Medal of Honor. When Benavidez was buried in Arlington National Cemetery, the honor guard placed an American flag on his coffin and then folded it and gave it to his widow. The purpose of Roy Benavidez' heroic sacrifice—and the purpose of the American people's ratification of the First Amendment—was not to protect the right of radicals like Greg Johnson to burn and spit on the American flag.

The American people have long distinguished between the First Amendment right to speak and write one's political opinions and the disrespectful, and often violent, physical destruction of the flag. For many years, the people's elected representatives in Congress and 49 state legislatures passed statutes prohibiting the physical desecration of the flag. Our founding fathers, Chief Justice Earl Warren, and Justice Hugo Black believed these laws to be completely consistent with the First Amendment's protection of the spoken and written word and not disrespectful, extremist conduct.

In 1989, however, the Supreme Court abandoned the history and intent of the First Amendment to embrace a philosophy that made no distinction between oral and written speech about the flag and extremist, disrespectful destruction of the flag. In Texas v. Johnson, five members of the Court, for the first time ever, struck down a flag protection statute. The majority argued that the First Amendment had somehow changed and now prevented a state from protecting the American flag from radical, disrespectful, and violent actions. When Congress responded with a federal flag protection statute, the Supreme Court, in United States v. Eichman, used its new and changed interpretation of the First Amendment to strike it down by another five-to-four vote.

Under this new interpretation of the First Amendment, it is assumed that the people, their elected legislators, and the courts can no longer distinguish between expressions concerning the flag that are more akin to spoken and written expression and expressions that constitute the disrespectful physical desecration of the flag. Because of this assumed inability to make such distinctions, it is argued that all of our freedoms to speak and write political ideas are wholly dependent on Greg Johnson's newly created ''right'' to burn and spit on the American flag.

This ill-advised and radical philosophy fails because its basic premise—that laws and judges cannot distinguish between political expression and disrespectful physical desecration—is so obviously false. It is precisely this distinction that laws and judges did in fact make for over 200 years. Just as judges have distinguished which laws and actions comply with the constitutional command to provide ''equal protection of the laws'' and ''due process of law,'' so too have judges been able to distinguish between free expression and disrespectful destruction.

Certainly, extremist conduct such as smashing in the doors of the State Department may be a way of expressing one's dissatisfaction with the nation's foreign policy objectives. And one may even consider such behavior speech. Laws, however, can be enacted preventing such actions in large part because there are peaceful alternatives that can be equally powerful. After all, right here in the United States Senate, we prohibit speeches or demonstrations of any kind, even the silent display of signs or banners, in the public galleries.

Moreover, it was not this radical philosophy of protecting disrespectful destruction that the people elevated to the status of constitutional law. Such an extremist philosophy was never

ratified. Such a philosophy is not found in the original and historic intent of the First Amendment. Thus, in this Senator's view, the Supreme Court erred in Texas v. Johnson and in United States v. Eichman.

Since Johnson and Eichman, constitutional scholars have opined that an attempt by Congress to protect the flag with another statute would fail in light of the new interpretation currently embraced by the Supreme Court. Thus, an amendment is the only legal means to protect the flag.

This amendment affects only the most radical forms of conduct and will leave untouched the current constitutional protections for Americans to speak their sentiments in a rally, to write their sentiments to their newspaper, and to vote their sentiments at the ballot box. The amendment simply restores the traditional and historic power of the people's elected representatives to prohibit the radical and extremist physical desecration of the flag.

Restoring legal protection to the American flag will not place us on a slippery slope to limit other freedoms. No other symbol of our bi-partisan national ideals has flown over the battlefields, cemeteries, football fields, and school yards of America. No other symbol has lifted the hearts of ordinary men and women seeking liberty around the world. No other symbol has been paid for with so much blood of our countrymen. The American people have paid for their flag, and it is our duty to let them protect it.

This amendment offers Senators, from both sides of the aisle, the opportunity to stand united for the protection of the sacred symbol of our nation.

