and use of unauthorized mobile infrared transmitters; to the Committee on the Judiciary.

By Mr. REID (for himself and Mr. ENSIGN):

S. 1826. A bill to direct the Secretary of the Interior to convey certain land in Washoe County, Nevada, to the Board of Regents of the University and Community College System of Nevada; to the Committee on Energy and Natural Resources.

By Mr. SMITH (for himself, Mrs. MURRAY, Ms. CANTWELL, and Mr. WYDEN):

S. 1827. A bill to amend the Agricultural Adjustment Act to remove the requirement that processors be members of an agency administering a marketing order applicable to pears; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KYL (for himself, Mr. CHAMBLISS, Mr. CRAIG, Mr. NICKLES, Mr. SESSIONS, and Mr. CORNYN):

S. 1828. A bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, and for other purposes; to the Committee on the Judiciary.

By Mr. CORNYN:

S.J. Res. 23. A joint resolution proposing an amendment to the Constitution of the United States providing for the event that one-fourth of the members of either the House of Representatives or the Senate are killed or incapacitated; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 259. A resolution to authorize legal representation in Bell Aviation, Inc., et al. v. Sino Swearingen Aircraft Co., L.P., et al; considered and agreed to.

ADDITIONAL COSPONSORS

S. 253

At the request of Mr. CAMPBELL, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 253, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

S. 736

At the request of Mr. ENSIGN, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 736, a bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.

S. 973

At the request of Mr. NICKLES, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 973, a bill to amend the Internal Revenue Code of 1986 to provide a shorter recovery period for the depreciation of certain restaurant buildings.

S. 1037

At the request of Ms. SNOWE, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1037, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of all oral anticancer drugs.

S. 1379

At the request of Mr. JOHNSON, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 1380

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 1380, a bill to distribute universal service support equitably throughout rural America, and for other purposes.

S. 1524

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 1524, a bill to amend the Internal Revenue Code of 1986 to allow a 7-year applicable recovery period for depreciation of motorsports entertainment complexes.

S. 1702

At the request of Mr. SMITH, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1702, a bill to amend the Internal Revenue Code of 1986 to extend the exclusion from gross income for employer-provided health coverage to designated plan beneficiaries of employees, and for other purposes.

S. 1813

At the request of Mr. LEAHY, the names of the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 1813, a bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts in Iraq, and for other purposes.

S.J. RES. 19

At the request of Mr. SPECTER, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S.J. Res. 19, a joint resolution recognizing Commodore John Barry as the first flag officer of the United States Navy.

S. RES. 202

At the request of Mr. CAMPBELL, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932–33.

S. RES. 244

At the request of Mrs. BOXER, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. Res. 244, a resolution congratulating Shirin Ebadi for winning the 2003 Nobel Peace Prize and commending her for her lifetime of work to promote democracy and human rights.

AMENDMENT NO. 2071

At the request of Mr. COCHRAN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of amendment No. 2071 intended to be proposed to H.R. 2673, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CORNYN (for himself and Mr. LOTT):

S. 1820. A bill to authorize the States to implement such mechanisms as are necessary to endure the continuity of Congress in the event that one-fourth of the members of either the House of Representatives or the Senate are killed or incapacitated; to the Committee on Rules and Administration.

Mr. CORNYN. Mr. President, I rise to say a few words about the continuity of Government. More than 2 years since the terrible events of September 11, Congress has not taken any steps necessary to protect the Nation by ensuring continuity of Government operations should there be another attack and the tragic loss of life or disability on the part of Members of the United States Congress. The Founders of this country rightly required a majority of each House to constitute a quorum to do business, to ensure a nationally representative Congress. But the Constitution does not provide, I should say, adequate mechanisms to assure a continuing, functioning Congress if a majority of the Members are incapacitated or killed by a terrorist attack.

Our current system of providing for the continuity of Government in the event of a disaster is simply inadequate to meet the realities of a post-9/11 world. As unthinkable as another attack of that magnitude might be, we must be ready for the worst.

In fact, we have a duty as the elected Representatives of our respective States to do everything within our power to provide for a stable continuance and function of Government, despite all possible catastrophes. We must not leave our Nation's citizens without representation, without order, and without defense. We simply owe it to the American people to ensure that our Government will remain strong and stable, even in the face of disaster.

It is my conviction that this issue deserves more than just token attention. It is not something we can or should put off until another day. It is urgent and it is a critical element of our ongoing fight against terror.

Today, I have offered a proposal to provide for the continuity of congressional operations. In coming weeks, I will submit legislation to address the problems of our current system of Presidential succession as well.

Earlier this year, the bipartisan Continuity of Government Commission,

which was a joint project of the American Enterprise Institute and the Brookings Institution, issued a report which unanimously recommended a constitutional amendment:

> To allow immediate, temporary appointments to Congress until special elections could be held to fill vacancies or until matters of incapacitation can be resolved.

Many Members of Congress strongly agree with the recommendation of that commission. Some, however, are reluctant to allow for the appointment rather than the election of Representatives, no matter how dire the emergency. To protect the American people and ensure a functioning Congress, we must find a way to bridge the gap on a temporary basis. I submit that this must be an emergency measure which would allow for the ongoing operation of Government in a catastrophe but which would then allow for election in the ordinary course of events, after events had been stabilized.

I have proposed a constitutional amendment that would allow Congress to enact laws providing for congressional succession modeled after the provision of article II, authorizing Congress to enact laws providing for Presidential succession.

I also propose implementing legislation to authorize each State to craft their own mechanisms for filling vacancies in their congressional delegations, which is modeled after the 17th amendment. In other words, my proposal specifically refrains from choosing sides in this debate, as far as whether the temporary emergency measure be by appointment or by election, leaving that decision up to the States, following the model of the 17th amendment, which of course provides for the election or selection of Senators in the event of vacancy. Forty-eight States provide for temporary appointment by the Governor, but two States provide for special elections. This proposal would give each State the option to choose which procedures they deem most advisable. The proposed constitutional amendment would simply defer the question to Congress, and the implementing legislation would defer the question to the States.

In an age of terrorism and weapons of mass destruction, I believe it is high time to address this need that is all that much more apparent post-9/11 to ensure the continuity of this body and of the entire Congress. In my capacity as chairman of the Constitution Subcommittee of the Senate, the Committee of the Judiciary, I plan to convene hearings next year so we can debate this proposal as soon as possible.

I was not in Washington when the attacks came on September 11. Like so many other Americans, I was at home in Texas, getting ready to go to work when I heard the terrible news, and then was rivetted to the events unfolding on television. But I know for many of my friends and colleagues who were here on that horrific day, they and we all feel a tremendous debt of gratitude to the heroes of flight 93. The brave passengers on that airplane did more than just save the lives of their fellow citizens. Absent their courageous sacrifice, flight 93 could have reached its final destination, perhaps this very building, in an attack that could have eliminated an entire branch of government.

That hallowed ground in Pennsylvania, where flight 93 met its ultimate rest, marks a promise left behind by those courageous heroes, a promise carried on to their children, to their loved ones, and, indeed, to this very Nation.

It is a promise that says that freedom will not end here in the violent acts of evil men. It persists, it endures, and it will not be destroyed.

Even as we dedicate ourselves to the ongoing war on terror at home and abroad, even as we hope and pray that the tragedies of September 11 will never be repeated, we must always remain conscious of our promise as Senators, to serve the people of our States and of our Nation, and to support and defend the Constitution of the United States. It is not every day that you introduce legislation hoping and praying that it will never be necessary, but this legislation is, in a very real sense, urgent and necessary.

We must prepare for all contingencies fulfilling our oaths of office to ensure that this promise—the promise of a free government, a government of laws, not men—shall not perish from the Earth.

I yield the floor.

By Mr. HOLLINGS (for himself, Mr. INOUYE, Mr. ROCKEFELLER, Mr. KERRY, Mr. BREAUX, Mr. DORGAN, and Mr. LAUTENBERG):

S. 1821. A bill to establish a National Space Commission on activities of the United States related to the future of space; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, we have 17 dead astronauts on our plate—3 from Apollo I, all preventable; 7 from the *Challenger*, all preventable; and 7 from the *Columbia*, all preventable.

What we are trying to do on behalf of myself and these several other Senators is get to a good healthy debate on the future of space in the United States and, more particularly, on correcting the safety features. There is a culture there that prevents safety from being adhered to, and, more than anything else, NASA is broke.

What is not understood is that at the present time we are going in all directions. It is like the Navy during World War II: When in danger, when in doubt, run in circles, scream and shout.

We here are saying we ought to take the orbital space station and accelerate it. Others on the other side say no, that is should be abolished. Some say we ought to go to Mars, and others say what we really need is to hire more expert personnel and bring them in. No one is going to leave their job and come work for the NASA endeavor at this particular time until we get a mixture and a program and a policy. That has to come from the President of the United States.

I introduce the National Space Commission Act to address the range of issues that the Columbia Accident Investigation Board—CAIB—identified with the National Aeronautics and Space Administration—NASA—and our space program in general, following the tragic loss of the *Columbia* Space Shuttle and its crew of seven astronauts. This bill authorizes the creation of a National Space Commission appointed by the President, to ensure that the safety reforms and recommendations of the *Columbia* investigation board are fully implemented by NASA. The commission will review and make recommendations regarding NASA's return-to-flight proposals and institutional changes that NASA will need to make to improve safety in the agency and to improve safety of the space shuttle, and other actions to assure future safe transportation to space and to the International Space Station. The commission will also look at the broader question of how the United States is organized for the safety of space flight across civilian, military and commercial sectors. It will begin to build a consensus on a future vision of space exploration that I hope will rekindle enthusiasm for our space program and generate the necessary support in the Congress and the administration for these endeavors.

The Columbia Accident Investigation Board shone a laser-sharp spotlight upon NASA and its program of human space exploration. Their pain-staking work to determine the cause of the loss of the Space Shuttle *Columbia* provides the context and justification for a new national agenda for space, a turning point in the history of space. Though the board stopped short of laying out this new future, its clear expectation is that the President and Congress should take up where the board left off.

> The U.S. civilian space effort has moved forward for more than 30 years without a guiding vision, and none seems imminent . . . Recommending the content of this debate goes well beyond the Board's mandate, but we believe that the White House, Congress, and NASA should honor the memory of Columbia's crew by reflecting on the nation's future in space and the role of new space transportation capabilities in enabling whatever space goals the nation chooses to pursue.
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> Columbia Accident Investigation Board Report, Volume I, August 2003, p. 210

The legislation I am introducing today, the National Space Commission Act, is designed to respond to this challenge. It is a complex challenge, and a complex undertaking, that now lies before the Congress and the Nation. My bill is not intended to supplant, nor substitute for, the President's desire to set a new goal in place for the Human Space Flight Program. But as we have seen in the board's report, merely setting a far-reaching goal into place for

NASA and for the Nation is not enough. It will not resolve the many complex issues raised by Admiral Harold Gehman and the Columbia Accident Investigation Board. No, this report, and these challenges, run deeper than a rousing call for future missions to Mars on the Earth's Moon can resolve. As Admiral Gehman said last week in testimony before the Senate Commerce, Science, and Transportation Committee:

In the course of (our) study, we became convinced how difficult it is to get into and out of low Earth orbit. It is extraordinarily dangerous and very difficult to do . . . We have to do it more safely than 49 out of 50 times, that's not good enough . . . No matter what your vision is for human space flight, whether it's Mars or the L2 or the Moon or whatever it is, it starts in low Earth orbit . . . We need some leadership to say, ''Just getting into and out of low Earth orbit is a goal worthy of itself, without killing a lot of people.'' And that's hard to argue, because it isn't very jazzy.
Hearing on NASA's Future, October 29, 2003

Since the inception of the human space flight program, seventeen astronauts have lost their lives and all were avoidable. In its investigative work, the Columbia Accident Investigation Board reached several fundamental conclusions that went beyond the specific technical and physical causes of the loss of *Columbia*. The Columbia Board found basic flaws in how NASA managers behaved, the belief system that lay behind NASA attitudes and behavior, and NASA's understanding of basic technical and organizational requirements of safety.

The attitudes and decision-making of Shuttle Program managers and engineers during the events leading up to this accident were clearly overconfident and often bureaucratic in nature.
Columbia Accident Investigation Board Report, Volume I, August 2003, p. 177

NASA's bureaucratic culture kept important information from reaching engineers and managers alike. The same NASA whose engineers showed initiative and a solid working knowledge of how to get things done fast had a managerial culture with an allegiance to bureaucracy and cost-efficiency that squelched the engineers' efforts. When it came to NASA managers' own actions, however, a different set of rules prevailed. The Board found that Mission Management Team decision-making operated outside the rules even as it held its engineers to a stifling protocol . . .

Each decision, taken by itself, seemed correct, routine, and indeed, insignificant and unremarkable. Yet, in retrospect, the cumulative effect was stunning.
Ibid, p. 202–203

Most troubling to the Board was the fact that these NASA tendencies were not new but existed in full force at the time of both the *Challenger* and the *Columbia* Shuttle accidents.

The (Rogers) Commission found that NASA's safety system had been silent . . . (denoted by) a lack of problem reporting requirements, inadequate trend analysis, misrepresentation of criticality, and lack of involvement in critical discussions . . .

By the eve of the *Columbia* accident, institutional practices that were in effect at the time of the *Challenger* accident—such as inadequate concern over deviations from expected performance, a silent safety program, and schedule pressure—had returned to NASA.
Ibid, p. 100–101

This ''echo'' between the events eighteen years ago and the present made the loss of *Columbia* and its explanation all the more confounding, because so many who reviewed the agency, its practices, and its culture had sounded an alarm. The fact that these NASA behaviors and beliefs were so enduring that they persisted beyond the stunning loss of the *Challenger* and her crew was all the more startling to the *Columbia* Board. So startling, that the Board found it necessary to offer a blunt and chilling assessment.

If these persistent, systemic flaws are not resolved, the scene is set for another accident.
Ibid, p. 195

The *Columbia* Accident Investigation Board also found that it was not only NASA that was at fault for the loss of *Columbia*. Rather, the Board found that the weaknesses at NASA were just as much a result of the Nation's neglect of its human space flight program.

Post-*Challenger* policy decisions made by the White House, Congress, and NASA leadership resulted in the agency reproducing many of the failings identified by the Rogers Commission. Policy constraints affected the Shuttle Program's organization culture, its structure, and the structure of its safety system.
Ibid, p. 197

The impact of this neglect extended beyond NASA's organizational responses, encompassing broad aspects of planning for NASA's future missions and the development of its technology.

There (has been a) lack, over the past three decades, of any national mandate providing NASA a compelling mission requiring human presence in space . . . (and a) lack of sustained government commitment over the past decade to improving U.S. access to space by developing a second-generation space transportation system.
Ibid, p. 209

It is the view of the Board that previous attempts to develop a replacement vehicle for the aging Shuttle represent a failure of national leadership.
Ibid, p. 211

The bill I am introducing today establishes a permanent National Space Commission to oversee the nation's current and future development and use of space. The commission is established with 12 members, appointed by the President and confirmed by the Senate. Commission members will be leaders chosen from industry, academia, and other professions who have a profound expertise in space flight and safety and have worn the mantle of responsibility and challenge in the development and use of space.

The Commission will be independent of NASA and is authorized to hire a staff to develop the engineering and technical expertise to carry out its work. It will begin its work looking at some of our most vexing current problems raised by the Columbia Board's report and provide the necessary oversight to ensure that the Board's recommendations are implemented in the following areas: (1) the return-to-flight of the Space Shuttle and return to assembling the International Space Station, (2) replacement of the Space Shuttle, and (3) changes to the culture of NASA. We specify a number of detailed questions, criteria, and concerns that the Commission should take up in laying out a near-term path forward for NASA's Human Space Flight program. In making its recommendations, the Commission is directed to consider the safety and dignity of human life as its highest priority.

This specific aspect of the bill is a special clause in my mind, one that is not subject redaction—the United States space flight program must, above all, be an American approach to the future of space flight and, as such, must place the dignity and preservation of human life above all other considerations. This assertion is not meant as an accusation or indictment of NASA—Admiral Gehman made it clear that the fault for the loss of Columbia rests with us all, impressed as we all were with space flight and our accomplishments, and naive about its risks and challenges.

