

He successfully argued that the Double Jeopardy Clause barred the imposition of civil penalties under Federal law against an individual who had been convicted and punished under criminal law for the same conduct.

Mr. Roberts also participates extensively in the pro bono program of his firm, assisting his colleagues prepare pro bono appeals on matters such as termination of parental rights, minority voting rights, noise pollution at the Grand Canyon, and environmental protection of Glacier Bay.

I have every confidence that Mr. Roberts will make a great addition to the DC Circuit. He is an exceptionally well-qualified jurist who has distinguished himself as one of the best in the legal profession. I am confident that Mr. Roberts will serve with distinction on the DC Circuit, and I ask for my colleagues' full support of his nomination.

Mr. President, I ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nomination considered and confirmed is as follows:

#### THE JUDICIARY

John G. Roberts, Jr., of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. HATCH. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. It is my understanding that this judge has waited about 10 years. He has been nominated several times.

Mr. HATCH. He has waited 12 years, through three nominations, by two different Presidents.

Mr. REID. He is the 124th judge we have approved for the Bush administration. The record is 124 to 2.

Mr. HATCH. Keep in mind, as of tomorrow, those two will be waiting for 2 solid years. We need to get them done, too. I call on my colleagues on the other side to get rid of their wicked and evil ways and allow these people to have votes up and down.

Mrs. BOXER. I object.

Mr. HATCH. I heard an objection from the other side.

I yield the floor.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

#### AIR CARGO SECURITY IMPROVEMENT ACT

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. I ask unanimous consent that the Senate now proceed to

the consideration of Calendar No. 76, S. 165, the air cargo security improvement bill.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 165) to improve air cargo security.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments, as follows:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 165

*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 "Air Cargo Security Improvement Act".

#### SEC. 2. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) of title 49, United States Code, is amended to read as follows:

"(f) CARGO.—

"(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

"(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

"(B) all-cargo aircraft in air transportation and intrastate air transportation.

"(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1)."

#### SEC. 3. AIR CARGO SHIPPING.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

**["§ 44922. Regular inspections of air cargo shipping facilities]**

**["§ 44923. Regular inspections of air cargo shipping facilities]**

"The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States."

(b) ADDITIONAL INSPECTORS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this subtitle.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, is amended by adding at the end the following:

**["44922]. 44923. Regular inspections of air cargo shipping facilities"**.

#### SEC. 4. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is further amended by adding at the end the following:

**["§ 44923. Air cargo security]**

**["§ 44924. Air cargo security]**

"(a) DATABASE.—The Under Secretary of Transportation for Security shall establish

an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the results of the pilot program to improve the known shipper program.

"(b) INDIRECT AIR CARRIERS.—

"(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

"(2) ENSURING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

"(3) NOTICE OF FAILURES.—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

"(4) SUSPENSION OR REVOCATION OF CERTIFICATE.—The Secretary, as appropriate, shall suspend or revoke any certificate or authority issued under chapter 411 to an indirect air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this subparagraph may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

"(5) INDIRECT AIR CARRIER.—In this subsection, the term 'indirect air carrier' has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

"(c) CONSIDERATION OF COMMUNITY NEEDS.—In implementing air cargo security requirements under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities."

(b) ASSESSMENT OF INDIRECT AIR CARRIER PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part 1548 of title 49, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Transportation for Security such sums as may be necessary to carry out this section.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, as amended by section 3, is amended by adding at the end the following: **["44923.] 44924. Air cargo security"**.

#### SEC. 5. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program

for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

**SEC. 6. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.**

(a) **IN GENERAL.**—The Under Secretary of Transportation for Security shall establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed aboard such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) **PLAN REQUIREMENTS.**—The plan shall include provisions for—

(1) security of each carrier's air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported aboard all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section 44901(f)(1)(B) of title 49, United States Code; and

(6) additional measures deemed necessary and appropriate by the Under Secretary.

(c) **CONFIDENTIAL INDUSTRY REVIEW AND COMMENT.**—

(1) **CIRCULATION OF PROPOSED PROGRAM.**—The Under Secretary shall—

(A) propose a program under subsection (a) within 90 days after the date of enactment of this Act; and

(B) distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply.

(2) **COMMENT PERIOD.**—Any person to which the proposed program is distributed under paragraph (1) may provide comments on the proposed program to the Under Secretary not more than 60 days after it was received.

(3) **FINAL PROGRAM.**—The Under Secretary of Transportation shall issue a final program under subsection (a) not later than 45 days after the last date on which comments may be provided under paragraph (2). The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

(4) **SUSPENSION OF PROCEDURAL NORMS.**—Neither chapter 5 of title 5, United States Code, nor the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the program required by this section.