Restoring legal protection to the American flag is not, nor should it be, a partisan issue. More than 40 Senators, both Republicans and Democrats, have already joined with Senator FEINSTEIN and myself as original cosponsors of this amendment. I am pleased that this amendment has the unqualified support of our distinguished colleagues: Senators TED STEVENS; ZELL MILLER; JOHN MCCAIN; JOHN B. BREAUX; LARRY E. CRAIG; JOHN E. ENSIGN; RICHARD G. LUGAR; BLANCHE LINCOLN; MAX BAUCUS; CHRISTOPHER S. BOND; TRENT LOTT; ERNEST F. HOLLINGS; MARK DAYTON; JEFF SESSIONS; E. BENJAMIN NELSON; JAMES M. INHOFE; JIM BUNNING; WAYNE ALLARD; SUSAN M. COLLINS; MICHAEL D. CRAPO; MICHAEL DEWINE; BILL FRIST; CHARLES E. GRASSLEY; CHUCK HAGEL; KAY BAILEY HUTCHINSON; PAT ROBERTS; JOHN W. WARNER; GEORGE ALLEN; SAM BROWNBACK; CONRAD R. BURNS; PETE V. DOMENICI; JUDD GREGG; RICK SANTORUM; RICHARD C. SHELBY; OLYMPIA J. SNOWE; LINDSEY GRAHAM; JOHN CORNYN; JAMES TALENT; LAMAR ALEXANDER; BEN NIGHTHORSE CAMPBELL.

Polls have shown that 80 percent of the American people want the opportunity to vote to protect their flag. Numerous organizations from the American Legion to the Women's War Veterans to the African-American Women's clergy all support the flag protection amendment. All 50 State legislatures have passed resolutions calling for constitutional protection for the flag.

I am, therefore, proud to rise today to introduce a constitutional amendment that would restore to the people's elected representatives the right to protect our unique national symbol, the American flag, from acts of physical desecration.

I ask unanimous consent that the text of the proposed amendment be printed in the RECORD.

I am very honored to be a cosponsor with my dear friend from California, Senator FEINSTEIN. I appreciate the effort and unwavering support she has put forth in this battle. I am proud and privileged to be able to work with her.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S.J. RES. 4

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within 7 years after the date of its submission for ratification:

''ARTICLE—

''The Congress shall have power to prohibit the physical desecration of the flag of the United States.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 22—EXPRESSING THE SENSE OF THE SENATE REGARDING THE IMPLEMENTATION OF THE NO CHILD LEFT BEHIND ACT OF 2001

Mr. DORGAN (for himself and Mr. CONRAD) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 22

Whereas all students, no matter where they live, should receive the highest quality education possible, and Congress and the President enacted the No Child Left Behind Act of 2001 (Public Law 107–110) to ensure high academic standards and the tools and resources to meet those standards;

Whereas the No Child Left Behind Act of 2001 imposes many new requirements and challenges for States, school districts, and individual educators;

Whereas many States and school districts are struggling to understand the requirements of the No Child Left Behind Act of 2001, even as additional regulations and guidance continue to be forthcoming from the Department of Education;

Whereas the small size, remoteness, and lack of resources of many rural schools pose potential additional problems in implementing the No Child Left Behind Act of 2001;

Whereas many rural schools and school districts have very small numbers of students, such that the performance of a few students on the assessments required by the No Child Left Behind Act of 2001 can determine the progress or lack of progress of that school or school district;

Whereas the small number of students in many rural schools can make the disaggregation of testing results difficult and even statistically unreliable;

Whereas some of the options created for students attending failing schools, including the choice to attend another public school and the availability of supplemental tutoring services, simply may not be available in rural areas or may be prohibitively expensive due to the cost of transportation over long distances;

Whereas many rural schools already have shortages of teachers in key subject areas, rural teachers frequently teach in multiple subject areas, and rural teachers tend to be older, and lower paid than their urban counterparts;

Whereas many experienced teachers and paraprofessionals in rural schools may not meet the definition of ''highly qualified'' in the No Child Left Behind Act of 2001 and rural school districts will have difficulty competing with large school districts in recruiting and retaining quality teachers;

Whereas the No Child Left Behind Act of 2001 imposes many new requirements on schools and school districts, but the President's budget request for fiscal year 2003 does not provide the level of funding needed and authorized to meet those requirements and in fact cuts funding by $90,000,000 for programs contained in the No Child Left Behind Act of 2001; and

Whereas a majority of the States are being forced to cut budgets and local governments are also struggling with revenue shortfalls that make it difficult to provide the increased resources necessary to implement the No Child Left Behind Act of 2001 in the absence of adequate federal funding: Now, therefore, be it

Resolved, That—

(1) the Secretary of Education should provide the maximum flexibility possible in assisting predominantly rural States and school districts in meeting the unique challenges presented to them by the No Child Left Behind Act of 2001 (Public Law 107–110);

(2) the President should, in his fiscal year 2004 budget request, request the full levels of funding authorized under the No Child Left Behind Act of 2001 for all programs, including the Rural Education Achievement Program (20 U.S.C. 7341 et seq.); and

(3) it is the sense of the Senate that, if the President does not request and Congress does not provide full funding for the No Child Left Behind Act of 2001 in fiscal year 2004, Congress should suspend the enforcement of the implementation of the requirements of the No Child Left Behind Act of 2001 until full funding is provided.