If Shuttle operations came to be viewed as routine, it was, at least in part, thanks to the skill and dedication of those involved in the program. They have made it look easy, though in fact it never was. The Board urges NASA leadership, the architects of U.S. space policy, and the American people to adopt a realistic understanding of the risks and rewards of venturing into space.
Ibid, p.208

For never again should we have to read in a formal accident report of the United States space program:

Managers failed to fulfill the implicit contract to do whatever is possible to ensure the safety of the crew.
Ibid, p.170

Never again.

In each of these assessments of current issues in NASA's Human Space Flight Program, we intend the commission to provide the President, the Congress, and NASA its informed judgment and advice, so that we can expeditiously return the program to a condition of stability and adopt a NASA culture of safety as soon as possible.

The second aspect of the bill is to set a long-range view of our Nation's participation in and development of space.

Concurrent with the work on current issues at NASA, but due by late 2005, are two ground-breaking studies. These studies are intended to go beyond defining a destination for humans in space and to address broader questions about the goals and methods we use, with a specific concern for public and private utilization and investment in space. Though we have learned that the economics of space flight should never again take precedence over its safety, we also know that, in the past, its cost has driven us down pathways that have not resulted in success.

In all three (Shuttle replacement) projects—National Aerospace Plane, X–33,

and X–34—national leaders had set ambitious goals in response to NASA's ambitious proposals. The programs relied on the invention of revolutionary technology, had run into major technical problems, and had been denied the funds needed to overcome these problems—assuming they could be solved. NASA had spent nearly 15 years and several billion dollars, and yet had made no meaningful progress toward a Space Shuttle replacement.
Ibid, p. 111

Continued U.S. leadership in space is an important national objective. That leadership depends on a willingness to pay the costs of achieving it.
Ibid, p. 211

First, the commission is chartered to provide a sweeping assessment of the future of space. Included in that assessment is a review of United States capabilities, goals, and uses for space, including the state of our Nation's investment in launch capabilities, how space could benefit State and local governments and regions, and the role of non-governmental, private organizations in the promotion of our space endeavors. The review will also take up the difficult issues related to public and private investment: the role of private institutions in the development and use of space and the business conditions they must meet; how Federal Government programs in space science, exploration, national security, and public safety support or limit the commercial development of space; and how space contributes to the terrestrial economy of the United States.

Given the high cost of space, and the even higher costs of space that the Nation is certain to experience in the near and long-term future, resolution of these questions of private versus public participation and promotion of the development of space is a necessary part of the examination of possible technological and economic futures for the space sector of the economy.

Second, and most importantly, the National Space Commission Act is directed to perform a comprehensive assessment and inventorying of the Nation's programs and practices related to the conduct and safety of space flight. This study will assess the state of the Nation's acceptance, approval, and commercial licensing practices as they relate to the conduct of civil, commercial, and military space flight and explore how space launch and high-risk space operations are conducted across each of these sectors. This study is intended to result in a series of recommendations about the future management of space launch and high-risk orbital and sub-orbital space operations in order to achieve the highest level of safety and management of these risks. To those who question the importance of establishing an authority independent of NASA to assess these provisions, the Columbia Accident Investigation board stated the case most convincingly:

(NASA) cultural norms tend to be fairly resilient . . . The norms bounce back into shape after being stretched or bent. Beliefs held in common throughout the organization resist alteration.
Ibid, p. 101

Within NASA, the cultural impediments to safe and effective Shuttle operations are real and substantial . . . Leadership will have to rid the system of practices and patterns that have been validated simply because they have been around so long . . . These recommendations will be difficult to initiate, and they will encounter some degree of institutional resistance.
Ibid. p. 209

NASA's blind spot is it believes it has a strong safety culture . . . Twice in NASA history, the agency embarked on a slippery slope that resulted in catastrophe . . . A safety team must have equal and independent representation so that managers are not again lulled into complacency by shifting definitions of risk.
Ibid, p. 203

Since NASA is an independent agency answerable only to the White House and Congress, the ultimate responsibility for enforcement of the recommended corrective actions must reside with those governmental authorities.
Ibid, p. 209

The National Space Commission is established on a permanent basis to maintain oversight of the implementation of space flight across all sectors of industry and government and vigilance in the management of safety in all United States high-risk space operations.

Let me reiterate. Merely announcing a bold new plan to travel to the Earth's Moon or to Mars is not sufficient. If the loss of the Space Shuttle *Columbia* merely results in that proposal, we will have failed the memory of our brave astronauts who lost their lives aboard both *Challenger* and *Columbia*. And we will have failed our own future. Unfortunately, our current charge is more difficult. We must challenge our assumptions, question our decisions and designs, revisit our approaches, and rethink our Nation's ambitions and goals for space. We must submit ourselves to the discipline to begin anew. The future of space and our Nation's reputation that we carry into history rests in the balance.

I ask unanimous consent that the text of the bill and an article from the New York Times be printed in the RECORD.

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

S. 1821

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 ''National Space Commission Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Since the enactment of the National Aeronautics and Space Act of 1958, space has become increasingly important for science, public safety, national defense and intelligence gathering, commercial telecommunications and other Earth applications, and the advancement of international relations tied to the use of space for peaceful purposes.

(2) The recent loss of the Space Shuttle Columbia highlighted the true condition of space flight: that it is highly prone to risk, fundamentally challenges the laws of nature, is extremely unforgiving of lapses in judgment, and demands the utmost consideration of safety and the dignity of human life.

(3) The Columbia Accident Investigation Board expressed extreme misgivings about the management and technical culture of the National Aeronautics and Space Administration. In addition to prescribing a specific menu of recommendations, the Board expressed concerns that the agency may not be able to achieve its own reform, stating that, ''Based on NASA's history of ignoring external recommendations, or making improvements that atrophy with time, the Board has no confidence that the Space Shuttle can be safely operated for more than a few years based solely on renewed post-accident vigilance''.

(4) Today, American astronauts and International Partner cosmonauts reside in space with limited means of safe rescue and support. The Nation remains dependent on the Space Shuttle as the sole means of International Space Station assembly and human operation in space for the foreseeable future. And the Nation faces a period of greatly increased expense merely to sustain current space operations.

(5) Even if new vehicle technologies were available, it is a matter of public discussion whether the historic ideals and prospects for the human exploration and development of space still guide our national program in space or whether the role and purpose of human presence in space has become ambiguous in light of other potential purposes for and uses of space.

(6) Meanwhile, our national program in space suffers from an aging space workforce and aging, sometimes dilapidated space facilities and systems, an atrophying of expertise, and a general lack of renewal of purposes, objectives, and methods. Commercial markets requiring space launch that are crucial to establishing the firm economic basis for the development of space and for the commercial development of space technology have not emerged but have withered. Although the use of space for science and national security purposes is expanding, the economic and commercial development of space continues to be fledgling. Although the Nation stands on the doorstep of the permanent human habitation of space, a mature agenda for safe, economic operation in space necessary to broaden the Nation's participation and interest in the peaceful development of space is lacking.

(7) The Nation would benefit by establishing a permanent National Space Commission to advise the President and Congress on issues related to the reflight and future use of the Space Shuttle and on the possibilities for the future development and use of space, and to recommend measures the Nation should take to secure the safety of future space flight.

SEC. 3. NATIONAL SPACE COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as National Space Commission.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall have 12 Members, who shall be appointed by the President by and with the advice and consent of the Senate.

(2) TERM.—Members of the Commission shall serve for a term of 5 years and shall be eligible for reappointment, except that the members initially appointed shall be appointed for terms of 3 years each.

(3) QUALIFICATIONS.—Members shall be selected from among individuals—

(A) with national reputations in the conduct of space flight and the development of space systems and technology;

(B) who are representative of the many views about the future of space and the economic and technical prospects for its use and development; and

(C) who are or have been employed in space-related activities, including—

(i) leaders of aerospace companies and other industries involved in the development and use of space;

(ii) professionals who have performed in significant capacities in the management of space programs or ventures; and

(iii) distinguished members of academia.

(4) VACANCIES.—Any vacancy occurring other than by the expiration of a term shall be filled in a manner that best replaces the qualifications of the person vacating the position, unless a person with different qualifications is to be nominated and appointed for the purpose of changing or re-directing the activities or objectives of the Commission.

(5) STATUS AS SPECIAL GOVERNMENT EMPLOYEES.—Members of the Commission are deemed to be special Government employees (as defined in section 202(a) of title 18, United States Code) without regard to the number of days of service during any 365–day period while engaged in the business of the Commission.

(6) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business.

(c) CHAIR.—The President shall designate an individual to serve as Chair of the Commission for a term of 3 years, except that until the Commission has been in operation for 3 full years the term of the individual so designated shall be 1 year. Any individual designated as chair is eligible for redesignation as chair.

(d) MEETINGS—The Commission shall meet at the call of the Chair. A majority of the members shall constitute a quorum, but a lesser number may conduct the business of the Commission.

(e) STAFF.—

(1) IN GENERAL.—The Commission shall appoint and fix the compensation (in accordance with the guidelines prescribed by the Administrator of General Services under section 7(d) of the Federal Advisory Committee Act) of staff comprising—

(A) staff selected by the Chair as permanent staff of the Commission; and

(B) staff selected by each Member as staff of the Member for the duration of the Member's appointment to the Commission.

(2) QUALIFICATIONS.—Staff shall be selected from among employees of business and professional firms in the business of the development of, manufacture and operation for, or use of space, individuals with entrepreneurial experience, employees of research centers and national laboratories, scholars, professionals, and academics whose work and insights are such that their work in support of the Commission will enhance the Nation's ability to guide and direct the space program.

(3) DETAILING OF FEDERAL EMPLOYEES.—At the request of the Commission, the head of a Federal department or agency may assign an employee to serve as a member of the Commission staff while employed by the United States.

(4) EXPERTS AND CONSULTANTS.—

(A) IN GENERAL.—The Commission may obtain the services of experts and consultants in the private and nonprofit sectors in accordance with section 3109 of title 5, United States Code.

(B) AVAILABLE ARRANGEMENTS.—In obtaining any service described in subparagraph (A), the Commission may use any available grant, contract, cooperative agreement, or other arrangement authorized by law.

(C) NOTICE.—The Commission shall give public notice of any such grant, contract, cooperative agreement, or other arrangement before making any such grant or executing any such contract, cooperative agreement, or other arrangement.

SEC. 4. GENERAL DUTIES.

(a) IN GENERAL.—The Commission shall—

(1) provide advice and counsel to the President and the Congress of the United States on matters related to the future development and use of space;

(2) address questions of special merit posed by the President or by the Congress to be addressed by the Commission,

(3) conduct studies, assessments, and other methods of evaluation, including market, business, and financial assessments, necessary to reach conclusions and to formulate recommendations about the future of space;

(4) convene and establish public forums, reviews, and other means of public discourse for purposes of gathering and distributing information,facts, opinions, and data related to the future of space;

(5) confer With Federal, State, and local governments and regional organizations, United States corporations, laboratories, research centers and universities, and appropriate departments, agencies, and enterprises of other Nations on questions related to the development and use of space;

(6) make other recommendations as necessary to achieve the expanded development and use of space, including assessments of the status, focus, and effectiveness of government and industry pro grams and efforts designed to achieve that purpose;

(7) propose and establish a national approach for the safety of space flight in support of commercial, military and civilian space and suborbital space programs, including issues related to the commercial licensing and operation of space vehicles, the regulation, management, and control of space flight parts, components, systems, and facilities, and the training and advancement of government and industry personnel necessary, to achieve safe space flight; and

(8) advise the President and the Congress on any changes in Federal law or international agreements necessary to achieve the recommendations, solutions, and outcomes proposed by the Commission.

(b) METHODS OF SPACE FLIGHT.—In carrying out its duties under subsection (a), the Commission shall consider the potential for the future use of space by human and robotic means and the likely contribution of both to the long-term development and use of space.

(c) DISCLAIMER.—Nothing in this Act is intended—

(1) to prejudice the disposition, or outcome of decisions related to the ownership or institutional operation and support, of Federal laboratories, centers, or bases; or

(2) to preclude the use of special classes, de signs, or certification rules and standards peculiar to the use of military space vehicles.

SEC. 5. SPECIFIC REPORTS AND ADVISORY ACTIVITIES.

(a) SPACE SHUTTLE; INTERNATIONAL SPACE STATION.—

(1) IN GENERAL.—The Commission shall evaluate the findings, recommendations, and observations of the Columbia Accident Investigation Board and the activities of the National Aeronautics and Space Administration to respond to the Board's report, in eluding issues related to the re-flight of the Space Shuttle, alternative near-term crewed vehicle options, and changes in the agency's organization, management, technical administration, and conduct of safety, operations and engineering, and training, and other changes intended to ensure the safety of space operations and the dignity of human life.

(2) CRITERIA FOR RETURN TO OPERATIONS.—The Commission shall make recommendations to the President and the Congress concerning—

(A) any additional criteria and conditions that the Commission considers critical for the safe operation of the Space Shuttle that war rant demonstration during the initial and subsequent return-to-flight test and demonstration missions; and

(B) longer-term criteria and conditions necessary for a return to sustained operation and management of human space flight following the initial Space Shuttle re-flight and test and demonstration flights.

(3) EVALUATION OF HUMAN SPACE FLIGHT MANAGEMENT REFORMS.— Commission shall assess—

(A) the capability of the National Aeronautic and Space Administration to resolve all findings, recommendations, and observations of the Columbia Accident Investigation Board to the Commission's satisfaction, including management and technical reforms necessary to achieve safe space flight;

(B) the relationship of the National Aeronautic and Space Administration to its Industrial, scientific, and commercial partners and the proper role of each party in the selection, design, development, and operation of high risk space flight systems; and

(C) additional workforce, organization, and management reforms that may be required to enhance further the ability of the National Aeronautic and Space Administration, its partners, or other agencies of the United States to achieve safety of human space flight.

(4) CONSIDERATION OF THE INTERNATIONAL SPACE STATION AND ALTERNATIVE SPACE TRANSPORTATION SOLUTIONS.—In making its evaluation and recommendations under this subsection the Commission shall consider—

(A) the condition of the International

Space Station along with the further risk to or security of human life resulting from any decision to accelerate or slow the return to assembly and operation of the International Space Station and sustained human space flight operations;

(B) alternative space vehicle and crewing options that meet the highest achievable stand and of crew safety and security onboard the international Space Station in the shortest amount of time;

(C) the modification or purchase of existing space vehicles necessary to achieve a higher standard of heightened crew safety or enhanced ability to conduct safe human space flight operations;

(D) the acquisition or development of crewed vehicles on a schedule significantly more aggressive that the proposed schedule of the Orbital Space Plane; and

(E) the contribution of any proposed vehicle options to purposes in space other than servicing and support of the International Space Station.

(4) REPORTS TO CONGRESS.—

(A) ALTERNATIVE MEANS OF CREW TRANSFER.—Within 3 months after the full Commission has taken office, it shall report to the President and the Congress on crewing options for the Space Shuttle during the period of assembly of the International Space Station, alternative interim use of available space vehicles for these operations, and alternative or accelerated United States crewed vehicle modification or development options in lieu of or in addition to the proposed Orbital Space Plane program.

(B) SPACE SHUTTLE RETURN-TO-FLIGHT.—

(i) PREFLIGHT ADVICE.—On a continuous basis from the initial return-to-flight mission of the Space Shuttle through the final such mission, the Commission shall advise the Administrator, the President, and the Congress of the results of its review and assessment of the Space Shuttle return-to-flight, including any additional criteria the

Commission establishes for return-to-flight missions.

(ii) FINAL PREFLIGHT RECOMMENDATION.—Within 60 days before the planned date for the first Space Shuttle return-to-flight, and within 30 days before each subsequent test or demonstration flight of the Space Shuttle, the Commission shall transmit its final recommendations for return-to-flight to the Administrator, the President, and the Congress. In addition, the Commission shall attach to each such transmittal to the President and the Congress a record of its recommendations to the Administrator and a description of the Administrator's responses and actions in response to those recommendations.

(iii) POST-RESUMPTION ANALYSIS.—Within 6 months after the first successful return-to-flight mission of the Space Shuttle, the Commission shall submit a report to the President and the Congress summarizing the Commission's and the National Aeronautics and Space Administration's work on the reflight of the Space Shuttle and addressing further changes that should be accomplished to ensure safe continuous operation of the Space Shuttle and the International Space Station. The report shall address the status of organizational, management, and technical changes in the National Aeronautics and Space Administration, their effectiveness in resolving concerns about the safety, operations, engineering, and management cultures of the agency, and their effectiveness in resolving concerns and risks associated with a return-to-normal operations for the Space Shuttle and the International Space Station.