**SEC. 7. REPORT ON PASSENGER PRESCREENING PROGRAM.**

(a) **IN GENERAL.**—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the Attorney General, shall submit a report in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the potential impact of the Transportation Security Administration's proposed Computer Assisted Passenger Prescreening system, commonly known as CAPPS II, on the privacy and civil liberties of United States Citizens.

(b) **SPECIFIC ISSUES TO BE ADDRESSED.**—The report shall address the following:

(1) Whether and for what period of time data gathered on individual travelers will be retained, who will have access to such data, and who will make decisions concerning access to such data.

(2) How the Transportation Security Administration will treat the scores assigned to individual travelers to measure the likelihood they

may pose a security threat, including how long such scores will be retained and whether and under what circumstances they may be shared with other governmental, non-governmental, or commercial entities.

(3) The role airlines and outside vendors or contractors will have in implementing and operating the system, and to what extent will they have access, or the means to obtain access, to data, scores, or other information generated by the system.

(4) The safeguards that will be implemented to ensure that data, scores, or other information generated by the system will be used only as officially intended.

(5) The procedures that will be implemented to mitigate the effect of any errors, and what procedural recourse will be available to passengers who believe the system has wrongly barred them from taking flights.

(6) The oversight procedures that will be implemented to ensure that, on an ongoing basis, privacy and civil liberties issues will continue to be considered and addressed with high priority as the system is installed, operated and updated.

**SEC. 8. MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.**

(a) **ALIENS COVERED BY WAITING PERIOD.**—Subsection (a) of section 44939 of title 49, United States Code, is amended—

(1) by resetting the text of subsection (a) after “(a) WAITING PERIOD.—” as a new paragraph 2 ems from the left margin;

(2) by striking “A person” in that new paragraph and inserting “(1) IN GENERAL.—A person”;

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(4) by striking “any aircraft having a maximum certificated takeoff weight of 12,500 pounds or more” and inserting “an aircraft”;

(5) by striking “paragraph (1)” in paragraph (1)(B), as redesignated, and inserting “subparagraph (A)”;

(6) by adding at the end the following:

“(2) **EXCEPTION.**—The requirements of paragraph (1) shall not apply to an alien who—

“(A) has earned a Federal Aviation Administration type rating in an aircraft; or

“(B) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation.”.

(b) **COVERED TRAINING.**—Section 44936(c) of title 49, United States Code, is amended to read as follows:

“(c) **COVERED TRAINING.**—

“(1) **IN GENERAL.**—For purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.

“(2) **EXCEPTION.**—For the purposes of subsection (a), training does not include classroom instruction (also known as ground training), which may be provided to an alien during the 45-day period applicable to the alien under that subsection.”.

(c) **PROCEDURES.**—

(1) **IN GENERAL.**—Not later than 30 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement section 44939 of title 49, United States Code.

(2) **USE OF OVERSEAS FACILITIES.**—In order to implement the amendments made to section 44939 of title 49, United States Code, by this section, United States Embassies and Consulates that have fingerprinting capability shall provide fingerprinting services to aliens covered by that section if the Attorney General requires their fingerprinting in the administration of that section, and transmit the fingerprints to the Department of Justice and any other appropriate

agency. The Attorney General shall cooperate with the Secretary of State to carry out this paragraph.

(d) **EFFECTIVE DATE.**—Not later than 120 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement the amendments made by this section. The Attorney General may not interrupt or prevent the training of any person described in section 44939(a)(1) of title 49, United States Code, who commenced training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less before, or within 120 days after, the date of enactment of this Act unless the Attorney General determines that the person represents a risk to aviation or national security.

(e) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation and the Attorney General shall jointly submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, in reducing risks to aviation and national security.

**SEC. 9. PASSENGER IDENTIFICATION.**

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air carriers and labor organizations representing individuals employed in commercial aviation, shall develop guidelines to provide air carriers guidance for detecting false or fraudulent passenger identification. The guidelines may take into account new technology, current identification measures, training of personnel, and issues related to the types of identification available to the public.

(b) **AIR CARRIER PROGRAMS.**—Within 60 days after the Under Secretary issues the guidelines under subsection (a) in final form, the Under Secretary shall provide the guidelines to each air carrier and establish a joint government and industry council to develop recommendations on how to implement the guidelines.

(c) **REPORT.**—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of this Act on the actions taken under this section.

**SEC. 10. PASSENGER IDENTIFICATION VERIFICATION.**

(a) **PROGRAM REQUIRED.**—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of the identification verification technologies the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

(b) **TECHNOLOGIES EMPLOYED.**—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, retinal, iris, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

(c) **COMMENCEMENT.**—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.