Mr. DORGAN. Mr. President, today, I am submitting a Sense of the Senate Resolution that expresses my concerns about the implementation of the No Child Left Behind Act.

I supported this law when it was passed by the Senate with overwhelming bipartisan support, and I still support it. In general, I think it is very appropriate and important for us as a Nation to demand very high standards of performance from our schools and to identify those schools that

should be doing better and give them the assistance they need to improve.

Having said that, I do have concerns that a lack of adequate funding and a potential lack of flexibility in the implementation of this new law could set out public schools up for failure, and that is wrong. All of us have an obligation, as parents, educators, concerned citizens, and policymakers, to get the implementation of this law right.

Nationwide, about 25 percent of public schools are rural. In North Dakota, fully 89 percent of our public school districts are rural. The No Child Left Behind Act imposes many new requirements that will be challenging for all States and schools to meet. However, rural school districts face unique challenges that are compounded by the small size, remoteness, and lack of resources facing many rural schools.

Rural educators in my State have pointed out a number of unique concerns facing them. For example, many rural school districts in North Dakota have very small numbers of students. The poor performance of just a few students on the tests required by the No Child Left Behind Act could result in a school being identified as needing improvement, even when most of the students are performing very well.

In addition, some of the options created under the No Child Left Behind Act for students attending schools identified for improvement simply may not be available in rural areas. For instance, most of the school districts in my State only include one school, so another public school choice is not an option. Likewise, the distance to the next nearest school district may be impractical or the cost of transportation may be prohibitively expensive. Similar concerns exist with the availability of supplemental tutoring services.

Many rural schools already have shortages of teachers in key subject areas, even though rural instructors frequently tech in multiple subject areas. Some of the experienced teachers and paraprofessionals in rural schools may not meet the new ''highly qualified'' requirements of the No Child Left Behind Act, and it will be very difficult for rural school districts to complete with large school districts in recruiting and retaining quality teachers.

I believe the No Child Left Behind Law provides States with the flexibility that is needed to address these and other concerns, if the Department of Education allows States to use that flexibility and the States take advantage of it. As President Bush himself said last week, ''One size doesn't fit all when it comes to public education.''

Of course, the other ingredient that is needed is funding. Even with the necessary flexibility, if schools do not have the resources to make needed reforms, they will not be able to improve.

When the Congress and the President last year reached bipartisan agreement on the No Child Left Behind Act, we agreed on the levels of funding that would be necessary to meet the new expectations and requirements. That law authorizes $31 billion for the No Child Left Behind Act in fiscal year 2003, a $9 billion increase over the fiscal year 2002 level.

Unfortuantely, barely a month after this legislation was signed into law, the President sent to Congress a budget that no only did not fully fund the increases in the No Child Left Behind Act, it actually cut funding by $90 million.

One cut of particular concern to me is the President's proposal to eliminate funding for the Rural Education Achievement Program, REAP, which was funded in fiscal year 2002 at $162.5 million. REAP funding is particularly important because it is targeted at small, rural districts that do not receive large enough amounts of money through the individual federal formula ''title programs'' to make substantive changes or investments. In addition, because small rural districts often lack the administrative staff to apply for competitive grants from the State and Federal level, they receive a smaller proportion of federal dollars then their suburban or urban counterparts.

For many rural school districts, REAP will mean an additional $20,000 to $60,000 in new funding that will help them to meet the challenges of implementing the No Child Left Behind Act. While this may not seem like much funding to an urban or suburban district, to a small rural district it makes a real impact.

As Congress completes work on the fiscal year 2003 Education appropriations bill, I hope we will provide the $31 billion authorized in No Child Left Behind. I understand that Senator HARKIN plans to offer an amendment to bring the funding level up to the authorized amount. Given that the No Child Left Behind Act was passed by the Senate by an 87–10 vote, I would hope and expect that Senator HARKIN's amendment would receive similarly strong bipartisan support.