(b) FUTURE LAUNCH TECHNOLOGY AND THE DEVELOPMENT OF AND USES FOR SPACE.—

(1) IN GENERAL.—The Commission shall—

(A) advise the President and the Congress on the state of the Nation's investment in and development of advanced space launch technology, including advanced space lift propulsion systems;

(B) make recommendations on steps necessary to accelerate the development of technologies and capabilities to advance the economy of space flight and the prospect for the expanded use of space for economic, commercial, and industrial purposes;

(C) assess how State and local governments and regional authorities might benefit from the expanded use of space;

(D) evaluate the ability of the Nation's private research centers, laboratories, and private and public universities to contribute to and benefit from the expanded development and use of space;

(E) assess the future use of space for exploration, science, research, national security, and public safety ensure that such uses are consistent with the long-term economic development of space, and are designed to enhance the industrial and commercial capabilities of space flight whenever possible; and

(F) make detailed recommendations related to the use of budget, regulatory, and licensing powers and authorities of the United States to enhance, to better plan for, and to coordinate the activities of the United States related to the development and use of space.

(2) REPORT TO CONGRESS.—By September 1, 2005 the Commission shall transmit to the Congress a report that—

(A) summarizes its recommendations for future national goals for the development and use of space;

(B) provides a blueprint of capabilities that could and should be achieved by the end of the present decade, by 2015, and by 2025 in order to better position the Nation to achieve those goals; and

(C) addresses potential markets and uses for space and the means of financing the development and use of space.

(c) NATIONAL APPROACH TO THE SAFETY OF SPACE FLIGHT.—

(1) IN GENERAL.—The Commission shall conduct a review and assessment of the Nation's program of safety in space flight as conducted by the United States, the commercial space industry, and other private parties.

(2) CONTENTS.—The review and assessment shall—

(A) assess the current use of inspection, acceptance, and commercial licensing to certify the safety, flight worthiness, and flight readiness of space vehicles and their associated launch and ground control facilities;

(B) evaluate and compare current space launch and flight operations practices, including the promulgation of flight rules and over-flight plans of populated areas;

(C) assess and compare how Federal agencies, private launch operators, and commercial industry make determinations of flight worthiness and ground and flight system readiness, including the use of tests, analyses, demonstrations, and other means whereby the operational readiness of space vehicles, crew, and ground systems are verified to be ready for launch and operation;

(D) address current government and industry practices for conducting and coordinating design and decision rules within and among space management agencies, firms, organizations, and ground control and flight operations management centers before, during, and after flight; and

(E) assess practices and conditions related to the acquisition and sale of parts, components, systems, services, and capabilities among Industry prime and supplier contractors and the Federal Government, including outsourcing, sole source, and other competitive and non-competitive forms of relationship, and their impact upon safety.

(3) REPORT TO CONGRESS.—No later than September 1, 2005, the Commission shall transmit to the Congress a report that—

(A) summarizes the results of the review and assessment required by paragraph (1); and

(B) makes recommendations for a National program of—

(i) management of safe commercial, civil, and military space flight; and

(ii) regulation of the design, certification, or licensing of space flight systems for launch and landing over the United States, or for orbital or suborbital operation using crew or passengers aboard commercial or civil vehicles licensed or operated by the United States.

(c) ANNUAL REPORT.—In addition to other reports required or permitted under this Act, within 60 days after the end of each fiscal year, the Commission shall provide an annual report to the Congress that—

(1) summarizes its activities, reports, findings, conclusions, and recommendations during that fiscal year; and

(2) contains a year-end financial statement of the Commission's operations, including a detailed statement of the purposes for which funds have been expended by the Commission.

(d) OTHER REPORTS.—The Commission may also report to the President and the Congress on other space related questions and issues raised by the Congress, the President, or on its own initiative.

SEC. 6. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the National Aeronautics and Space Administration.

(2) COMMISSION.—The term ''Commission'' means the National Space Commission established by section 3.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out its duties under this Act.

[From the New York Times, Nov. 5, 2003]

NASA SUPPORTERS SEEK NATIONAL DEBATE ON SPACE GOALS

(By Matthew L. Wald)

WASHINGTON, NOV. 4—After the shuttle Columbia disintegrated on Feb. 1, many supporters of NASA expected a renewed national debate on the goals of the space program. But nine months later, supporters of space exploration and the science program say that the subject appears to be in danger of slipping below the national horizon.

''There have been fits and starts of a national debate,'' said Senator Ernest F. Hollings of South Carolina, the ranking Democrat on the Commerce Committee, which has jurisdiction over NASA.

Mr. Hollings plans to introduce a bill on Wednesday to create a national space commission to oversee NASA's progress in fixing the hardware and the ''broken safety culture'' identified in the Columbia investigation, and to help set goals.

Senator Hollings' bill, which has six sponsors, all Democrats, joins a varied flock of measures on the House side, none likely to see major action this year.

''It's not commanding anywhere near the level of attention that the Challenger did,'' said a House staff aide who was on Capitol Hill at the time of that accident, in 1986.

The war in Iraq helps explain the difference, the aide added, but beyond that, ''space is more humdrum now,'' even when astronauts die.

Sean O'Keefe, the NASA administrator, said in testimony last week that the Bush administration would produce a new plan for space, including a replacement vehicle for the shuttle, now more than 20 years old. He said Congress should wait until that plan is released, but he refused to predict how long that would take.

The leisurely pace contrasts with the push by the Columbia Accident Investigation Board to complete its work over the summer so members of Congress could digest the report during their recess and be ready for a vigorous debate when they returned.

The most prominent feature of the debate so far has been a skirmish between NASA and the chairman of the House Science Committee and the ranking Democrat on the panel. The two lawmakers, Representatives Sherwood Boehlert, Republican of New York, and Ralph M. Hall, Democrat of Texas, suggested that NASA hold off on development of an orbital space plane, a crew-transport vehicle that could replace the shuttle, until an ''overall vision for the human spaceflight program'' emerges.

Mr. Boehlert said at a hearing on Oct. 16 that NASA would be successful ''only if it's pursuing a clear and broad national consensus with sustained and adequate funding,'' and he added, ''That hasn't been the case in three decades.''

Mr. O'Keefe, responding to the letter on the orbital space plane, argued that the project was still at a conceptual stage and should proceed.

Beyond establishing a commission to oversee NASA's progress, the Senate bill to be introduced on Wednesday seeks ''to address broader questions about the goals and methods we use,'' with specific concern for public and private investment in spaceflight and use of it. In remarks prepared for delivery on the Senate floor on Wednesday, Mr. Hollings argues that while economics of spaceflight should not take precedence over safety, ''we also know that, in the past, its cost has driven us down pathways that have not resulted in success.''

On the House side, Representative Bart Gordon, Democrat of Tennessee, introduced a bill that would have future accidents investigated by a presidential commission independent of NASA. The Columbia Accident Investigation Board began under a charter written after the Challenger accident, with members selected according to positions they held in the Air Force, Federal Aviation Administration and other agencies.

Mr. Gordon's bill was approved by a subcommittee but has gone no further.

Mr. Hall, the ranking Democrat on the House Science Committee, introduced a bill on Oct. 1, with 24 sponsors, including 3 Republicans, that would have the National Academy of Sciences and the National Academy of Engineering assemble an oversight committee, as was done after the Challenger accident. NASA has generally opposed outside oversight.

Mr. Hall also introduced an amendment to an appropriations bill that would mandate a $15 million study of shuttle crew escape, to be performed by NASA. The House passed the bill, and it is now in a conference committee.

Representative Nick Lampson, Democrat of Texas, has introduced a measure that would require NASA to develop reusable spaceships that could sit for long periods balanced between the gravitational pull of Earth and the Sun or the Moon; ships that could reach an asteroid; and, ultimately, ones that could reach Mars. The bill has 24 sponsors but has not yet been taken up in committee.

Mr. Lampson said in a telephone interview that he was glad that Senator Hollings was focused on the problem, but he added, ''we don't need a commission, we need a commitment for NASA.''

''If the goals get set, we will re-energize the academic community, and the space industrial community,'' he said, predicting that missions to Mars would ''do a great deal to move this country forward.''

Mr. Hollings, in a separate interview, said, ''I want to go to Mars, too, but unless you get the culture changed and fixed, we're not going anywhere.''

By Mr. AKAKA (for himself, Mr. FITZGERALD, and Mr. LIEBERMAN):

S. 1822. A bill to require disclosure of financial relationships between brokers and mutual fund companies and of certain brokerage commissions paid by mutual fund companies; to the Committee on Banking, Housing, and Urban Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce legislation intended to restore public trust in mutual funds, the Mutual Fund Transparency Act of 2003. I thank Senator FITZGERALD and Senator LIEBERMAN for cosponsoring my bill. I greatly appreciate the efforts of Senator FITZGERALD to address this issue. Our Financial Management, Budget, and International Security Subcommittee held a very thorough hearing on mutual fund trading abuses on Monday. I applaud the efforts of Representative RICHARD BAKER for his leadership and his efforts to improve mutual fund governance. I also commend the efforts of New York Attorney General Eliot Spitzer and the Secretary of Massachusetts William Galvin for their efforts to pursue individuals that have harmed mutual fund investors.

Mr. President, 95 million people have placed a significant portion of their future financial security into mutual funds. Mutual funds provide middle-income Americans, blue and white collar workers and their families, with an investment vehicle that offers diversification and professional money management. Mutual funds are what average investors rely on for retirement, savings for children's college education, or other financial goals and dreams.

My legislation will bring about structural reform of mutual fund governance and increase disclosures in order to provide useful and relevant information to mutual fund investors. I ask unanimous consent that a letter of support for my bill from the Consumer Federation of America, Fund Democracy, Consumer Action, U.S. Public Interest Research Group, and Consumers Union be printed in the RECORD.

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

CONSUMER FEDERATION OF AMERICA,
FUND DEMOCRACY, INC., CONSUMER ACTION, U.S. PUBLIC INTEREST RESEARCH GROUP, CONSUMERS UNION,
October 31, 2003.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: We are writing to express our enthusiastic support for your draft legislation to increase the transparency of mutual disclosures and enhance the independence of fund oversight. Over the last two decades, mutual funds have become firmly established as average Americans' investment vehicle of choice, and investors have for the most part benefitted greatly from the ability mutual funds have offered even those of modest means to diversify their portfolios and obtain professional management. However, fund rules in some areas have not kept pace with industry practices, and the recent scandals embroiling the mutual fund industry have raised serious questions about the quality of corporate governance in this industry.

Given the importance of mutual funds in the financial portfolios of average Americans and the heavy reliance of the least sophisticated investors on these investment vehicles, we applaud your efforts to address key weaknesses in the regulatory structure for mutual funds. Your proposed reforms to improve disclosures about fund costs and strengthen the independence of mutual fund boards, if adopted, should help the fund industry to regain the investor trust that has been the key to its success over the years but has been so severely undermined by recent revelations.

1. We support requiring disclosure of broker compensation for mutual fund transactions

The legislation would require disclosure of the compensation brokers receive for selling funds. While funds are currently required to disclose the existence of such payments in fund prospectuses, the actual amount of the broker's compensation for a particular mutual fund transaction does not currently have to be disclosed. This from of compensation creates a conflict of interest between the broker, who may be inclined to recommend the fund that offers him or her the highest compensation, and the investor, whose interest is in obtaining the highest quality fund at the lowest cost. By requiring timely disclosure to investors of the actual dollar amount of these commissions, your bill should help to increase investors' awareness of the existence and extent of this conflict of interest and its potential to induce their broker to place his or her interests ahead of theirs.

Ample evidence that brokers do not always put investors' interests first can be found in the allegations of improper sale of fund B shares at some fund companies. In addition, a recent Consumer Federation of America-Fund Democracy study of excess costs paid by investors in S&P 500 Index funds found that many of the funds with unjustifiably high expense ratios were funds that brokers sold on commission. Since costs subtract directly from fund performance, investors in these funds end up paying a premium for sub-par performance. Had these investors been made aware of the often substantial payments their brokers received on the sale, they might have been encouraged to look more closely at whether the fund or share type being sold was really the best for them.

2. We support requiring improved disclosure of portfolio transaction costs

The legislation would also require mutual funds to disclosure in the prospectus the brokerage commissions they pay on portfolio transactions and to include this cost in the fund expense ratio. Portfolio transaction costs vary greatly among funds and can be the single largest fund expense, exceeding all other fund expenses combined. These costs are not, however, currently included in fee information provided in the prospectus. The only public disclosure of portfolio transaction costs is a statement of the dollar amount of the fund's commissions in the Statement of Additional Information, a document never reviewed by the vast majority of mutual fund investors.

Fuller disclosure of portfolio transaction costs would help investors to hold fund advisers accountable for their trading practices. It also would provide a collateral benefit in connection with funds' soft dollar practices. Commissions paid by funds typically pay for both execution and research services. Since soft dollars pay for research that fund advisers would otherwise have to pay for themselves, this creates a significant conflict of interest for fund advisers. Requiring brokerage commission cost disclosure would subject these fund expenditures, including expenditures on soft dollar services, to market forces, and in the process provide a practical solution to the problem of regulating soft dollar practices.

3. We support reforms to enhance the independence of mutual fund boards.

The legislation contains a number of provisions to strengthen the independence of fund boards. It would require that 75 percent of board members, including the board chairman, be independent. It would substantially strengthen the definition of independent director by excluding individuals who had served as directors, officers, or employees within the past 10 years of the fund's manager, principal underwriter, or other significant service provider. It would delegate selection of new independent directors exclusively to existing independent directors. And it would establish qualification standards for board members that must be publicly disclosed.

The recent investigation into market timing and late trading at certain mutual funds has raised serious questions about the quality of oversight provided by fund boards. Of particular concern are the allegations that some Putnam fund managers and the CEO of the Strong fund family were timing their own funds—essentially picking the pockets of their own shareholders to the tune of several hundred thousand dollars in each instance. This is an unconscionable violation

of these fund managers' fiduciary duty to their shareholders. It is also strong evidence of the need to end the domination of fund boards by the fund manager. Increasing the representation of independent members on boards, making sure that independent members are truly independent, and ensuring that the boards are led by independent members should go a long way toward advancing that goal.

4. Other bill provisions would also benefit investors

The recent mutual fund scandals are not just a corporate governance failure—though they certainly are that. They are also a regulatory failure. The fact is that the SEC was apparently aware of problems related to market timing for years and had drifted along without doing anything about it. Given the lack of clear direction from the SEC, it is hardly surprising that fund boards failed to closely supervise the trading practices at funds they oversaw. Your bill offers an innovative approach to enhancing the quality of fund board oversight. It would direct the SEC to study the benefits of creating a Mutual Fund Oversight Board, generally modeled after the Public Company Accounting Oversight Board, with authority to examine and bring enforcement actions against mutual fund boards of directors. Under this approach, the SEC would retain responsibility for direct oversight of investment adviser, but that responsibility would be supplemented by the new independent agency's supervision of fund boards. We believe this approach is well worth studying.

We also support the bill's provisions requiring disclosure of portfolio managers' compensation and ownership of fund shares (something that might have discouraged market timing by fund managers), as well as its proposed GAO study of mutual fund advertising practices and SEC study of financial literacy. Such a study should look at innovative disclosure methods designed to reach unsophisticated investors—those who fail to take costs into account, for example—with information they understand and act on.

CONCLUSION

Recent events have provided a rude awakening to those who have long trusted mutual funds as the one place where the needs of average investors are generally well protected. Your bill offers a reasonable approach—one that recognizes the continued benefits of mutual fund investing for millions of Americans but also recognizes that reforms are needed to restore investor confidence in the integrity of this industry. Please let us know what we can do to assist in its passage.

Respectfully submitted,

BARBARA ROPER,
Director of Investor Protection, Consumer Federation of America.
MERCER BULLARD,
Executive Director, Fund Democracy.
KENNETH MCELDOWNEY,
Executive Director, Consumer Action.
EDMUND MIERZWINSKI,
Consumer Program Director, U.S. Public Interest Research Group.
SALLY GREENBERG,
Senior Counsel, Consumers Union.

Mr. AKAKA. I also ask unanimous consent that a letter of support for the legislation from AARP be printed in the RECORD.

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

AARP,
Washington, DC, November 4, 2003.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: AARP supports your effort to improve investor awareness of mutual fund costs, and to improve the independent oversight and governance functions of fund boards of directors. The legislation you have introduced, ''the Mutual Fund Transparency Act of 2003,'' would put into effect an overdue upgrade in investor protection for the ordinary saver-investor. These reforms are already warranted by the continuing evolution in market practices and the growth in market choices. They are now more urgently required.