**SEC. 11. BLAST-RESISTANT CARGO CONTAINER TECHNOLOGY.**

Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security, and the Administrator of the Federal Aviation Administration, shall jointly submit a report to Congress that contains—

(1) an evaluation of blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) an examination of the advantages associated with the technology in preventing damage and loss of aircraft from terrorist action and any operational impacts which may result from use of the technology (particularly added weight and costs);

(3) an analysis of whether alternatives exist to mitigate the impacts described in paragraph (2) and options available to pay for the technology; and

(4) recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

#### SEC. 12. ARMING PILOTS AGAINST TERRORISM.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress makes the following findings:

(A) During the 107th Congress, both the Senate and the House of Representatives overwhelmingly passed measures that would have armed pilots of cargo aircraft.

(B) Cargo aircraft do not have Federal air marshals, trained cabin crew, or determined passengers to subdue terrorists.

(C) Cockpit doors on cargo aircraft, if present at all, largely do not meet the security standards required for commercial passenger aircraft.

(D) Cargo aircraft vary in size and many are larger and carry larger amounts of fuel than the aircraft hijacked on September 11, 2001.

(E) Aircraft cargo frequently contains hazardous material and can contain deadly biological and chemical agents and quantities of agents that caused communicable diseases.

(F) Approximately 12,000 of the Nation's 90,000 commercial pilots serve as pilots and flight engineers on cargo aircraft.

(G) There are approximately 2,000 cargo flights per day in the United States, many of which are loaded with fuel for outbound international travel or are inbound from foreign airports not secured by the Transportation Security Administration.

(H) aircraft transporting cargo pose a serious risk as potential terrorist targets that could be used as weapons of mass destruction.

(I) Pilots of cargo aircraft deserve the same ability to protect themselves and the aircraft they pilot as other commercial airline pilots.

(J) Permitting pilots of cargo aircraft to carry firearms creates an important last line of defense against a terrorist effort to commandeer a cargo aircraft.

(2) SENSE OF CONGRESS.—It is the sense of Congress that a member of a flight deck crew of a cargo aircraft should be armed with a firearm to defend the cargo aircraft against an attack by terrorists that could result in the use of the aircraft as a weapon of mass destruction or for other terrorists purposes.

(b) ARMING CARGO PILOTS AGAINST TERRORISM.—Section 44921 of title 49, United States Code, is amended—

(1) by striking "passenger" in subsection (a) each place that it appears;

(2) by striking "or," and all that follows in subsection (k)(2) and inserting "or any other flight deck crew member."; and

(3) by adding at the end of subsection (k) the following:

"(3) ALL-CARGO AIR TRANSPORTATION.—For the purposes of this section, the term air transportation includes all-cargo air transportation."

(d) IMPLEMENTATION.—

(1) TIME FOR IMPLEMENTATION.—The training of pilots as Federal flight deck officers required in the amendments made by subsection (b) shall begin as soon as practicable and no later than 90 days after the date of enactment of this Act.

(2) EFFECT ON OTHER LAWS.—The requirements of subparagraph (1) shall have no effect on the deadlines for implementation contained

in section 44921 of title 49, United States Code, as in effect on the day before the date of enactment of this Act.

#### SEC. 13. REPORT ON DEFENDING AIRCRAFT FROM MAN-PORTABLE AIR DEFENSE SYSTEMS (SHOULDER-FIRED MISSILES).

Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall issue a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on how best to defend turbo and jet passenger aircraft from Man-Portable Air Defense Systems (shoulder-fired missiles). The report shall also include actions taken to date, countermeasures, risk mitigation, and other activities. The report may be submitted in classified form.

#### COMMITTEE AMENDMENTS WITHDRAWN

Mr. HATCH. I ask unanimous consent that the committee amendments be withdrawn.

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

#### AMENDMENT NO. 538

Mr. HATCH. I send a substitute amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for Mr. MCCAIN, Mr. HOLLINGS, Mrs. HUTCHISON, and Mrs. BOXER, proposes an amendment numbered 538.

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

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

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

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. MCCAIN. Mr. President, I am pleased that the Senate is considering S. 165, the Air Cargo Security Act. When Congress acted in the aftermath of the September 11, 2001 attacks, its focus was on passenger screening. The Aviation and Transportation Security Act set out a template for the screening of passengers and baggage. We deferred dealing with cargo carried on passenger airlines and on all-cargo aircraft until a review of cargo security could be undertaken. S. 165 is designed to bolster air cargo security and provides further guidance and authority to the Transportation Security Administration—TSA—to ensure continued improvement in these areas.