However, my Sense of the Senate resolution also calls on President Bush to request the authorized level of funding of $34 billion in his fiscal year 2004 budget he will send to Congress next month, and it calls on Congress to appropriate that level of funding in fiscal year 2004.

If full funding is not provided in fiscal year 2004, my resolution expresses the ''Sense of the Senate'' that enforcement of the No Child Left Behind Act should be suspended. A moratorium on enforcement is not my preference. Our children would be much better off if Congress and the President simply lived up to their commitment to provide the level of funding and flexibility needed to implement this law correctly. That should be our goal.

However, without this funding, we are simply imposing an enormous ''unfunded mandate'' on states and local school districts. The reality is that the budget crises facing just about every state and local government make it virtually impossible for states and local governments to make up for the lack of resources from the federal government.

Fundamentally, this can be a good law, and I think it would be a shame, and irresponsible to our children, if it cannot be implemented properly because Congress did not provide the resources it said it would.

SENATE RESOLUTION 23—SUPPORTING A DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT RELATING TO THE ADMISSIONS POLICY OF THE UNIVERSITY OF MICHIGAN

Mr. DASCHLE (for himself and Mr. GRAHAM of Florida) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 23

Whereas racial and ethnic diversity has far-reaching benefits for all students, nonminorities and minorities alike;

Whereas racial and ethnic diversity increases the range of ideas and perspectives raised in the classroom, generates complex thinking, and prepares students to become participants in a pluralistic democratic society;

Whereas racial and ethnic diversity has a positive effect on students' intellectual and personal development because such diversity causes students to challenge stereotypes, broaden perspectives, and sharpen critical thinking skills;

Whereas a study done in 2000 by the American College on Education and the American Association of University Professors found that students and faculty believe that having multiracial and multiethnic student populations has a positive effect on students' cognitive and personal development;

Whereas in 1955, 1 year after the Supreme Court decided Brown v. Board of Education, 347 U.S. 483 (1954), less than 5 percent of college students in the United States were African-American;

Whereas by 1990, because of affirmative action and other initiatives, over 11 percent of college students in the United States were African-American;

Whereas after the United States Court of Appeals for the Fifth Circuit ruled, in Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996), that the University of Texas Law School's affirmative action program was unconstitutional, Latino and African-American admissions to the law school plummeted by 64 percent and 88 percent, respectively;

Whereas after California's anti-affirmative action measure, Proposition 209, took affect, law school admissions dropped nearly 72 percent among African-American applicants and 35 percent among Latino applicants;

Whereas, even with affirmative action measures there continues to be significant racial disparities between the enrollment rates of minority students and white students;

Whereas in 1978, in Regents of University of California v. Bakke, 438 U.S. 265 (1978), the Supreme Court ruled that campus diversity is a ''compelling governmental interest'' that justifies race and ethnicity as one of many factors that a university may consider in developing a diverse student body;

Whereas the admissions policy of the University of Michigan adheres to the standards set out in the landmark Bakke decision;

Whereas the University of Michigan does not have racial quotas for admission, and instead uses many factors to select students, including race, social and economic background, geographic origin, athletic ability, and a relationship to alumni, as well as test scores, grades, and essay scores;

Whereas all of those factors help the University of Michigan select a diverse well-rounded student body that is not just racially diverse, but economically and geographically diverse; and

Whereas the University of Michigan's admissions policy so far has been upheld as constitutional by the United States Court of Appeals for the Sixth Circuit, in the case of Grutter v. Bollinger, 288 F.3d 732 (6th Cir. 2002): Now, therefore, be it

Resolved, that the Senate—

(1) strongly supports the decision of the United States Court of Appeals for the Sixth Circuit, in the case of Grutter v. Bollinger; and

(2) authorizes and instructs the Senate Legal Counsel to appear as amicus curiae in that case, in the name of the Senate, to defend the constitutionality of the University of Michigan's admissions policy to ensure a diverse student body.

AMENDMENTS SUBMITTED & PROPOSED

SA 4. Mr. LUGAR submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table.

SA 5. Mrs. CLINTON submitted an amendment intended to be proposed by her to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 6. Mr. COLEMAN (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 7. Mr. GRAHAM, of Florida (for himself, Mr. NELSON, of Florida, and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 8. Mr. BYRD (for himself and Mr. ROCKEFELLER) proposed an amendment to the joint resolution H.J. Res. 2, supra.