Mounting allegations of illegal—at best unethical—practices by mutual fund management companies, executives and brokers highlight the need for prompt action. We are concerned that lay investor confidence in the mutual fund industry not be allowed to deteriorate further—specifically in its ability to reliably provide fairly priced benefits of investment diversification and expert management.

With regard to initiatives designed to increase fund transparency, we strongly support the bill's provisions to require that: fees be disclosed in dollar amounts; fee disclosures incorporate all fees, including portfolio transaction costs; fee disclosures identify all distribution expenses; and compensation paid to portfolio managers and retail brokers be fully disclosed.

While greater transparency is essential to fair competition among funds for investors, we believe it does not provide a sufficient check on the cost of fund governance. Mutual funds allow investors to share the costs of professional money managers—who under the 1940 Investment Company Act are called ''advisers.'' However, most funds are not established by investors but rather are incorporated by advisory firms, who then contractually provide research, trading, money management and customer support services, and also have some representation on the fund's board. The advisory firms have their own corporate charters and are accountable to their own boards of directors, posing—as we are seeing—a range of potential conflicts of interest in the costs of services provided to the fund.

We support the provisions in the proposal to strengthen the role and independence of boards of directors, which should reduce potential conflicts of interest. Specifically, we support the requirement that: a super-majority (i.e., two-thirds to three-fourths) of fund board members be independent; the board chairman be selected from among the independent members; and the independent directors be responsible for establishing and disclosing the qualification standards of independence, and for nominating and selecting all subsequent independent board members.

We also see merit in the bill's requirements for three separate studies of investor financial literacy, the value of creating a mutual fund oversight board, and mutual fund advertising.

The importance of the mutual fund market as a critical component of the economic security of all Americans—especially order persons—should not be underestimated. Similar—although not identical—legislation (H.R. 2420) is pending before the House financial Services Committee. We look forward to working with you and with the other members of the Senate to enact this measured and important piece of investor protection legislation. Please feel free to contact me, or have your staff call Roy Green of our Federal Affair staff at (202) 434–3800, if you have any questions about our views.

Sincerely,

DAVID CERTNER,
Director, Federal Affairs.

Mr. AKAKA. Mr. President, recent revelations of widespread market-timing and late-trading abuses demonstrate the failures of mutual fund boards of directors to fulfill their fiduciary obligations to shareholders. The activities of Canary Capital Partners and Putnam Investments are two deeply troubling examples. However, it is likely that the trading abuses are much more routine. At our hearing, Mr. Stephen Cutler, Director, Division of Enforcement, Securities and Exchange Commission, SEC, testified that preliminary results of an SEC survey show that about ''50 percent of responding fund groups appear to have one or more arrangements with certain shareholders that allow these shareholders to engage in market timing.'' This statistic is just one example of mutual funds having different sets of rules for large and small investors. These differing rules allow the larger investors to profit at the expense of average, ordinary investors who are working toward their long-term financial goals.

The abuses that have been brought to our attention make it clear that the boards of mutual fund companies are not providing sufficient oversight. To be more effective, the boards must be strengthened and more independent. Investment company boards should be required to have an independent chairman, and independent directors must have a dominant presence on the board. My bill strengthens the definition of who is considered to be an independent director. It also requires that mutual fund company boards have 75 percent of their members considered to be independent. To be considered independent, shareholders would have to approve them. My legislation also prohibits the board from making decisions that require a vote of a non-independent director. In addition, a committee of independent members would be responsible for nominating members and adopting qualification standards for board membership. These steps are necessary to add much needed protections to strengthen the ability of mutual fund boards to detect and prevent abuses of the trust of shareholders.

In addition, this bill requires the SEC to develop rules to disclose the compensation of individuals employed by the investment advisor of the company to manage the portfolio of the company and their ownership interest in the company. Consumers deserve to know relevant information about the portfolio manager's incentives and whether they are properly aligned with those of their shareholders. Again, I am referring to ordinary American families patiently working toward their long-term financial goals.

The strengthening of boards to protect shareholders is only one important aspect of my bill. My bill will also increase the transparency of often complex financial relationships between brokers and mutual funds in ways that are meaningful and easy to understand for investors.

Shelf-space payments and revenue-sharing agreements between mutual fund companies and brokers present conflicts of interest that must be addressed. Brokers also compile preferred lists which highlight certain funds, which typically generate more investment than those left off the list. It is not clear to investors that the mutual fund company also may pay a percentage of sales and/or an annual fee on the fund assets held by the broker to obtain a place on the preferred list or to have their shares sold by the broker.

Shelf-space and revenue sharing agreements present risk to investors. Brokers have conflicts of interest, some of which are unavoidable, but these need to be disclosed to investors. Without such disclosure, investors cannot make informed financial decisions. Investors may believe that brokers are recommending funds based on the expectation for solid returns or low volatility, but the broker's recommendation may be influenced by hidden payments.

The SEC has exempted mutual funds from Rule 10b–10, which requires that confirmation notices of securities transactions be sent to customers to indicate how the broker was compensated in the trade. Mutual funds should be subject to this confirmation notice requirement. My legislation will require brokers to disclose in writing, to those who purchase mutual fund company shares, the amount of compensation the broker will receive due to the transaction, instead of simply providing a prospectus. The prospectus fails to include the detailed relevant information that investors need to make informed decisions. Mutual fund investors deserve to know how their broker is being paid.

My bill also will inject a measure of reality into the expenses of mutual funds. In order to increase the transparency of the actual costs of the fund, brokerage commissions must be counted as an expense in filings with the SEC and included in the calculation of the expense ratio, so that investors will have a more realistic view of the expenses of their fund. Consumers often compare the expense ratios of funds when making investment decisions. However, the expense ratios fail to take into account the costs of commissions in the purchase and sale of securities. Therefore, investors are not provided with an accurate idea of the expenses involved. Currently, brokerage commissions have to be disclosed to the SEC, but not to individual investors. Brokerage commissions are only disclosed to the investor upon request. My bill puts teeth into brokerage commission disclosure provisions and ensures that commissions will be included in a document that investors actually have access to and utilize.

This bill also creates a powerful incentive to reduce the use of soft dollars. Soft dollars refer to the bundling of services or products into commissions. Mutual fund companies often pay higher commissions in order to obtain other products and services, typically research on stocks. Soft dollars can be used to lower their expenses by having services and products paid for by soft dollars. Purchases using soft dollars do not count as expenses and are not calculated into the expense ratio. The SEC released a study in September 1998 concluding that soft dollars were used to pay for research, salaries, office rent, telephone services, legal expenses, and entertainment, among other expenses.

At the hearing, Secretary Galvin called for a prohibition of soft dollars. This is a recommendation that needs to be examined. However, my bill provides an immediate alternative, which is to provide an incentive for funds to limit their use of soft dollars by calculating them as expenses. If commissions are disclosed in this manner, the use of soft dollars will be reflected in the higher commission fees and overall expenses. This will make it easier for investors to see the true cost of the fund and compare the expense ratios of funds.

Some may argue that this gives an incomplete picture and fails to account for spreads, market impact, and opportunity costs. However, the SEC has the authority to address the issue further if it can determine an effective way to quantify these additional factors. This bill does not impose an additional reporting requirement that would be burdensome to brokers. It merely uses what is already reported and presents this information in a manner meaningful to investors.

My legislation also directs the SEC to conduct a study to assess financial literacy among mutual fund investors. The SEC will identify the most useful and relevant information that investors need prior to purchasing shares, methods to increase the transparency of expenses and potential conflicts of interest in mutual fund transactions, and a strategy to increase the financial literacy of investors that results in positive change in investor behavior. None of our disclosure provisions will truly work unless investors are effectively given the tools they need to make smart investment decisions.

Finally, my bill requires the General Accounting Office, GAO, to study the current marketing practices for the sale of shares of mutual funds. GAO will provide recommendations to improve investor protections in mutual fund advertising to ensure that investors are able make informed financial decisions when purchasing shares.

Public confidence in mutual funds will not recover if funds continue to employ different sets of rules for large and small investors, engage in ethical misconduct, and enrich themselves at the expense of shareholders. The transgressions brought to light underscore the absence of effective oversight by the boards of mutual funds companies. This legislation will strengthen board independence and enhance the transparency of financial relationships. The American investing public deserves nothing less.

Mr. President, I look forward to working with my colleagues in enacting meaningful reform of the troubled mutual fund industry. We must act to restore trust in this critical investment vehicle that people rely on for their financial future and goals. I ask unanimous consent that the text of the Mutual Fund Transparency Act of 2003 be printed in the RECORD.

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

S. 1822

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 ''Mutual Fund Transparency Act of 2003''.

SEC. 2. DISCLOSURE OF FINANCIAL RELATIONSHIPS BETWEEN BROKERS AND MUTUAL FUND COMPANIES.

(a) IN GENERAL.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

''(11) CONFIRMATION OF TRANSACTIONS FOR MUTUAL FUNDS.—

''(A) IN GENERAL.—Each broker shall disclose in writing to customers that purchase the shares of an open-end company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8)—

''(i) the amount of any compensation received or to be received by the broker in connection with such transaction from any sources; and

''(ii) such other information as the Commission determines appropriate.

''(B) TIMING OF DISCLOSURE.—The disclosure required under subparagraph (A) shall be made to a customer not later than as of the date of the completion of the transaction.

''(C) LIMITATION.—The disclosures required under subparagraph (A) may not be made exclusively in—

''(i) a registration statement or prospectus of an open-end company; or

''(ii) any other filing of an open-end company with the Commission.

''(D) COMMISSION AUTHORITY.—

''(i) IN GENERAL.—The Commission shall promulgate such rules as are necessary to carry out this paragraph not later than 1 year after the date of enactment of the Mutual Fund Transparency Act of 2003.

''(ii) FORM OF DISCLOSURE.—Disclosures under this paragraph shall be in such form as the Commission, by rule, shall require.

''(E) DEFINITION.—In this paragraph, the term 'open-end company' has the same meaning as in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5).''.

(b) DISCLOSURE OF BROKERAGE COMMISSIONS.—Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) is amended by adding at the end the following:

''(k) DISCLOSURE OF BROKERAGE COMMISSIONS.—The Commission, by rule, shall require that brokerage commissions as an aggregate dollar amount and percentage of assets paid by an open-end company be included in any disclosure of the amount of fees and expenses that may be payable by the holder of the securities of such company for purposes of—

''(1) the registration statement of that open-end company; and

''(2) any other filing of that open-end company with the Commission, including the calculation of expense ratios.''.

SEC. 3. MUTUAL FUND GOVERNANCE.

(a) INDEPENDENT FUND BOARDS.—Section 10(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(a)) is amended—

(1) by striking ''shall have'' and inserting the following: ''shall—

''(1) have'';

(2) by striking ''60 per centum'' and inserting ''25 percent'';

(3) by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(2) have as chairman of its board of directors an interested person of such registered company; or

''(3) have as a member of its board of directors any person that is an interested person of such registered investment company—

''(A) who has served without being approved or elected by the shareholders of such registered investment company at least once every 5 years; and

''(B) unless such director has been found, on an annual basis, by a majority of the directors who are not interested persons, after reasonable inquiry by such directors, not to have any material business or familial relationship with the registered investment company, a significant service provider to the company, or any entity controlling, controlled by, or under common control with such service provider, that is likely to impair the independence of the director.''.

(b) ACTION BY INDEPENDENT DIRECTORS.—Section 10 of the Investment Company Act of 1940 (15 U.S.C. 80a–10) is amended by adding at the end the following:

''(i) ACTION BY BOARD OF DIRECTORS.—No action taken by the board of directors of a registered investment company may require the vote of a director who is an interested person of such registered investment company.

''(j) INDEPENDENT COMMITTEE.—

''(1) IN GENERAL.—The members of the board of directors of a registered investment company who are not interested persons of such registered investment company shall establish a committee comprised solely of such members, which committee shall be responsible for—

''(A) selecting persons to be nominated for election to the board of directors; and

''(B) adopting qualification standards for the nomination of directors.

''(2) DISCLOSURE.—The standards developed under paragraph (1)(B) shall be disclosed in the registration statement of the registered investment company.''.

(c) DEFINITION OF INTERESTED PERSON.—Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2) is amended—

(1) in subparagraph (A)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of an investment adviser or principal underwriter to such registered investment company, or of any entity controlling, controlled by, or under common control with such investment adviser or principal underwriter;

''(viii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of any entity that has within the preceding 5 fiscal years acted as a significant service provider to such registered investment company, or of any entity controlling, controlled by, or under the common control with such service provider;

''(ix) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with the investment company or an affiliated person of such investment company;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment company; or

''(III) any other reason determined by the Commission.'';

(2) in subparagraph (B)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with such investment adviser or principal underwriter or affiliated person of such investment adviser or principal underwriter;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment adviser or principal underwriter; or

''(III) any other reason as determined by the Commission.''.

(d) DEFINITION OF SIGNIFICANT SERVICE PROVIDER.—Section 2(a) of the Investment Company Act of 1940 is amended by adding at the end the following:

''(53) SIGNIFICANT SERVICE PROVIDER.—

''(A) IN GENERAL.—Not later than 270 days after the date of enactment of the Mutual Fund Transparency Act of 2003, the Securities and Exchange Commission shall issue final rules defining the term 'significant service provider'.

''(B) REQUIREMENTS.—The definition developed under paragraph (1) shall include, at a minimum, the investment adviser and principal underwriter of a registered investment company for purposes of paragraph (19).''.

(e) STUDY.—

(1) IN GENERAL.—The Securities and Exchange Commission shall conduct a study to determine whether the best interests of investors in mutual funds would be served by the creation of a Mutual Fund Oversight Board that—

(A) has inspection, examination, and enforcement authority over mutual fund boards of directors;

(B) is funded by assessments against mutual fund assets;

(C) the members of which are selected by the Securities and Exchange Commission; and

(D) has rulemaking authority.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required under paragraph (1) to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

SEC. 4. PORTFOLIO MANAGER COMPENSATION.

Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe rules under the Investment Company Act of 1940, requiring that a registered investment company disclose the structure of, or method used to determine, the compensation of—

(1) individuals employed by the investment adviser of the company to manage the portfolio of the company; and

(2) the ownership interest of such individuals in the securities of the registered investment company.

SEC. 5. FINANCIAL LITERACY AMONG MUTUAL FUND INVESTORS STUDY.

(a) IN GENERAL.—The Securities and Exchange Commission shall conduct a study to identify—

(1) the existing level of financial literacy among investors that purchase shares of open-end companies, as such term is defined under section 5 of the Investment Company Act of 1940, that are registered under section 8 of such Act;

(2) the most useful and understandable relevant information that investors need to make sound financial decisions prior to purchasing such shares;

(3) methods to increase the transparency of expenses and potential conflicts of interest in transactions involving the shares of open-end companies;

(4) the existing private and public efforts to educate investors; and

(5) a strategy to increase the financial literacy of investors that results in a positive change in investor behavior.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 6. STUDY REGARDING MUTUAL FUND ADVERTISING.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on mutual fund advertising to identify—

(1) existing and proposed regulatory requirements for open-end investment company advertisements;

(2) current marketing practices for the sale of open-end investment company shares, including the use of unsustainable past performance data, funds that have merged, and incubator funds;

(3) the impact of such advertising on consumers;

(4) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can make informed financial decisions when purchasing shares.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the United States Senate; and

(2) the Committee on Financial Services of the House of Representatives.

Mr. LIEBERMAN. Mr. President, I rise today to join with my colleagues Senator DANIEL AKAKA and Senator PETER FITZGERALD and cosponsor legislation that would begin the crucial process of reforming the mutual fund industry. In the wake of shocking revelations of abusive trading and self-dealing in some of America's largest funds, it is imperative that we act quickly, and I commend my friend Senator AKAKA for his leadership. We must

do two things in order to reassure the 95 million Americans who invest in mutual funds that they have not misplaced their trust. We must find out how this was allowed to happen, and we must put safeguards in place to prevent these widespread abuses from poisoning our markets again.

As the deceptions and conflicts of the Wall Street analysts were uncovered last year in the wake of the Enron scandal, the oft-heard advice to the average investor was to invest in mutual funds. Investors took this advice in droves. Half of all American households own shares in mutual funds, and of the $7 trillion invested in mutual funds, $2.1 trillion of it is invested for retirement.