Let me say at the outset that Senator HUTCHISON has worked very hard on this bill and deserves a great deal of credit. Although this issue was one that everyone believed was very important, she and Senator SNOWE introduced cargo security bills during the second session of last congress. Those bills became a base for the cargo security provisions in last year's S. 2949, the Aviation Security Improvement Act, which passed the Senate, but was not passed by the House. Senator HUTCHISON and Senator FEINSTEIN reintroduced the air cargo provisions from last year as a stand alone bill this year.

Cargo security is one area in which we can and should be proactive to address potential problems and vulnerabilities head on. I note that TSA is already looking at improving cargo security under its mandate in ATSA.

S. 165 requires the TSA to develop a strategic plan to ensure that all air cargo is screened, inspected, or otherwise made secure. Up until now, there has been no consistent oversight in this area and this plan will ensure the continued safety of air cargo.

In addition, TSA is to develop a system for the regular inspection of air cargo shipping facilities. This will ensure that all regulations are being followed and that these shipping facilities are meeting all of their federal security requirements.

TSA is required to establish a database of known shippers in order to further improve the Known Shipper Program. This is in response to concerns expressed by the DOT Inspector General that the existing Known Shipper Program needed some revisions to ensure the continued safety in air cargo.

S. 165 also requires that the existing Federal security plans for indirect air carriers is reviewed and it gives TSA the power to take enforcement actions against indirect air carriers if TSA finds that they are not adhering to security laws or regulations. This enforcement power will ensure that these freight forwarders have the appropriate safeguards in place and are meeting them.

S. 165 also requires all-cargo carriers to develop a security plan that is subject to approval by TSA to ensure that air cargo carried on these carriers is properly screened and protected from tampering. As a part of this requirement, TSA is to develop a security training program for persons who handle air cargo.

Finally, the managers' amendment to S. 165 makes a couple of changes to the bill approved by the Commerce Committee. At the time of Committee consideration, we were working with the TSA on a number of their technical comments. We were unable to complete these efforts prior to the markup. These have now been worked-out and are included.

The Commerce Committee also adopted an amendment offered by Senator NELSON of Florida that extends the Federal Government's oversight of foreign students receiving flight training in the United States. Some members of the committee expressed concern that the requirements of the amendment would be too onerous on flight schools and Senator NELSON agreed to work on these issues. A compromise has been developed that met the concerns of both sides and is included in the amendment.

I urge the Senate to approve this bill that will strengthen the security of our cargo aviation system.

I also note my friend, Senator BOXER from California, continues to be heavily involved in the issue of protecting

our airliners from the possibility of a missile attack. I thank her for her efforts in that direction. I am encouraged by the information she has given to me that the TSA apparently is very serious in working on this threat to the security of aviation.

I again thank my friend from Texas for her outstanding work on this issue and I think it lays out a very reasonable but very important template for ensuring the security of our cargo aircraft, the same way as we worked together on that of commercial airliners.

I thank my colleague, I thank all who were involved in this very important issue, and I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, Senator HOLLINGS asked me if I would be the Democratic manager here. I want to say to Senator HUTCHISON, thank you so much for all your hard work. I also thank Senator HOLLINGS and Senator ROCKEFELLER, Senator WYDEN—frankly, the whole committee. This is one committee that does work on a bipartisan basis and it is very refreshing, I might say.

S. 165 takes needed steps to respond to concerns that have been raised about the status of air cargo security in the U.S., and will act to close a loophole that has left our aviation system vulnerable to a terrorist attack.

Last year, Admiral James Loy, the Under Secretary of Transportation for Security, expressed his concern, in testimony before the Senate Commerce Committee, that air cargo security needed to be strengthened or it would remain a potential backdoor open for terrorists to exploit. These concerns are well-founded as, prior to September 11, 2001, the Department of Transportation Inspector General's—DOT IG—Office had confirmed that it was possible to ship dangerous items on aircraft without ever having the contents of packages screened. Since the terrorist attacks of 9-11, significant changes have occurred to the cargo industry in response to this security loophole, but more must be done. Last year, the Senate passed a comprehensive cargo security bill, but time ran out on the 107th Congress before the House could properly consider it. We need to pass S. 165 now, and make certain the foundation for addressing this matter is put into law.

S. 165 will instruct the Transportation Security Administration—TSA—to establish an inspection program for all cargo that is transported through the Nation's air transportation system. The bill includes language from the legislation which passed in the Senate last year requiring the creation of an industry-wide database of known shippers of cargo on passenger aircraft and an assessment of the current indirect air carrier program, random inspections of indirect air carrier facilities, and a report to Congress on the random audit system. In addition, S. 165 authorizes the ap-

propriation of necessary sums for TSA to carry out an air cargo security program, and mandates the development of a training program for all air cargo handlers.