SA 9. Mr. KERRY (for himself, Mr. KENNEDY, Mr. SCHUMER, and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 10. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 11. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 12. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 13. Mr. KENNEDY (for himself, Mr. DASCHLE, Mr. DODD, Mr. REED, Mr. BINGAMAN, Mrs. MURRAY, Mrs. CLINTON, Ms. MIKULSKI, Mr. JEFFORDS, Mr. SCHUMER, Mr. LAUTENBERG, Mr. SARBANES, Mr. JOHNSON, and Mr. KOHL) proposed an amendment to the joint resolution H.J. Res. 2, supra.

SA 14. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 15. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 16. Mr. KENNEDY submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 17. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 18. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 19. Mr. GREGG proposed an amendment to the joint resolution H.J. Res. 2, supra.

SA 20. Ms. SNOWE submitted an amendment intended to be proposed by her to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 21. Ms. SNOWE submitted an amendment intended to be proposed by her to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 22. Mr. MCCAIN submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 23. Mr. GRASSLEY (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 24. Mr. DAYTON submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 25. Mr. DAYTON submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 26. Mr. LOTT submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 27. Mr. REED (for himself, Ms. COLLINS, Mr. DAYTON, Mr. JEFFORDS, Mr. DEWINE, Mr. KENNEDY, Mr. SARBANES, Ms. CANTWELL, Ms. STABENOW, Mrs. CLINTON, Mr. DODD, Mr. KERRY , Mr. LEVIN, Mr. CORZINE, Mr. LEAHY, Mr. DURBIN, and Ms. SNOWE) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 28. Mr. KENNEDY submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 29. Mr. KENNEDY submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 30. Mrs. MURRAY (for herself, Mrs. HUTCHISON, Mr. BYRD, Ms. SNOWE, Mr. HOLLINGS, Mr. CHAFEE, Mr. BIDEN, Mr. SPECTER, Mr. LEAHY, Mr. CARPER, Mr. LAUTENBERG, Mr. CORZINE, Mr. KERRY, Mr. ROCKEFELLER, Mr. DODD, Mrs. CLINTON, Mr. REID, Mr. JEFFORDS, Ms. COLLINS, and Mr. DURBIN) proposed an amendment to the joint resolution H.J. Res. 2, supra.

SA 31. Mr. SCHUMER submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra.

SA 32. Mr. HARKIN (for himself, Mrs. FEINSTEIN, Mr. LEAHY, Mr. BIDEN, Mr. KOHL, Mr. JOHNSON, Mr. NELSON, of Florida, Mr. ROCKEFELLER, Mr. AKAKA, Mr. JEFFORDS, Mrs. MURRAY, and Mr. LAUTENBERG) proposed an amendment to the joint resolution H.J. Res. 2, supra.

SA 33. Mr. CRAIG (for himself, Mr. DORGAN, Mr. CRAPO, Mrs. MURRAY, Mr. JOHNSON, Mr. CONRAD , and Mr. ALLARD) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 34. Mr. CRAIG (for himself, Mr. BURNS, Mrs. MURRAY, Mr. SMITH, Mr. CRAPO, Mr. BAUCUS, Ms. CANTWELL, and Mr. WYDEN) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4. Mr. LUGAR submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. Of the amount appropriated by this title for Atomic Energy Defense Activities for Defense Nuclear Nonproliferation, $8,000,000 shall be available to the Secretary of Energy to carry out a program to encourage graduate students in the United States, and in the Russian Federation, to pursue careers in areas relating to nonproliferation.

SA 5. Mrs. CLINTON submitted an amendment intended to be proposed by her to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. HEALTH EXAMINATIONS OF EMERGENCY SERVICES PERSONNEL.

From amounts previously appropriated in chapter 13 of title I of Public Law 107–206 (116 Stat. 894) to the Federal Emergency Management Agency to respond to the September 11, 2001, terrorist attacks on the United States, not less than $90,000,000 shall be made available, until expended, for baseline and follow-up screening and clinical examinations and long-term health monitoring and analysis for emergency services personnel and rescue and recovery personnel, of which not less than $25,000,000 shall be made available for such services for current and retired firefighters.

SA 6. Mr. COLEMAN (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 928, line 24, strike ''$3,000,000'' and insert in lieu thereof ''$10,000,000''.

SA 7. Mr. GRAHAM of Florida (for himself, Mr. NELSON of Florida, and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert:

Notwithstanding any other provision of law, the Corps of Engineers, using funds made available by this Act and funds made available under any Act enacted before the