Perhaps these working families felt comfortable entrusting their precious savings with mutual funds because these funds offer one of the most highly regulated investments available. Mutual funds, their directors and their managers owe their investors a statutory fiduciary duty. Mutual funds are overseen by the SEC through a prescribed registration and reporting process as well as a regular examination and audit process, pursuant to the Investment Company Act of 1940.

Unfortunately, the trust of these American families has been abused. According to a just-released survey conducted by the Securities and Exchange Commission, half of the largest 88 mutual funds have permitted a practice called ''market-timing,'' which allows some investors to trade quickly in and out of the funds, even though many of those funds had explicit policies against such trading because of its detrimental impact on other investors in the fund. Many fund companies admitted providing portfolio information, unavailable publicly, to certain large investors to help them make trading decisions. Also, a full one-quarter of the brokerage firms surveyed indicated that they had allowed certain customers to engage in late-trading, an illegal practice that allows favored investors to execute trades based on that day's price, but after the market close, when new information has come to light. Perhaps most shocking, Stephen Cutler, Director of the SEC's Enforcement Division, has said that there is evidence that officials at fund companies profited personally at the expense of their customers by market-timing their own funds.

The SEC didn't discover these abuses on its own initiative, however. It acted only after the New York State Attorney General and the Massachusetts Secretary of the Commonwealth took steps to investigate and stop this conduct. The SEC didn't discover the abuses through the extensive reporting process mutual funds go through; the SEC didn't discover the abuses through the broad and regular examinations the SEC does of these mutual funds; the SEC didn't even discover the abuses after it received a tip from an insider, who went to the SEC with his attorney, evidence in hand.

Yesterday, I sent a ten-page letter to SEC Chairman William Donaldson, demanding to know how the SEC could have failed to uncover such a sweeping problem in the mutual fund industry. I asked how the SEC planned to change its practices in order to ensure that it is never again caught so unaware. Congress gave the SEC the responsibility to monitor the mutual fund industry, and we must ensure that the SEC does its job.

This is not the first time the SEC has been caught off guard with a scandal on Wall Street. In October 2002, the staff of the Senate Governmental Affairs Committee, of which I was then the Chairman, released a report, Financial Oversight of Enron: The SEC and Private-Sector Watchdogs, detailing the ignored red flags and the missed opportunities that kept the SEC from detecting the problems at Enron before that company collapsed, taking with it the jobs and retirement savings of thousands of Americans. Again, despite being fully aware of the troubling conflicts faced by Wall Street analysts, the SEC turned a blind eye to that problem until this Committee and others held hearings on the issue and New York State Attorney General Eliot Spitzer exposed how deeply deceptive many analyst recommendations truly were. I hope this mutual fund scandal represents the last time the SEC is playing regulatory catch-up.

In addition to holding the SEC accountable, Congress must also act to protect investors by fixing the holes in the statutory scheme for mutual funds. That's why I'm pleased to cosponsor the Mutual Fund Transparency Act of 2003, which enjoys widespread support from consumer groups. It contains many of the policy changes I urged the SEC to consider in my letter to Chairman Donaldson. It would strengthen the independence of mutual fund boards of directors by tightening the definition of independence and by requiring that 75 percent of the directors be independent. The bill would also require that mutual fund boards have nominating committees comprised solely of independent directors, so that directors are not chosen by management.

In my letter to the SEC, I also criticized the opaque or, in some cases, lack of, disclosure to investors about mutual fund fees. The Mutual Fund Transparency Act would significantly improve such disclosure to investors, by including in the fees disclosed to investors the costs the fund incurs when it executes trades of its holdings. Currently, such costs are not included among these more visible fees, which are disclosed in documents provided directly to mutual fund shareholders. Trading costs are currently only disclosed in filings with the SEC, but if this bill became law, trading costs would be included among the fees provided directly to investors. Such information is useful because it can give investors a sense of how often their funds are buying and selling assets and at what expense. The bill would also require funds to tell shareholders how fund advisers are compensated. Public companies are required to tell their shareholders how their managers are paid; mutual fund shareholders should have the same information. Finally, the bill would require that brokers offering mutual funds to investors inform those investors of any fees or incentives those brokers are receiving for making those sales in a sale confirmation.

The bill also mandates that the SEC study three initiatives to improve mutual fund oversight and transparency. The first two ask the SEC and the Comptroller General, respectively, to look at financial literacy among mutual fund investors and at mutual fund advertising, to determine how relevant information can be made clearer and more readily understandable to the average investor. In my letter to the SEC, I suggested the agency consider using consumer research methods in order to achieve such a result. The third study required by the bill relates to the formation of a Mutual Fund Oversight Board to take over the frontline efforts of mutual fund regulation from the SEC, while remaining under that agency's oversight. This may be a good approach, but I have concerns about the costs of such a board being borne by mutual fund investors, which is one of the areas suggested for study. I hope other options would be explored.

The Mutual Fund Transparency Act is clearly an important first step in closing some of the gaps in the laws governing these important investment vehicles. But there is more work to do, and I look forward to working with Senator AKAKA and the other cosponsors of this bill in making further necessary improvements. For example, we should consider strengthening the fiduciary duties owed by mutual fund directors and managers to their shareholders. In addition, as I indicated in my letter to the SEC, guidelines must be developed to prevent mutual fund directors from serving on more boards of funds than they can effectively oversee; at some of the major funds, directors serve on a hundred or more boards. Compliance officers at the funds must be elevated to emphasize their role. I suggested in my letter to the SEC that such a compliance officer should be active at each fund and should report directly to an independent committee of the board.

Moreover, as I pointed out to the SEC in my letter to Chairman Donaldson, we must close the loophole that allowed so many brokers and mutual funds to circumvent the law on late trading. Imposing a hard deadline of a time at which trades must be into the mutual fund may be the solution to this problem. We also must provide even more, clearer information to investors about the fees they are actually paying to participate in mutual funds. In my letter the SEC, I asked

the agency why investors should not receive on their monthly statements detail about the fees they actually paid to the fund during that time period, similar to the finance charge information that credit card consumers get. I also suggested that funds be required to provide comparative fee information. This would help people make better investment decisions, and might also encourage more competition among funds to reduce expenses.

Mutual funds hold the nest eggs, the retirement savings, and the college funds for many of America's working families. Through those investments in their own futures, those families are also feeding capital into today's economy, fueling the engine that creates and maintains American jobs. In a very real sense, these mutual fund investments are investments in the American dream. We must act now to protect them, and to restore the integrity to the mutual fund industry.

Once again, I thank Senator AKAKA for his leadership on this issue, and I urge my colleagues to support this important and timely legislation.

By Mr. BURNS (for himself and Mr. BAUCUS):

S. 1823. A bill to amend the Act of August 9, 1955, to authorize the Assiniboine and Sioux Tribes of the Fort Peck Reservation to lease tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines; to the Committee on Indian Affairs.

Mr. BURNS. Mr. President, I rise today to introduce the Northern Border Lease Extension legislation. Currently, and since 1981, Northern Border Pipeline Company has leased tribally owned lands on the Fort Peck Indian Reservation for its gas pipeline, which carries gas from Alberta, Canada to consumers in the Midwest. This lease expires in March 2011.

Northern Border wishes to have the right to continue to lease tribal lands for up to fifty years beyond 2011 for its pipeline. They need to be assured as soon as possible their lease can be extended. If not, they must look for other options that would include constructing a new pipeline to go around the Reservation by 2011.

If the lease is not extended, not only will Northern Border be forced to build a new pipeline, but also the Assiniboine and Sioux Tribes of the Fort Peck Reservation will lose over $20 million in payments from Northern Border. Additionally, if extended, the lease would provide tens of millions of dollars in additional payments, with the rental payments increasing at an annual rate of three percent per year every five years. These terms came about after negotiations between Northern Border and the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

This legislation would allow the Tribes to enter into a lease with Northern Border that would give Northern Border the right to continue to lease tribal lands for up to fifty years beyond 2011 for its pipeline. This is one of those great instances when both sides of a situation agree and are of one mind. This provision was included in a bill previously approved by the Senate Indian Affairs Committee, but unfortunately for reasons not associated with this provision, is being held up. Therefore, I wish to introduce this important piece of legislation as a stand-alone bill.

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. 1823

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

SECTION 1. LEASE OF TRIBALLY-OWNED LAND BY ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION.

The first section of the Act of August 9, 1955 (25 U.S.C. 415), is amended by adding at the end the following:

''(g) LEASE OF TRIBALLY-OWNED LAND BY ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION.—

''(1) IN GENERAL.—Notwithstanding subsection (a) and any regulations under part 162 of title 25, Code of Federal Regulations (or any successor regulation), subject to paragraph (2), the Assiniboine and Sioux Tribes of the Fort Peck Reservation may lease to the Northern Border Pipeline Company tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines.

''(2) CONDITIONS.—A lease entered into under paragraph (1)—

''(A) shall commence during fiscal year 2011 for an initial term of 25 years;

''(B) may be renewed for an additional term of 25 years; and

''(C) shall specify in the terms of the lease an annual rental rate—

''(i) which rate shall be increased by 3 percent per year on a cumulative basis for each 5-year period; and

''(ii) the adjustment of which in accordance with clause (i) shall be considered to satisfy any review requirement under part 162 of title 25, Code of Federal Regulations (or any successor regulation).''.

By Mr. DEWINE:

S. 1825. A bill to amend title 18, United States Code, to provide penalties for the sale and use of unauthorized mobile infrared transmitters; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I rise today, to introduce the Safe Intersections Act of 2003. This bill would criminalize the unauthorized sale and possession of a mobile infrared transmitter, MIRT.

A MIRT is a remote control for changing traffic signals. These devices have been used for years by ambulances, police cars, and fire trucks, allowing them to reach emergencies faster. As an ambulance approaches an intersection where the light is red, the driver engages the transmitter. That transmitter then sends a signal to a receiver on the traffic light, which changes to green within a few seconds. This is a very useful tool when properly used in emergency situations.

In a 2002 survey, the U.S. Department of Transportation found that in the top 78 metropolitan areas, there are 24,683 traffic lights equipped with the sensors. In my home State of Ohio, there is a joint pilot project underway by the Washington Township Fire Department and the Dublin Police Department to install these devices. Other areas in Ohio where they are in use include Mentor, Twinsburg, Willoughby, and Westerville. Across the country, law enforcement officers, fire departments, and paramedics utilize this technology to make communities safer.

However, recently it has come to light that this technology may be sold to unauthorized individuals—individuals who want to use this technology to bypass red lights during their commute or during their everyday driving. MIRT was never intended for this use. MIRT technology—in the hands of unauthorized users—could result in traffic problems, like gridlock, or even worse, accidents in which people are injured or killed.

Let me quote from an ad that was recently posted on the Internet auction site, ''eBay'':

Tired of sitting at endless red lights? Frustrated by lights that turn from green to red too quickly, trapping you in traffic? The MIRT light changer used by police and other emergency vehicles Change the Traffic Signal Red to Green [for] only $499.00. Traffic Signal Changing Devices—It's every motorist's fantasy to be able to make a red traffic light turn green without so much as easing off the accelerator. The very technology that has for years allowed fire trucks, ambulances and police cars to emergencies faster—a remote control that changes traffic signals—is now much cheaper and potentially accessible.

This ad demonstrates the extent to which the potential widespread sale and possession of MIRT technology by drivers would be a hazard to public safety and must be stopped before it starts. That is why I am introducing the Safe Intersections Act of 2003. I encourage my colleagues to cosponsor this important piece of legislation.

I ask unanimous consent that the legislation I have just introduced be printed in the appropriate place in the RECORD immediately following the conclusion of my remarks.

By Mr. REID (for himself and Mr. ENSIGN):

S. 1826. A bill to direct the Secretary of the Interior to convey certain land in Washoe County, Nevada, to the Board of Regents of the University and Community College System of Nevada; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, sometime, when the opportunity arises, I am going to introduce, for myself and Senator ENSIGN, the Dandini Research Park Transfer Act, which will transfer an important tract of land in Washoe County, Nevada, to the University and Community College System of Nevada.

The University of Nevada holds two patents from the Bureau of Land Management for approximately 467 acres of

public land located north of downtown Reno. In the early 1970s, the land was patented to the university pursuant to the Recreation and Public Purposes Act. Now known as the Dandini Research Park, it is the home of Truckee Meadows Community College and the Desert Research Institute's Northern Nevada Science Center.

Truckee Meadows Community College and its predecessor, Western Nevada Community College, have provided educational programs and opportunities to the residents of Reno, Sparks, and the surrounding communities for over 30 years. Construction of the College's facilities on the Dandini campus began in 1975, shortly after conveyance of the original patents.

For over 25 years the Desert Research Institute has excelled in applied scientific research and the application of technologies to improve people's lives in Nevada and throughout the world. Its three core divisions of Atmospheric, Hydrologic, and Earth and Ecosystem Sciences cooperate with two interdisciplinary centers to provide innovative solutions to pressing environmental problems. The Center for Arid Lands Environmental Management and the Center for Watersheds and Environmental Sustainability apply scientific understanding to the effective management of natural resources while addressing our needs for economic diversification and science-based educational opportunities. In doing so, DRI undertakes fundamental scientific research in Nevada and around the globe. For example, as a key participant in the U.S. Geological Survey Water Research Program, DRI plays a critical role in identifying and helping protect the region's scarce water resources.

DRI shares its facility with the Western Regional Climate Center, one of six regional climate centers operating under the National Oceanic and Atmospheric Administration's climate program. The Western Regional Climate Center conducts applied research and provides high quality climate data and information pertaining to the western United States.

The Desert Research Institute wishes to expand its Northern Nevada Science Center. DRI is considering an innovative means of financing the expansion, which would involve a private developer who would build and finance the expansion and lease it back to DRI. The private developers with whom DRI has discussed the proposal, as well as the Institute's counsel, however, have pointed out that the terms of the patents and the restrictions imposed by the Recreation and Public Purposes Act represent obstacles to such an arrangement.

Truckee Meadows Community College and the Northern Nevada Science Center are exceptional assets to the scientific and educational community in the Truckee Meadows. The Center serves not only the citizens of Washoe County, but the needs of all Nevadans and the western United States as well. It deserves the opportunity to grow and prosper with the community—one of the fastest-growing communities in the Nation.

The bill Senator ENSIGN and I will introduce simply directs the Secretary of the Interior to convey this property from the Bureau of Land Management to the University and Community College System of Nevada. Because of the overwhelming public benefit provided by the Center, we ask that the land be conveyed for free, but that the University cover the costs of the transaction.

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. 1826

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 ''Dandini Research Park Conveyance Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) BOARD OF REGENTS.—The term ''Board of Regents'' means the Board of Regents of the University and Community College System of Nevada.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 2. CONVEYANCE TO THE UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF NEVADA.

(a) CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall convey to the Board of Regents, without consideration, all right, title, and interest of the United States in and to the approximately 467 acres of land located in Washoe County, Nevada, patented to the University of Nevada under the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869 et seq.), and described in paragraph (2).

(2) DESCRIPTION OF LAND.—The land referred to in paragraph (1) is—

(A) the parcel of land consisting of approximately 309.11 acres and more particularly described as T. 20 N., R. 19 E., Sec. 25, lots 1, 2, 3, 4, 5, and 11, SE ¼ NW ¼, NE ¼ SW ¼, Mount Diablo Meridian, Nevada; and

(B) the parcel of land consisting of approximately 158.22 acres and more particularly described as T. 20 N., R. 19 E., Sec. 25, lots 6 and 7, SW ¼ NE ¼, NW ¼ SE ¼, Mount Diablo Meridian, Nevada.

(b) COSTS.—The Board of Regents shall pay to the United States an amount equal to the costs of the Secretary associated with the conveyance under subsection (a)(1).

(c) CONDITIONS.—If the Board of Regents sells any portion of the land conveyed to the Board of Regents under subsection (a)(1)—

(1) the amount of consideration for the sale shall reflect fair market value, as determined by an appraisal; and

(2) the Board of Regents shall pay to the Secretary an amount equal to the net proceeds of the sale, for use by the Director of the Bureau of Land Management in the State of Nevada, without further appropriation.

By Mr. KYL (for himself, Mr. CHAMBLISS, Mr. CRAIG, Mr. NICKLES, Mr. SESSIONS, and Mr. CORNYN):

S. 1828. A bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, and for other purposes; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I rise today to introduce the ''Advancing Justice Through DNA Technology Act of 2003.'' This bill consists of the President's DNA initiative, which will expand and improve DNA databases used for criminal investigations and authorize additional funds to clear the backlog of untested DNA evidence in the nation's crime labs.