We have come close to closing the loopholes in cargo security before, but the process must be completed. This issue is critical to the future of aviation security, air travelers and our economy. Congress should act now to pass this legislation before a tragic, avoidable incident forces our hand.

I close by thanking the committee for adding actually four amendments that we worked on. I thank my staff for working so hard on this as well.

First of all, we have in this bill made sure the cargo pilots have the same opportunity to protect the cockpit as pilots in commercial planes. They are going to be part of this program now. I am very pleased about that.

Second, there is a study in here on the best way to proceed on blast-resistant containers. I have seen Kevlar material which will contain a bomb blast so that it doesn't wreak havoc and cause a horrible tragedy. So we are looking at that.

Third, something that Senator MCCAIN mentioned, we have included a study to look at the best defense for shoulder-fired missiles. During the break, I went to San Diego and I stood on the roof of a parking garage at the airport and, believe me, I felt like I could touch the aircraft as they came in for a landing. I looked around and realized this is a great vulnerability. Many terrorist groups have these shoulder-fired missiles, or they can buy them for as little as \$8,000. We have defenses we have on Air Force One, on military planes, with which El Al has their fleet protected. We need to protect our fleet.

We have a study in this particular bill just in case the study that is going on via the supplemental emergency bill gets bogged down. So it is a backup.

Last, I was very concerned to learn fake IDs are very easy to use, when you check into an airport. We have a study here to come up with a plan on how to use high technology to spot a fake ID.

I am very pleased to be here. Again, I thank Senator HOLLINGS for giving me this honor to express my support. I believe we are going to have a voice vote. I am very happy about it and I look forward to seeing this bill become law.

With that, I yield the floor. I know my friend from Texas, the author of this bill, has a good deal to say about this important piece of legislation.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, the Air Cargo Security Act will make such a difference in our Nation's air security. I think we have done a lot since 9/11. Since the 9/11 attacks, we have made tremendous progress in transportation security. We have created a new Department of Homeland Security. We have established the Transportation

Security Agency and invested heavily in personnel and equipment. However the one thing we have not done in the same way that we have protected the top of the airplane and the airport, is that we have not yet secured the belly of the aircraft. This is where the cargo is shipped. That is what the bill we are passing today would do.

The Air Cargo Security Act would establish a reliable known-shipper program, mandate inspections of cargo facilities, direct the Transportation Security Agency to work with foreign countries to have regular checks at facilities that bring cargo into the United States. The legislation develops a training program for air cargo handlers, and give TSA the power to revoke the license of a shipper or freight forwarder whose practices are unsound.

As the Senator from California mentioned, her amendment will allow cargo pilots to participate in the same security training as airline pilots and the legislation will require background checks for all noncitizens who would undergo flight training. These are just a few of the provisions that I think will go a long way to securing the entire aircraft and our country.

I think we have seen a dramatic improvement in the safety of our aircraft and our airports.

I want to make sure that America has the safest aviation system in the world. I think we can do it. This air cargo bill will make a difference. This bill passed the Senate last year, and I hope very much that the House will pass the bill this year and the President will sign it. Then we will give TSA the authority it needs to do this very important work.

Today, there is no doubt in my mind that the traveling public is considerably safer than we were on September 10, 2001. That is important to recognize. Our screeners undergo background checks, training and testing. Checked bags are scrutinized. Flight crew training has been improved. We all are traveling under a more secure system.

While our efforts in the 107th Congress have dramatically enhanced security, we in the 108th must continue to strive for seamless operations. This responsibility includes closing the cargo security loophole. It makes no sense to inconvenience airline passengers with security screening and baggage checks if we do not establish controls over the cargo traveling in the belly of the same plane. Currently, twenty-two percent of all air cargo in the U.S. is carried on passenger flights, only a tiny fraction of which is inspected. That is inexcusable.

Last year, Senator FEINSTEIN and I commissioned a GAO report on the security of our existing air cargo system, and the Commerce Committee held a closed hearing on this issue. The report reveals some very troubling facts. Security considerations prevent the report from getting too specific. But the GAO found that air cargo is vulnerable to theft and tampering while it is in

transit, and while it is in supposedly secure cargo facilities.

According to the report, identification cards used by cargo workers are generally not secured with fingerprints or other biometric identifiers. They can be counterfeited. Background checks for cargo employees are inadequate.

Perhaps the weakest link in the cargo security chain is the freight forwarder. These are the middlemen who collect cargo from shippers and deliver it to the air carrier. Regulations governing these companies are lax, and the TSA is finding security violations as it conducts inspections. Under current law, however, TSA lacks the authority to revoke the shipping privileges of freight forwarders that repeatedly violate security and procedural rules. The Air Cargo Security Act gives TSA that power.