This bill offers several advantages over another version of the President's proposal that recently was introduced in the Senate. Today's bill gives States greater leeway in the use of DNA grants, removes arbitrary and unnecessary restrictions on the testing of criminal suspects' DNA samples, authorizes additional funds to clear the backlog of non-DNA forensics evidence, and—most importantly avoids tying this critical program to unrelated and highly controversial anti-death penalty legislation. I include in the record at the end of this statement a news story that describes the nature of the state counsel and other extraneous provisions that others have sought to attach to the President's proposal.

The bill that I introduce today is an unencumbered—and unabridged—version of the President's DNA initiative: the DNA Sexual Assault Justice Act and the Rape Kits and DNA Evidence Backlog Elimination Act, which authorize the Debbie Smith DNA Backlog Grant Program and provide $755 million over five years to address the DNA backlog crisis in the nation's crime labs.

Today's bill includes the following improvements over other congressional versions of the President's proposal: First, this bill also expands funding for non-DNA forensics funding. Section 211 of the bill authorizes $100 million in new grant programs to eliminate ''the backlog in the analysis of any area of forensic science evidence, including firearms examination, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence.''

Second, this bill increases the authorization for the Paul Coverdell grant program, in recognition of the fact that this program never has been funded at more than a small fraction of its authorization. Other congressional versions of the President's DNA initiative only authorize decreasing Coverdell funding in the coming years. This bill resets the clock on the Coverdell program, authorizing 2004 funding at the level for 2001, and subsequent years accordingly. This will allow sharp increases in Coverdell funding in the coming years.

Third, today's bill allows states to test DNA samples from convicts seeking exoneration against the national DNA database, in order to determine if the convict has committed other rapes or murders. The other congressional versions of the President's DNA initiative would bar such testing; they effectively would give convicts a free roll of the dice to challenge their current convictions while protecting them against the risk that they will be linked to other crimes. There is no reason why states should be prevented from solving such other crimes. If DNA evidence is good enough to test a prisoner's conviction for the crimes that we do know that he committed, it also is good enough to establish the prisoner's involvement in crimes that we do not yet know that he committed.

Fourth, this bill includes all Federal felony arrestees in the federal DNA database. Other versions of this bill exclude arrestees and place other unnecessary and arbitrary limits on the federal DNA index. The federal government already maintains fingerprints for all federal felony arrestees—there is no reason to treat DNA evidence differently. Nor is there any reason to prevent states and the federal government from solving other crimes committed by suspects arrested for a federal felony offense.

The Department of Justice has expressly informed Congress of the benefits of casting a wide net when including criminal suspects in the federal DNA database. During a July 17 hearing on the President's DNA initiative before the Crime Subcommittee of the House Judiciary Committee, Sarah Hart, the Director of the National Institute of Justice, testified that:

> The efficacy of the DNA identification system depends entirely on the profiles entered into it. Experience demonstrates that broad collection and indexing of DNA samples is critical to the effective use of the DNA technology to solve rapes, murders, and other serious crimes.
>
> The DNA sample that enables law enforcement to identify the perpetrator of a rape, for example, often was not collected in connection with an earlier rape. Rather, in a large proportion of such cases, the sample was taken as a result of the perpetrator's prior conviction for a non-violent crime (such as a burglary, theft, or drug offense).
>
> For example, in Virginia, which has authorized the collection of DNA samples from all felons since 1991, a review of cases in which offenders were linked to sex crimes through DNA matching found that almost 40% of the offenders had no prior convictions for sexual or violent offenses. Most serious offenders do not confine themselves to violent crimes. The experience of States with broad DNA collection regimes demonstrates that DNA databases that include all felons dramatically increase law enforcement's ability to solve serious crimes.

Fifth, today's bill tolls the statute of limitations when a perpetrator has been identified through DNA—including in rape cases. Other congressional versions of the President's initiative inexplicably exclude sexual-assault crimes from the initiative's DNA tolling provision. There is no reason to do so. Indeed, it is in sexual-assault cases that DNA evidence is most likely to identify a perpetrator. At the July 17 hearing before the House Judiciary Committee's Crime Subcommittee, the Department of Justice testified in favor of tolling the statute of limitations to the full extent permitted by the Constitution.

Sixth, this bill allows grants for DNA training and research to be made to prosecutors' organizations, universities, and other private entities. Competing bill versions limit such grants to state and local governments, which is inconsistent with the President's DNA initiative.

Finally, the bill that I introduce today does not include the so-called ''Innocence Protection Act'' (IPA), a controversial anti-death penalty bill. The other congressional versions of the President's initiative have incorporated the IPA as a third title to the President's bill. At the July 17 hearing on the President's initiative, the Department of Justice made very clear that it ''do[es] not believe that legislation embodying the important proposals in the President's DNA initiative should be joined to these controversial [IPA] measures, which intrinsically are unrelated to DNA.''

In an October 27 letter to several members of Congress, the National District Attorneys Association also voiced strong objections to the capital-counsel provisions included in the IPA titles of the other bills. The NDAA's letter stated:

> Section 321 [of these bills] attempts to re-establish the old 'death penalty resource centers.' As you no doubt recall, Congress abolished funding for such centers because they devolved into organizations dedicated solely to the abolition of the death penalty and were staffed and controlled by those dedicated to the disruption of the criminal justice system by whatever means available, ethical or otherwise. Section 321 would cause a return to such tactics by removing the ability for the state judiciary to appoint counsel in death penalty cases and giving that authority to a self-appointed group of anti-death penalty attorneys.
>
> . . . NDAA strongly urges deletion of Section 321 from this bill . . . .
>
> Elimination of Section 321 . . . keeps the appointment and control of capital defense counsel in the hands of state court judges who are responsible for insuring that defendants receive quality representation. With Section 321 there is no oversight of those individuals selected to develop state standards for capital defense counsel.

The IPA titles included in the other congressional versions of the President's DNA initiative would authorize $500 million in Federal funding for State public defenders in State capital cases. There is no reason for Congress to finance the States' public-defender systems. The States adequately fund these programs themselves—indeed, many have enacted reforms and substantially increased funding for public defenders in recent years. When the IPA originally was introduced in 2000, it was targeted at the State of Texas. In 2001, the Texas legislature enacted reforms that completely overhauled the State's public-defender system. Yet the IPA provisions of the other Senate bill would declare Texas's reforms ''ineffective,'' and would force the State to again replace its indigent-defense system. Such a mandate makes no sense.

Moreover, there is no reason why States cannot or should not fund their own indigent-defender systems. Basic principles of federalism dictate that each level of government should finance its own operations. Once States become accustomed to and budget for Federal funds, they never are able to reject the money (or its conditions) in the future. And Federal funding inevitably comes with increasing Federal strings. In the long run, the States risk losing control over their own public-defender programs. There is no reason to start down this path.

The IPA proposals in the other congressional versions of the President's initiative begin by placing a number of conditions on the states' receipt of federal funds. Among these conditions is that states transfer control over capital defense to an ''entity'' composed of persons with ''demonstrated knowledge and expertise in capital representation.'' (This means private defense lawyers; public prosecutors likely would be barred by their jobs from serving or would be conflicted out.) This new ''entity'' would be charged with: (1) setting standards for capital-defense counsel; (2) deciding which lawyers meet those standards; and (3) appointing lawyers from the roster of qualifying attorneys to represent defendants in particular cases.

Essentially, the bill's new ''entity'' would completely control staffing of the defense in capital cases. From past experience with the ''capital resource centers,'' which were defunded by Congress in 1996, we know that hard-core death penalty opponents tend to gravitate toward these jobs, and will engage in litigation abuse when not supervised. Congress should not require the states to repeat its own past mistakes. It should not place anti-death penalty partisans in charge of public representation of capital defendants.

The other congressional versions of the President's proposal also include these additional highly problematic provisions:

They allow free DNA testing under very low standards. The competing bills provide that DNA tests shall be available to any prisoners if a negative test match would ''raise a reasonable probability that the applicant did not commit the offense.'' This standard is too low. Not all DNA evidence clearly came from the perpetrator of the crime or had anything to do with the crime—for example, a blood spot near the crime scene may or may not have come from the perpetrator. The ''reasonable probability'' standard means a prisoner could secure a test even if, despite a negative match, the other evidence would still show that the prisoner more likely than not committed the crime.

The bill requires only a chance that the prisoner did not commit the crime. Almost every prisoner with material to test will be able to meet this standard. Reopening old cases forces victims and their families to relive the ordeal of the crime. They should not be put through this unless a negative test result could at least show more likely than not that the prisoner did not commit the crime.

During the July 17 hearing before the House Crime Subcommittee, NIJ Director Sarah Hart expressly warned congress of the consequences of applying unduly low DNA testing standards. Director Hart testified:

[W]hile post-conviction DNA testing is necessary to correct erroneous convictions imposed prior to the ready availability of DNA technology, experience also points to the need to ensure that postconviction DNA testing is appropriately designed so as to benefit actually innocent persons, rather than actually guilty criminals who wish to game the system or retaliate against the victims of their crimes. Frequently, the results of postconviction DNA testing sought by prisoners confirm guilt, rather than establishing innocence. In such cases, justice system resources are squandered and the system has been misused to inflict further harm on the crime victim. The recent experience of a local jurisdiction is instructive:

''Twice last month, DNA tests at the police crime lab in St. Louis confirmed the guilt of convicted rapists. Two other tests, last year and in 2001, also showed the right men were behind bars for brutal rapes committed a decade or more earlier.

''[The St. Louis circuit attorney's] staff spent scores of hours and thousands of dollars on those tests. She personally counseled shaking, sobbing victims who were distraught to learn that their traumas were being aired again.

''One victim, she said, became suicidal and then vanished; her family has not heard from her for months. Another, a deaf elderly woman, grew so despondent that her son has not been able to tell her the results of the DNA tests. Every time he raises the issue, she squeezes her eyes shut so that she will not be able to read his lips.

'''She finally seemed to have some peace about the rape, and now she's gone back to being angry,' the woman's son said.

''DNA tests confirmed that she was raped by Kenneth Charron in 1985, when she was 59. To get that confirmation, however, investigators had to collect a swab of saliva from her so that they could analyze her DNA. They also had to inquire about her sexual past, so they could be sure the semen found in her home was not that of a consensual partner.

''The questioning sent the woman into such depression that she's now on medication. 'None of this needed to happen,' her son said.''

Post-conviction DNA testing is not without its costs. It should be allowed only in carefully measured circumstances.

Another problematic provision in the other congressional versions of the President's DNA initiative would employ an unduly low standard to authorize new trials for very old cases. This provision of these bills is designed to allow new trials for prisoners who may have been convicted 20 or more years ago. But it is very often impossible to retry a case this old—key witnesses die or disappear or their memories simply fade, and other evidence deteriorates or is lost. For many such cases, ordering a new trial effectively means that the prisoner walks free.

Congress should make sure that there is compelling evidence of innocence before ordering new trials in old cases. Unfortunately, these other bills would allow a new trial if test results simply ''establish by a preponderance of the evidence that a new trial would result in an acquittal.'' The key language here is ''result in acquittal.'' It means a test result would not even have to indicate actual innocence; it need only conflict with other evidence of guilt so as to undermine the jury's ability to convict beyond a reasonable doubt. Prisoners could win new trials—and go free—even if, despite the negative DNA match, other evidence still shows the prisoner very likely committed the crime. Current law, Federal Rule 33, uses the liberal ''result in acquittal'' standard to allow new trials based on new evidence, but only within three years of trial. It usually is not difficult to retry a case within three years. But for older cases, Congress should insist on a showing of actual innocence before ordering an often-impossible new trial.

There are other problems with the IPA titles in the various congressional versions of the President's DNA initiative. These titles would vastly expand DNA testing by authorizing tests even for prisoners who pleaded guilty. According to the Department of Justice, 90 percent of Federal prisoners pleaded guilty. Extending free tests to these prisoners literally expands the pool of potential test seekers by an order of magnitude. A guilty plea also means that there is no trial record, which makes it much more difficult to assess the potential relevance of DNA-test evidence.

These other bills also impose broad and potentially costly new evidence-retention requirements on the States—requirements that appear to require States to preserve all potential DNA evidence in all cases, indefinitely. And these bills also would give the newly created capital-counsel ''entities'' an unwarranted degree of control over defense attorneys' budgets. States traditionally have charged courts and other responsible agencies with monitoring budgets for capital representation. Prosecutors do not have unlimited budgets. There is no reason to allow the capital-counsel entity to draw a blank check on State treasuries.

There are other problems with the IPA titles of the competing bills. Suffice it to say that these titles are unrelated to the President's DNA initiative and both the Department of Justice and the NDAA oppose adding them to the President's bill. We should not weigh down the President's DNA initiative with the IPA. For this reason, my colleagues and I today introduce the President's proposal—important, consensus legislation that should be enacted by Congress without delay.

Mr. President, I ask unanimous consent that the text of the bill, the following letter, and the following article all be printed in the RECORD.

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

S. 1828

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Advancing Justice Through DNA Technology Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—RAPE KITS AND DNA EVIDENCE BACKLOG ELIMINATION ACT OF 2003

SEC. 101. SHORT TITLE.

This title may be cited as the ''Rape Kits and DNA Evidence Backlog Elimination Act of 2003''.

SEC. 102. DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.

(a) DESIGNATION OF PROGRAM; ELIGIBILITY OF LOCAL GOVERNMENTS AS GRANTEES.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) by amending the heading to read as follows:

''SEC. 2. THE DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.'';

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by inserting ''or units of local government'' after ''eligible States''; and

(ii) by inserting ''or unit of local government'' after ''State'';

(B) in paragraph (2), by inserting before the period at the end the following: '', including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect''; and

(C) in paragraph (3), by striking ''within the State'';

(3) in subsection (b)—

(A) in the matter preceding paragraph (1)—

(i) by inserting ''or unit of local government'' after ''State'' both places that term appears; and

(ii) by inserting '', as required by the Attorney General'' after ''application shall'';

(B) in paragraph (1), by inserting ''or unit of local government'' after ''State'';

(C) in paragraph (3), by inserting ''or unit of local government'' after ''State'' the first place that term appears;

(D) in paragraph (4)—

(i) by inserting ''or unit of local government'' after ''State''; and

(ii) by striking ''and'' at the end;

(E) in paragraph (5)—

(i) by inserting ''or unit of local government'' after ''State''; and

(ii) by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

''(6) if submitted by a unit of local government, certify that the unit of local government has taken, or is taking, all necessary steps to ensure that it is eligible to include, directly or through a State law enforcement agency, all analyses of samples for which it has requested funding in the Combined DNA Index System; and'';

(4) in subsection (d)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking ''The plan'' and inserting ''A plan pursuant to subsection (b)(1)'';

(ii) in subparagraph (A), by striking ''within the State''; and

(iii) in subparagraph (B), by striking ''within the State''; and

(B) in paragraph (2)(A), by inserting ''and units of local government'' after ''States'';

(5) in subsection (e)—

(A) in paragraph (1), by inserting ''or local government'' after ''State'' both places that term appears; and

(B) in paragraph (2), by inserting ''or unit of local government'' after ''State'';

(6) in subsection (f), in the matter preceding paragraph (1), by inserting ''or unit of local government'' after ''State'';

(7) in subsection (g)—

(A) in paragraph (1), by inserting ''or unit of local government'' after ''State''; and

(B) in paragraph (2), by inserting ''or units of local government'' after ''States''; and

(8) in subsection (h), by inserting ''or unit of local government'' after ''State'' both places that term appears.

(b) REAUTHORIZATION AND EXPANSION OF PROGRAM.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) in subsection (a)—

(A) in paragraph (3), by inserting ''(1) or'' before ''(2)''; and

(B) by inserting at the end the following:

''(4) To collect DNA samples specified in paragraph (1).

''(5) To ensure that DNA testing and analysis of samples from crimes, including sexual assault and other serious violent crimes, are carried out in a timely manner.'';

(2) in subsection (b), as amended by this section, by inserting at the end the following:

''(7) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(4).'';

(3) by amending subsection (c) to read as follows:

''(c) FORMULA FOR DISTRIBUTION OF GRANTS.—

''(1) IN GENERAL.—The Attorney General shall distribute grant amounts, and establish appropriate grant conditions under this section, in conformity with a formula or formulas that are designed to effectuate a distribution of funds among eligible States and units of local government that—

''(A) maximizes the effective utilization of DNA technology to solve crimes and protect public safety; and

''(B) allocates grants among eligible entities fairly and efficiently to address areas where significant backlogs exist, by considering—

''(i) the number of offender and casework samples awaiting DNA analysis in a jurisdiction;

''(ii) the population in the jurisdiction; and

''(iii) the number of part I violent crimes in the jurisdiction.

''(2) MINIMUM AMOUNT.—The Attorney General shall allocate to each State not less than 0.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriation.

''(3) LIMITATION.—Grant amounts distributed under paragraph (1) shall be awarded to conduct DNA analyses of samples from casework or from victims of crime under subsection (a)(2) in accordance with the following limitations:

''(A) For fiscal year 2004, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(B) For fiscal year 2005 not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(C) For fiscal year 2006, not less than 45 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(D) For fiscal year 2007, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(E) For fiscal year 2008, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).'';

(4) in subsection (g)—

(A) in paragraph (1), by striking ''and'' at the end;

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) a description of the priorities and plan for awarding grants among eligible States and units of local government, and how such plan will ensure the effective use of DNA technology to solve crimes and protect public safety.'';

(5) in subsection (j), by striking paragraphs (1) and (2) and inserting the following:

''(1) $151,000,000 for fiscal year 2004;

''(2) $151,000,000 for fiscal year 2005;

''(3) $151,000,000 for fiscal year 2006;

''(4) $151,000,000 for fiscal year 2007; and

''(5) $151,000,000 for fiscal year 2008.''; and

(6) by adding at the end the following:

''(k) USE OF FUNDS FOR ACCREDITATION AND AUDITS.—The Attorney General may distribute not more than 1 percent of the grant amounts under subsection (j)—

''(1) to States or units of local government to defray the costs incurred by laboratories operated by each such State or unit of local government in preparing for accreditation or reaccreditation;

''(2) in the form of additional grants to States, units of local government, or nonprofit professional organizations of persons actively involved in forensic science and nationally recognized within the forensic science community—

''(A) to defray the costs of external audits of laboratories operated by such State or unit of local government, which are participating in the National DNA Index System in order to ensure compliance with quality assurance standards;

''(B) to assess compliance with any plans submitted to the National Institute of Justice, which detail the use of funds received by States or units of local government under this Act; and

''(C) to support future capacity building efforts; and

''(3) in the form of additional grants to nonprofit professional associations actively involved in forensic science and nationally recognized within the forensic science community to defray the costs of training persons who conduct external audits of laboratories operated by States and units of local government and which participate in the National DNA Index System.

''(l) EXTERNAL AUDITS AND REMEDIAL EFFORTS.—In the event that a laboratory operated by a State or unit of local government which has received funds under this Act, has undergone an external audit conducted in order to demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation, and, as a result of such audit, identifies measures to remedy deficiencies with respect to the compliance by the laboratory with such standards, the State or unit of local government shall implement any such remediation as soon as practicable.''.

SEC. 103. EXPANSION OF COMBINED DNA INDEX SYSTEM.

(a) INCLUSION OF ALL DNA SAMPLES FROM STATES.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132) is amended—

(1) in subsection (a)(1), by striking ''of persons convicted of crimes;'' and inserting the following: ''of—

''(A) persons convicted of crimes; and

''(B) other persons whose DNA samples are collected under applicable legal authorities;''; and

(2) by striking subsection (d).

(b) FELONS CONVICTED OF FEDERAL CRIMES.—Section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)) is amended to read as follows:

''(d) QUALIFYING FEDERAL OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

''(1) Any felony.

''(2) Any offense under chapter 109A of title 18, United States Code.

''(3) Any crime of violence (as that term is defined in section 16 of title 18, United States Code).

''(4) Any attempt or conspiracy to commit any of the offenses in paragraphs (1) through (3).''.

(c) MILITARY OFFENSES.—Section 1565 of title 10, United States Code, is amended—

(1) by amending subsection (d) to read as follows:

''(d) QUALIFYING MILITARY OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses, as determined by the Secretary of Defense, in consultation with the Attorney General:

''(1) Any offense under the Uniform Code of Military Justice for which a sentence of confinement for more than one year may be imposed.

''(2) Any other offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)).'';

(2) by striking subsection (e); and

(3) by redesignating subsection (f) as subsection (e).

(d) COLLECTION OF DNA IDENTIFICATION INFORMATION FROM PERSONS ARRESTED FOR QUALIFYING FEDERAL OFFENSES.—

(1) IN GENERAL.—Section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a) is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking ''The Director'', and inserting the following:

''(A) The Attorney General shall collect a DNA sample from each individual who is arrested for, or accused by information or indictment of, a qualifying Federal offense (as determined under subsection (d)). The Attorney General may delegate this function within the Department of Justice as provided in section 510 of title 28, United States Code, and may also authorize and direct any other agency that makes arrests for such offenses or supervises persons facing charges of such offenses to carry out any function and exercise any power of the Attorney General under this section.

''(B) The Director''; and

(ii) in paragraphs (3) and (4), by striking ''Director of the Bureau of Prisons'' each place it appears and inserting ''Attorney General, the Director of the Bureau of Prisons,''; and

(B) in subsection (b), by striking ''Director of the Bureau of Prisons'' and inserting ''Attorney General, the Director of the Bureau of Prisons,''.

(2) CONDITIONS OF RELEASE.—

(A) SECTION 3142 AMENDMENTS.—Subsections (b) and (c)(1)(A) of section 3142 of title 18, United States Code, are each amended by inserting ''and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a)'' after ''period of release''.

(B) BACKLOG ELIMINATION ACT AMENDMENT.—Section 7(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135c) is amended by inserting '', or on release under chapter 207 of title 18, United States Code,'' before ''is authorized''.

SEC. 104. TOLLING OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''§ 3297. Cases involving DNA evidence

''In a case in which DNA testing implicates a person in the commission of a felony, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''3297. Cases involving DNA evidence.''.

(c) APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section to the full extent permitted by the Constitution.

SEC. 105. LEGAL ASSISTANCE FOR VICTIMS OF VIOLENCE.

Section 1201 of the Violence Against Women Act of 2000 (42 U.S.C. 3796gg–6) is amended—

(1) in subsection (a), by inserting ''dating violence,'' after ''domestic violence,'';

(2) in subsection (b)—

(A) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively;

(B) by inserting before paragraph (2), as redesignated by subparagraph (A), the following:

''(1) DATING VIOLENCE.—The term 'dating violence' means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of—

''(A) the length of the relationship;

''(B) the type of relationship; and

''(C) the frequency of interaction between the persons involved in the relationship.''; and

(C) in paragraph (3), as redesignated by subparagraph (A), by inserting ''dating violence,'' after ''domestic violence,'';

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting '', dating violence,'' after ''between domestic violence''; and

(ii) by inserting ''dating violence,'' after ''victims of domestic violence,'';

(B) in paragraph (2), by inserting ''dating violence,'' after ''domestic violence,''; and

(C) in paragraph (3), by inserting ''dating violence,'' after ''domestic violence,'';

(4) in subsection (d)—

(A) in paragraph (1), by inserting '', dating violence,'' after ''domestic violence'';

(B) in paragraph (2), by inserting '', dating violence,'' after ''domestic violence'';

(C) in paragraph (3), by inserting '', dating violence,'' after ''domestic violence''; and

(D) in paragraph (4), by inserting ''dating violence,'' after ''domestic violence,'';

(5) in subsection (e), by inserting ''dating violence,'' after ''domestic violence,''; and

(6) in subsection (f)(2)(A), by inserting ''dating violence,'' after ''domestic violence,''.

SEC. 106. ENSURING PRIVATE LABORATORY ASSISTANCE IN ELIMINATING DNA BACKLOG.

Section 2(d)(3) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(d)(3)) is amended to read as follows:

''(3) USE OF VOUCHERS OR CONTRACTS FOR CERTAIN PURPOSES.—

''(A) IN GENERAL.—A grant for the purposes specified in paragraph (1), (2), or (5) of subsection (a) may be made in the form of a voucher or contract for laboratory services, even if the laboratory makes a reasonable profit for the services.

''(B) REDEMPTION.—A voucher or contract under subparagraph (A) may be redeemed at a laboratory operated on a non-profit or for-profit basis by a private entity that satisfies quality assurance standards and has been approved by the Attorney General.

''(C) PAYMENTS.—The Attorney General may use amounts authorized under subsection (j) to make payments to a laboratory described under subparagraph (B).''.

TITLE II—DNA SEXUAL ASSAULT JUSTICE ACT OF 2003

SEC. 201. SHORT TITLE.

This title may be cited as the ''DNA Sexual Assault Justice Act of 2003''.

SEC. 202. ENSURING PUBLIC CRIME LABORATORY COMPLIANCE WITH FEDERAL STANDARDS.

Section 210304(b)(2) of the DNA Identification Act of 1994 (42 U.S.C. 14132(b)(2)), is amended to read as follows:

''(2) prepared by laboratories that—

''(A) not later than 2 years after the date of enactment of the DNA Sexual Assault Justice Act of 2003, have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and

''(B) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; and''.

SEC. 203. DNA TRAINING AND EDUCATION FOR LAW ENFORCEMENT, CORRECTIONAL PERSONNEL, AND COURT OFFICERS.

(a) IN GENERAL.—The Attorney General shall make grants to provide training, technical assistance, education, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by—

(1) law enforcement personnel, including police officers and other first responders, evidence technicians, investigators, and others who collect or examine evidence of crime;

(2) court officers, including State and local prosecutors, defense lawyers, and judges;

(3) forensic science professionals; and

(4) corrections personnel, including prison and jail personnel, and probation, parole, and other officers involved in supervision.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $12,500,000 for each of the fiscal years 2004 through 2008 to carry out this section.

SEC. 204. SEXUAL ASSAULT FORENSIC EXAM PROGRAM GRANTS.

(a) IN GENERAL.—The Attorney General shall make grants to eligible entities to provide training, technical assistance, education, equipment, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by medical personnel and other personnel, including doctors, medical examiners, coroners, nurses, victim service providers, and other professionals involved in treating victims of sexual assault and sexual assault examination programs, including SANE (Sexual Assault Nurse Examiner), SAFE (Sexual Assault Forensic Examiner), and SART (Sexual Assault Response Team).

(b) ELIGIBLE ENTITY.—For purposes of this section, the term ''eligible entity'' includes—

(1) States;

(2) units of local government; and

(3) sexual assault examination programs, including—

(A) sexual assault nurse examiner (SANE) programs;

(B) sexual assault forensic examiner (SAFE) programs;

(C) sexual assault response team (SART) programs; and

(D) State sexual assault coalitions.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 for each of the fiscal years 2004 through 2008 to carry out this section.

SEC. 205. DNA RESEARCH AND DEVELOPMENT.

(a) IMPROVING DNA TECHNOLOGY.—The Attorney General shall make grants for research and development to improve forensic DNA technology, including increasing the identification accuracy and efficiency of DNA analysis, decreasing time and expense, and increasing portability.

(b) DEMONSTRATION PROJECTS.—The Attorney General shall conduct research through grants for demonstration projects involving coordinated training and commitment of resources to law enforcement agencies and key criminal justice participants to demonstrate and evaluate the use of forensic DNA technology in conjunction with other forensic tools. The demonstration projects shall include scientific evaluation of the public safety benefits, improvements to law enforcement operations, and cost-effectiveness of increased collection and use of DNA evidence.

(c) NATIONAL FORENSIC SCIENCE COMMISSION.—

(1) APPOINTMENT.—The Attorney General shall appoint a National Forensic Science Commission (in this section referred to as

the ''Commission''), composed of persons experienced in criminal justice issues, including persons from the forensic science and criminal justice communities, to carry out the responsibilities under paragraph (2).

(2) RESPONSIBILITIES.—The Commission shall—

(A) assess the present and future resource needs of the forensic science community;

(B) make recommendations to the Attorney General for maximizing the use of forensic technologies and techniques to solve crimes and protect the public;

(C) identify potential scientific advances that may assist law enforcement in using forensic technologies and techniques to protect the public;

(D) make recommendations to the Attorney General for programs that will increase the number of qualified forensic scientists available to work in public crime laboratories;

(E) disseminate, through the National Institute of Justice, best practices concerning the collection and analyses of forensic evidence to help ensure quality and consistency in the use of forensic technologies and techniques to solve crimes and protect the public;

(F) examine additional issues pertaining to forensic science as requested by the Attorney General;

(G) examine Federal, State, and local privacy protection statutes, regulations, and practices relating to access to, or use of, stored DNA samples or DNA analyses, to determine whether such protections are sufficient;

(H) make specific recommendations to the Attorney General, as necessary, to enhance the protections described in subparagraph (G) to ensure—

(i) the appropriate use and dissemination of DNA information;

(ii) the accuracy, security, and confidentiality of DNA information;

(iii) the timely removal and destruction of obsolete, expunged, or inaccurate DNA information; and

(iv) that any other necessary measures are taken to protect privacy; and

(I) provide a forum for the exchange and dissemination of ideas and information in furtherance of the objectives described in subparagraphs (A) through (H).

(3) PERSONNEL; PROCEDURES.—The Attorney General shall—

(A) designate the Chair of the Commission from among its members;

(B) designate any necessary staff to assist in carrying out the functions of the Commission; and

(C) establish procedures and guidelines for the operations of the Commission.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $15,000,000 for each of the fiscal years 2004 through 2008 to carry out this section.

SEC. 206. FBI DNA PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Bureau of Investigation $42,100,000 for each of the fiscal years 2004 through 2008 to carry out the DNA programs and activities described under subsection (b).

(b) PROGRAMS AND ACTIVITIES.—The Federal Bureau of Investigation may use any amounts appropriated pursuant to subsection (a) for—

(1) nuclear DNA analysis;

(2) mitochondrial DNA analysis;

(3) regional mitochondrial DNA laboratories;

(4) the Combined DNA Index System;

(5) the Federal Convicted Offender DNA Program; and

(6) DNA research and development.

SEC. 207. DNA IDENTIFICATION OF MISSING PERSONS.

(a) IN GENERAL.—The Attorney General shall make grants to promote the use of forensic DNA technology to identify missing persons and unidentified human remains.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for each of the fiscal years 2004 through 2008 to carry out this section.

SEC. 208. ENHANCED CRIMINAL PENALTIES FOR UNAUTHORIZED DISCLOSURE OR USE OF DNA INFORMATION.

Section 10(c) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e(c)) is amended to read as follows:

''(c) CRIMINAL PENALTY.—A person who knowingly discloses a sample or result described in subsection (a) in any manner to any person not authorized to receive it, or obtains or uses, without authorization, such sample or result, shall be fined not more than $100,000. Each instance of disclosure, obtaining, or use shall constitute a separate offense under this subsection.''.

SEC. 209. TRIBAL COALITION GRANTS.

Section 2001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is amended by adding at the end the following:

''(d) TRIBAL COALITION GRANTS.—

''(1) PURPOSE.—The Attorney General shall award grants to tribal domestic violence and sexual assault coalitions for purposes of—

''(A) increasing awareness of domestic violence and sexual assault against Indian women;

''(B) enhancing the response to violence against Indian women at the tribal, Federal, and State levels; and

''(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence.

''(2) GRANTS TO TRIBAL COALITIONS.—The Attorney General shall award grants under paragraph (1) to—

''(A) established nonprofit, nongovernmental tribal coalitions addressing domestic violence and sexual assault against Indian women; and

''(B) individuals or organizations that propose to incorporate as nonprofit, nongovernmental tribal coalitions to address domestic violence and sexual assault against Indian women.

''(3) ELIGIBILITY FOR OTHER GRANTS.—Receipt of an award under this subsection by tribal domestic violence and sexual assault coalitions shall not preclude the coalition from receiving additional grants under this title to carry out the purposes described in subsection (b).''.

SEC. 210. EXPANSION OF PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANT PROGRAM.

(a) FORENSIC BACKLOG ELIMINATION GRANTS.—Section 2804 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797m) is amended—

(1) in subsection (a)—

(A) by striking ''shall use the grant to carry out'' and inserting ''shall use the grant to—

''(1) carry out'';

(B) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(2) eliminate a backlog in the analysis of forensic science evidence, including firearms examination, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence; and

''(3) train, assist, and employ forensic laboratory personnel, as needed, to eliminate a forensic evidence backlog.'';

(2) in subsection (b), by striking ''under this part'' and inserting ''for the purpose set forth in subsection (a)(1)''; and

(3) by adding at the end the following:

''(e) DEFINED TERM.—As used in this section, the term 'forensic evidence backlog' means forensic evidence that—

''(1) has been stored in a laboratory, medical examiner's office, or coroner's office; and

''(2) has not been subjected to all appropriate forensic testing because of a lack of resources or personnel.''.