Air cargo security is not a new problem. In 1988, Pan Am 103 went down over Lockerbie, Scotland because of explosives planted inside a radio in the cargo hold of a passenger airplane. The 1996 ValuJet crash in the Everglades was caused by high-pressure tanks that never should have been placed aboard a passenger aircraft.

This legislation will strengthen air cargo security on all commercial flights. Specifically, this bill establishes a more reliable known shipper program by requiring inspections of facilities, creating an accessible shipper database, and providing for tamper-proof identification cards for airport personnel. It also gives the TSA the tools required to hold shippers accountable for the contents they ship by allowing the administration to revoke the license of a shipper or freight forwarder engaged in unsound or illegal practices.

This Air Cargo Security Act also requires the TSA to develop a comprehensive training program for cargo professionals as well as an approved cargo security plan. The rules and procedures in this bill were developed in consultation with the TSA, the airlines, and the cargo carriers to ensure that the requirements are aggressive, but will not cause hardship to an already-stressed industry. In 2001, cargo accounted for about \$13 billion, or 10 percent, of the passenger airlines' total revenue.

I helped craft the assistance package set forth in the recent Supplemental Appropriations bill, and I applaud the way the unions have stepped to the plate and engaged in good faith negotiations to relieve financial stress on the carriers. I will fight to protect the one million aviation-related jobs nationwide. However, the aviation industry can never afford another 9/11. Air cargo is the largest loophole left in our aviation security network. It must be closed.

We will oversee the bill's implementation to ensure that it is accomplished with a minimum of expense to our critical, yet endangered aviation industry.

To strengthen air cargo security and passenger safety, I urge my colleagues to support the Air Cargo Security Act.

I thank all of my colleagues for their support. I thank the chairman of the committee, Mr. MCCAIN, and all of those who worked with me on this. I think we are doing a great job. Senator LOTT, the chairman of the Aviation Subcommittee, has worked with me on this. We have worked with the airlines. We don't want to burden the airlines at this time because they have had many shocks to their system. So we have worked with them to make sure that the actions we take are done in a responsible way.

I ask my colleagues for their support. I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, before she leaves the floor, let me commend our colleague from Texas, Senator HUTCHISON, who has spent an enormous amount of time on this issue. It has been particularly helpful to this Senator as I worked on some of the privacy issues I will be discussing. I thank my colleague for all of her good work.

Earlier this year I spoke on the floor about what I think has been the most important privacy issue of our time. That is the proposal for what is known as the Total Information Awareness Program. This would constitute the biggest surveillance program in American history. In the U.S. Senate, Senators INOUE, STEVENS, and FEINSTEIN have been working on a bipartisan basis with our colleagues in both political parties. We put in place sensible restrictions so as to ensure accurate congressional oversight.

What we called for was a requirement that first there be a report by the proponents of the program and the agencies involved on how the program would work.

Second, there is a requirement that to deploy any of the technology under the Total Information Awareness Program, there would have to be explicit congressional approval. This was a momentous step for the Senate to pass this legislation unanimously.

I am rising today to discuss what I think is yet another very significant privacy question which is an issue that needs debate in committee on this particular bill: the air cargo security legislation. The air cargo security legislation includes a proposal that I offered regarding what is known as CAPPS II, the passenger prescreening system that the Transportation Security Administration is developing. This program would do a computer search on each airline passenger to determine who should be subject to more careful security screening and, in some cases, who shouldn't be allowed to get on a plane.

All of us in the U.S. Senate understand that it is critically important to protect the security and safety of those who fly, and we certainly want to look at ways to do it that are smart and, particularly, target resources in an ef-

ficient way. But to set up a system that seeks information on each and every aircraft traveler and uses that system to assign scores to every individual—a score as to who might possibly be a threat—does raise some very significant privacy questions for the Senate.

The American people will want to know whether that system is narrowly limited for a specific purpose or whether it would become an all-purpose electronic snooping system. The public wants to know whether there are accurate safeguards to be sure the system won't be abused and sound procedures to provide passengers with the means to address mistakes.

Verbal assurances that these technologies will be used only on "lawfully collected information" are not enough. For one thing, "lawfully collected information" can include almost anything—my medical information, financial information, the books I have read, places I have visited. This same information—for each of my distinguished colleagues and millions of law-abiding citizens—can also be "lawfully collected."

In order to protect our civil liberties and right to privacy, Congress must be fully and publicly briefed on these types of new technological efforts.

As the New York Times editorial page said earlier this year, identifying travelers who may pose a terrorist threat is "a worthy goal" but also "raises serious privacy and due process concerns, which the government needs to address in a forthright manner." I ask unanimous consent that the text of this article be printed in the RECORD.