(b) EXTERNAL AUDITS.—Section 2802 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797k) is amended—

(1) in paragraph (2), by striking the ''and'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(4) a certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, or coroner's office in the State that will receive a portion of the grant amount.''.

(c) THREE-YEAR EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by striking paragraph (24) and inserting the following:—

''(24) There are authorized to be appropriated to carry out part BB of this Act, to remain available until expended—

''(A) $35,000,000 for fiscal year 2004;

''(B) $85,400,000 for fiscal year 2005;

''(C) $134,733,000 for fiscal year 2006;

''(D) $128,067,000 for fiscal year 2007;

''(E) $56,733,000 for fiscal year 2008; and

''(F) $42,067,000 for fiscal year 2009.''.

SEC. 211. CREATION OF NEW FORENSIC BACKLOG ELIMINATION GRANT PROGRAM.

(a) GRANTS AUTHORIZED.—The Attorney General is authorized to award grants to States, units of local government, and tribal governments to eliminate forensic science backlogs.

(b) PURPOSE.—The purpose of the grant program established under this section is to—

(1) eliminate the backlog in the analysis of any area of forensic science evidence, including firearms examination, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence; and

(2) train, assist, and employ forensic laboratory personnel as needed to eliminate a forensic evidence backlog.

(c) USE OF FUNDS.—

(1) SUPPLANTING PROHIBITED.—Grant funds made available to applicants under this section shall be used to supplement and not supplant other Federal or State funds.

(2) ADMINISTRATIVE COSTS.—An applicant may use not more than 5 percent of the funds received through grants awarded under this section for administrative costs.

(d) APPLICATION.—

(1) IN GENERAL.—A State, local government, or tribal government desiring a grant under this section, shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require.

(2) ASSURANCES AND CERTIFICATION.—The application submitted under paragraph (1) shall—

(A) provide assurances that the applicant has implemented, or will implement not later than 120 days after the submission date

of such application, a comprehensive plan for the expeditious analysis of the forensic evidence currently backlogged; and

(B) certify that the forensic science laboratory—

(i) employs generally accepted practices and procedures; and

(ii) is accredited by the Laboratory Accreditation Board of the American Society of Crime Laboratory Directors or the National Association of Medical Examiners or any other nonprofit professional organization that may be recognized within the forensic science community as competent to award such accreditation.

(e) DEFINED TERM.—As used in this section, the term ''forensic evidence backlog'' means—

(1) particular forensic evidence has been admitted to the laboratory faster than it can be analyzed; or

(2) pertinent testing has been curtailed or not performed due to lack of resources.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $20,000,000 for each of the fiscal years 2005 through 2009 for grants under this section.

SEC. 212. REPORT TO CONGRESS.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the implementation of this Act.

(b) CONTENTS.—The report submitted under subsection (a) shall include a description of—

(1) the progress made by Federal, State, and local entities in—

(A) collecting and entering DNA samples from offenders convicted of qualifying offenses for inclusion in the Combined DNA Index System (referred to in this subsection as ''CODIS'');

(B) analyzing samples from crime scenes, including evidence collected from sexual assaults and other serious violent crimes, and entering such DNA analyses in CODIS; and

(C) increasing the capacity of forensic laboratories to conduct DNA analyses;

(2) the priorities and plan for awarding grants among eligible States and units of local government to ensure that the purposes of this Act are carried out;

(3) the distribution of grant amounts under this Act among eligible States and local governments, and whether the distribution of such funds has served the purposes of the Debbie Smith DNA Backlog Grant Program;

(4) grants awarded and the use of such grants by eligible entities for DNA training and education programs for law enforcement, correctional personnel, court officers, medical personnel, victim service providers, and other personnel authorized under sections 203 and 204;

(5) grants awarded and the use of such grants by eligible entities to conduct DNA research and development programs to improve forensic DNA technology, and implement demonstration projects under section 205;

(6) the steps taken to establish the National Forensic Science Commission, and the activities of the Commission under section 205(c);

(7) the use of funds by the Federal Bureau of Investigation under section 206;

(8) grants awarded and the use of such grants by eligible entities to promote the use of forensic DNA technology to identify missing persons and unidentified human remains under section 207;

(9) grants awarded and the use of such grants by eligible entities to eliminate forensic science backlogs under sections 210 and 211; and

(10) any other matters considered relevant by the Attorney General.

CRIMINAL JUSTICE LEGAL FOUNDATION,
Sacramento, CA, November 5, 2003.

Hon. JON KYL,
U.S. Senate,
Washington, DC.

DEAR MR. KYL: Recently, the Judiciary Committee approved H.R. 3214, the ''Advancing Justice Through DNA Technology Act of 2003.'' Although the goals of this bill are laudable, one provision in particular is extremely ill-considered, and it will actually operate to obstruct the system rather than improve it. Section 321 should be deleted from the bill.

Section 321 authorizes grants ''for the purpose of improving the quality of legal representation provided to indigent defendants in State capital cases.'' That is certainly a worthy purpose, but this bill will not achieve it. Instead, it is a giant step backward in the direction of the discredited ''resource centers'' which Congress defunded years ago, after finding that they had become taxpayer-funded nests of saboteurs.

A condition for the grant is that a state establish an ''effective system'' for capital representation. However, ''effective system'' is nonsensically defined as one that removes the authority to appoint trial counsel from the trial judge and gives it to a central authority composed of capital defense lawyers.

We saw with the ''resource centers'' how these capital representation organizations were invariably staffed by hard-core, anti-death-penalty fanatics who saw it as their mission to bring the system to a screeching halt. In an unusual moment of candor, the head of one of the resource centers wrote in a published article that it was the duty of the lawyer to file motions just to ''make trouble,'' Lyon, Defending the Capital Case: What Makes Death Different? 42 Mercer L. Rev. 695, 700 (1991). Such conduct is, of course, clearly unethical. In 1996, Congress finally woke up to what was being done with taxpayer money and defunded the resource centers.

Appointment authority is one of the few checks available against unethical conduct by defense lawyers. The attorney discipline system is toothless. The prosecution cannot appeal on defense misconduct, the way the defense does on prosecutor misconduct. The trial judge's refusal to appoint lawyers who are notorious for obstructionism and other unethical behavior is the most effective deterrent. To remove the appointment authority to an entity full of people who actually encourage such misconduct is a recipe for chaos.

Congress has not removed the appointment authority from federal district judges, for good reason. A number of states have recently implemented improvements to their capital representation systems. These reforms have taken different shapes in different states, as is appropriate for a federal system. Instead of evaluating the different approaches to see which one works best in the real world, section 321 would declare most, if not all, of them ''ineffective,'' and deny defense grants to states that have chosen a different and possibly better path. Section 326 effectively makes a state ineligible for the prosecution grants if it chooses not to change its appointment system to qualify for the defense grants.

Congress should not mandate a single solution without the most careful consideration of the reforms the states have already enacted. The problem of effective counsel is a complex one. It requires more study and more debate before Congress endorses a particular solution. Section 321 of H.R. 3214 is half-baked, and it should be deleted.

Sincerely,

KENT S. SCHEIDEGGER,
Legal Director.

[From National Review Online, Oct. 29, 2003]

PROTECTION RACKET—CONGRESS PREPARES TO FUND THE ANTI-DEATH-PENALTY LOBBY

(By Ramesh Ponnuru)

Why is a Republican Congress considering a bill to fund anti-death-penalty activists? A bill that could result in murderers going free? A bill that was initially introduced to hurt George W. Bush? Beats me. But that's exactly what Congress is doing.

In early 2000, Democrats were portraying George W. Bush's Texas as a third-world hellhole where the water was dirty, the churches were filled with guns, and the streets ran red with blood of unlucky defendants. A few anecdotes in which public defenders really had been lax in capital murder cases were extrapolated into a critique of law enforcement in the state. At around this time, Senator Patrick Leahy of Vermont and Representative William Delahunt of Massachusetts, both Democrats, introduced the ''Innocence Protection Act.'' Supposedly, the bill was going to keep innocents from getting put on death row by, among other things, providing for better legal defenses for accused capital murderers.

In a modified form, the bill has been made part of the ''Advancing Justice Through DNA Technology Act of 2003.'' Sponsors of the bill include Orrin Hatch and James Sensenbrenner, the chairmen of the House and Senate judiciary committees. The House Judiciary Committee voted for the bill 28–1. Conservative Jeff Flake was the only dissenter.

There are two major problems with the bill. First, its low standard for requiring new trials makes it likely that murderers will go free. The bill says that federal prisoners have a right to a new trial if a DNA test ''establish[es] by a preponderance of evidence that a new trial would result in acquittal.'' This standard is very different from a requirement that the DNA test establish that the prisoner probably did not commit the crime. DNA at a murder scene can, of course, come from a variety of sources. It may be that the jury in the original trial, faced with a negative DNA result, would have found the defendant guilty anyway based on other evidence. But witnesses die and evidence deteriorates. Wait long enough to get a DNA test, and a new trial may be unlikely to yield a conviction even if the defendant actually committed the crime. The ''result in acquittal'' standard is used to allow new trials based on new evidence—but only within three years of the original trial. This bill has no such time limit. The result is not a reduced sentence, but the defendant's walking.

The second problem is that the bill bribes states to give up control of their public-defender systems. Essentially, the bill would funnel taxpayer dollars to the ''capital resource centers'' that Congress defunded in 1996, having found that they frequently abused the appeals process. (See pages 53–57 of this report for a long list of examples of such abuses.) Abuses would be likely since state courts, and other branches of state and local government, would no longer have supervisory authority over publicly funded defense counsel. Indeed, supporters of the Innocence Protection Act have been positively enthusiastic about one form of abuse. When Leahy ran the Judiciary Committee last year, it issued a report that said that capital resource centers ''may legitimately assert a large number of claims'' based on a ''reversal of existing law.'' In other words, it's legitimate for tax-funded public defenders to file a ''large number of claims'' that are precluded by current law.

Is federal intervention necessary? States have been busy reforming their own capital-

defense systems. But the same Leahy report mentioned earlier identified five cases in which ineffective counsel had led innocent people to be sentenced to death. But as the dissenting Republican report pointed out, the five cases Leahy discussed established no such thing. In one of the cases, the defendent was never actually sentenced to death. In three of the cases, it is not at all clear that the defendant was innocent. (Prosecutors declined to retry them because evidence had deteriorated. In one case, for example, the building in which the murder took place had been demolished.) The cases are marked more, in any case, by prosecutorial misconduct than by sloppy defenses.

That's true, by the way, of cases in which actually innocent people have been put on death row. It has generally been because prosecutors relied too much on unreliable evidence, such as the testimony of jailhouse informants, or because police and prosecutors acted in grossly improper ways. (Say hello to our friends in Cook County.) When prosecutors suppress evidence, the most competent defense attorneys will be at a disadvantage. The Innocence Protection Act's capital-defense provisions will not ameliorate that problem. But then, it's more about funneling tax money to opponents of the death penalty than springing truly innocent people from death row.

''What's disgusting is we're actually wasting time fighting this in a Republican Congress,'' says one Republican Senate staffer.

By Mr. CORNYN:

S.J. Res. 23. A joint resolution proposing an amendment to the Constitution of the United States providing for the event that one-fourth of the members of either the House of Representatives or the Senate are killed or incapacitated; to the Committee on the Judiciary

S.J. RES. 23

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, 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:

''ARTICLE—

''The Congress may by law provide for the case of death or inability of members of the House of Representatives, and the case of inability of members of the Senate, in the event that one-fourth of either House are killed or incapacitated, declaring who shall serve until the disability is removed, or a new member is elected. Any procedures established pursuant to such a law shall expire not later than 120 days after the death or inability of one-fourth of the House of Representatives or the Senate, but may be extended for additional 120-day periods if one-fourth of either the House of Representatives or the Senate remains vacant or occupied by members unable to serve.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 259—TO AUTHORIZE LEGAL REPRESENTATION IN BELL AVIATION, INC., ET AL. V. SINO SWEARINGEN AIRCRAFT CO., L.P., ET AL

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 259

Whereas, in the case of Bell Aviation, Inc., et al. v. Sino Swearingen Aircraft, Co., L.P., et al., Cause No. 03–02532, pending in the District Court of Dallas County, Texas, the plaintiffs have obtained from the Superior Court of the District of Columbia subpoenas for deposition testimony and document production by Senator John D. Rockefeller IV and Terri Giles, a staff member in the office of Senator Rockefeller;

Whereas, pursuant to section 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members and employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate; and

Whereas, by Rule VI of the Standing Rules of the Senate, no Senator shall absent himself from the service of the Senate without leave: Now, therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent Senator Rockefeller and Terri Giles in connection with the subpoenas issued at this action.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2072. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

SA 2073. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2074. Mr. DASCHLE (for himself and Mr. FRIST) submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2075. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2076. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2077. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2078. Mr. DASCHLE (for himself, Mr. ENZI, Mr. THOMAS, Mr. JOHNSON, Mr. HARKIN, Mr. GRASSLEY, Mr. BURNS, Mr. BINGAMAN, Mr. BAUCUS, Mr. DORGAN, Mr. CONRAD, and Mr. KERRY) submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2079. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2080. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra.

SA 2081. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2082. Mr. NELSON, of Florida (for himself and Mr. GRAHAM, of Florida) submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2083. Mrs. FEINSTEIN (for herself, Mr. LUGAR, Mr. LEVIN, Mr. HARKIN, Ms. CANTWELL, Mrs. BOXER, Mr. LEAHY, Mr. WYDEN, Mr. DURBIN, and Mr. HOLLINGS) proposed an amendment to the bill H.R. 2673, supra.

SA 2084. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2085. Mr. HARKIN submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2086. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2087. Ms. CANTWELL (for herself, Mr. BINGAMAN, Mr. HOLLINGS, Mr. JEFFORDS, Mr. DORGAN, and Mr. FEINGOLD) proposed an amendment to the bill H.R. 2673, supra.

SA 2088. Mr. AKAKA (for himself, Mr. LEVIN, Mr. LIEBERMAN, and Ms. CANTWELL) proposed an amendment to the bill H.R. 2673, supra.

SA 2089. Mr. DAYTON proposed an amendment to the bill H.R. 2673, supra.

SA 2090. Mr. HATCH (for himself, Mr. HARKIN, and Mr. DURBIN) submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra.

SA 2091. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2092. Mr. BENNETT (for Mr. DURBIN) proposed an amendment to the bill H.R. 2673, supra.

SA 2093. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2094. Mr. BENNETT (for Ms. MURKOWSKI (for herself, Mr. STEVENS, Mr. INOUYE, and Mr. AKAKA)) proposed an amendment to the bill H.R. 2673, supra.

SA 2095. Mr. BENNETT (for Ms. SNOWE (for herself, Mr. DORGAN, and Ms. COLLINS)) proposed an amendment to the bill H.R. 2673, supra.

SA 2096. Mr. BENNETT (for Mr. LEVIN (for himself and Ms. STABENOW)) proposed an amendment to the bill H.R. 2673 , supra.

SA 2097. Mr. BENNETT (for Mr. INHOFE) proposed an amendment to the bill H.R. 2673, supra.

SA 2098. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2099. Mr. BENNETT (for Mr. INOUYE) proposed an amendment to the bill H.R. 2673, supra.

SA 2100. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2101. Mr. BENNETT (for Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2102. Mr. BENNETT (for Mr. BROWNBACK) proposed an amendment to the bill H.R. 2673, supra.

SA 2103. Mr. BENNETT proposed an amendment to the bill H.R. 2673, supra.

SA 2104. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2105. Mr. BENNETT (for Mr. GRASSLEY (for himself and Mr. DORGAN)) proposed an amendment to the bill H.R. 2673, supra.

SA 2106. Mr. BENNETT (for Mr. CRAIG) proposed an amendment to the bill H.R. 2673, supra.

SA 2107. Mr. BENNETT (for Mr. GRAHAM, OF FLORIDA (for himself and Mr. NELSON, of Florida)) proposed an amendment to the bill H.R. 2673, supra.

SA 2108. Mr. BENNETT (for Mr. BURNS (for himself and Mrs. CLINTON)) proposed an amendment to the bill H.R. 2673 , supra.