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

[From the New York Times, Mar. 11, 2003]

#### THE NEW AIRPORT PROFILING

Having successfully fielded thousands of newly minted federal agents to screen air travelers and their luggage, the Transportation Security Administration is now turning to a far more controversial endeavor. The agency is developing a sophisticated screening system designed to identify travelers who may pose a terrorist threat.

It is a worthy goal—one ordered up by Congress—but the creation of a highly intrusive federal surveillance program raises serious privacy and due process concerns, which the government needs to address in a forthright manner.

The notion of electronic profiling is not new. Using such criteria as whether a passenger paid cash for a ticket, a rudimentary system designed in the mid-1990's helped airlines flag passengers deserving heightened scrutiny. What that usually meant was that their checked luggage was carefully inspected. Some of the Sept. 11 hijackers were reported to have been picked out by that system, but it did little good since they did not check any bags.

The new profiling system is a quantum leap. In addition to evaluating certain travel-related behavior and looking for passenger names on watch lists, the new system will give the transportation agency access to numerous public and private databases the moment a passenger books a flight. Exactly which ones has not yet been determined, but

they may include the records of Department of Motor Vehicle offices, banks and credit-rating agencies.

After the program is in place, which could be as early as the end of this year, the Transportation Security Administration will assign each passenger a risk level: green, yellow or red. Travelers will not be informed of their designations, which will be encrypted onto their boarding passes. The T.S.A. says it is mindful of the obvious privacy concerns raised by such a system, though it points out that it will not be amassing new databases, but rather mining ones already used routinely to profile consumers. The agency says it is not interested in knowing whether you bounced a check five years ago, or whether you have paid your parking tickets, but in authenticating your identity.

Privacy principles are not necessarily sacrosanct, but this plan runs the risk of overreaching. For one thing, it could quickly lead to mistaken actions based on inaccurate information.

More worrisome is the possibility that this system could grow into a runaway vacuum cleaner, sweeping up all manner of data that can then be misused by the government. Congress recently put the brakes on the Pentagon's Total Information Awareness project, a dangerously uncontrolled program that was designed to track the activities of millions of Americans. Lawmakers must ensure that the transportation agency's profiling system does not become an all-purpose equivalent.

Mr. WYDEN. Mr. President, this article identifies the issue with respect to travelers. I spoke about those who may pose a terrorist threat. It is a worthy goal. But I also said that this issue raises serious privacy concerns which the government needs to address in a forthright way, and addressing privacy concerns in a forthright manner is what the legislation now does as a result of the amendment involving this passenger prescreening program.

What you are going to have under the legislation now is a chance to get the key questions answered with respect to how this program would work. It is my intention that the information with respect to how this program would work would be available for public scrutiny as well.

I met with those at the TSA who spearhead this passenger prescreening program. They certainly raise a number of issues with respect to privacy protections which they would like to include. But at this point, the only written information that we have on CAPPS II was published in the Federal Register on January 15 of this year.

That program outlines a broad-based initiative that would house records such as "risk assessment reports," financial and transactional data, public source information, proprietary data, and information from law enforcement and intelligent sources.

This broad array of information may then be disclosed to "Federal, State, territorial, tribal, local, international, or foreign agencies." Suffice it to say, based on the Federal Register description on January 15, 2003, the public is concerned about how this kind of program is going to work.

Clearly, our country wants to fight terrorism ferociously. We want to take

the steps necessary to protect our airline passengers. But something which is as sweeping and as broad as the proposal that was outlined in the Federal Register for screening airline passengers certainly ought to give the American people and the U.S. Senate pause.

I think it is important that the public not be kept in the dark on this issue. That is why the legislation on the program which I was able to include in the air cargo security bill is important. It is going to bring some sunshine to this issue—some long overdue sunshine.

I hope my colleagues will continue to work with me and others in a bipartisan basis on the privacy issues. We made very significant progress with respect to the limitations that were put on the Total Information Awareness Program. The effort that is now underway with respect to screening airline passengers presents some other very significant privacy issues. We ought to continue to make sure that as we take steps to protect the public safety, we remember that it is critically important to protect privacy rights and civil liberties. We now are making an effort to do that in the air cargo security legislation.

I urge my colleagues to support the bill tonight.

I yield the floor.

The PRESIDING OFFICER (Mr. VOINOVICH). Without objection, the amendment is agreed to.

The amendment (No. 538) was agreed to.

Mr. ROCKEFELLER. Mr. President, I rise in support of S. 165, the Air Cargo Security Improvement Act. This legislation is another critical piece in our ongoing efforts to increase the security of our aviation system. I commend my colleagues, Senator HUTCHISON and Senator FEINSTEIN, for their continued leadership on this critical issue.

Over the past 18 months, we have worked every day to improve security in our airports and on our airplanes. While we set in place unprecedented improvements in aviation security, clear gaps remain. Today's legislation is aimed at filling security gaps in the vast and economically vital air cargo network by providing the Transportation Security Administration and related security agencies with the authority and resources they need to implement new air cargo security requirements.

This important legislation, which passed the Senate last year as part of S. 2949, the Aviation Security Improvement Act, requires TSA to establish a system to screen, inspect, or otherwise ensure security of all cargo transported by air and to establish a system for regular inspection of airport and cargo shipping facilities. Unfortunately, the House of Representatives did not act on this legislation last year. Improving the security of our nation's air cargo system must be addressed this year, and I am pleased that the Senate has

acted quickly to pass this vital legislation again in the 108th Congress.

The Air Cargo bill would take several steps to improve the security of air cargo. The bill requires the Transportation Security Agency, TSA, to develop a strategic plan to ensure that all air cargo is screened, inspected, or otherwise made secure. TSA would also be required to develop a system for the regular inspection of air cargo shipping facilities, the establishment of a database of known shippers, companies and persons that regularly ship cargo, in order to bolster the Known Shipper Program, and review and assess the existing federal security program for freight forwarders, companies that accept and consolidate freight and tender it to an all cargo or passenger carrier for air shipment. The bill allows TSA to revoke the certificates of freight forwarders if the agency finds that they are not adhering to security laws or regulations.

The legislation also mandates that TSA develop a security training program for persons who handle air cargo and all cargo carriers would be required to develop security plans that would be subject to approval by TSA.

During the Commerce Committee's consideration of the legislation a number of important amendments offered by Senators WYDEN, BOXER, and BILL NELSON were adopted that strengthened the bill.

These provisions included requiring Secretary of Homeland Security to report to Congress on the impact on the privacy and civil liberties of the Computer Assisted Passenger Prescreening System, requiring background checks of alien flight school applicants to include applicants for flight training of planes below 12,500 pounds, and to transfer these responsibilities from the Department of Justice to the Transportation Security Administration, and requires guidelines for verifying passenger identification.

The Committee also adopted provisions to have the FAA and TSA conduct a study on blast-resistant cargo containers, allowing cargo pilots to participate in the Federal Flight Deck Officer program, and requiring the Department of Homeland Security to issue a report on how best to defend passenger aircraft from shoulder-fired missiles.

The Air Cargo Security Improvement Act is another important step in our efforts to improve our nation's aviation security network, but it is by no means the final step. I spend countless hours each week as part of my duties on the Intelligence Committee and we all recognize that the changing nature of threats will require continued vigilant oversight and modifications to our security network. There are no guarantees, but we can and must continue to work every day to make sure that the people who fly and the places they fly from are safe.

Mr. NELSON of Florida. Mr. President, I rise in support of S. 165 the Air Cargo Security Improvement Act.

This legislation is another important step toward fully protecting the United States and all Americans from terrorists who intend to use our aviation system to commit future attacks.

Among other provisions, including the creation of a security program to protect our air cargo from terrorist attacks, this bill mandates crucial studies on blast resistant cargo containers, the Transportation Security Administration's passenger screening program known as CAPPs II, and most importantly, how to defend our airliners from shoulder missile attacks similar to the attack last December on an Israeli charter jet in the skies over Kenya.

We must continue to be vigilant in protecting our Nation. This legislation addresses a deep concern of mine regarding foreign citizens coming to the United States to receive pilot training on all sizes of aircraft. Unfortunately, we have seen what can happen when people come to our country with the specific intent to do us great harm. Many of the September 11 hijackers learned to fly the planes they used as deadly weapons at flight schools here in the United States.

Section 113 of the Aviation and Transportation Security Act, which was enacted in the 107th Congress, requires background checks of all foreign flight school applicants seeking training to operate aircraft weighing 12,500 pounds or more. While this provision should help prevent September 11th-style attacks by U.S.-trained pilots using hijacked jets in the future, it does nothing to prevent different types of potential attacks against our domestic security. To rectify this problem, I introduced S. 236 together with Senators CORZINE, ENZI, FEINSTEIN, and THOMAS earlier this year.

The FBI has issued terrorism warnings indicating that small planes might be used to carry out suicide attacks. Small aircraft can be used by terrorists to attack nuclear facilities, carry explosives, or deliver biological or chemical agents. For example, if a crop duster filled with a combination of fertilizers and explosives were crashed into a filled sporting event stadium, thousands of people could be seriously injured or killed. We cannot allow this to happen. We need to ensure that we are not training terrorists to perform these activities. We cannot allow critical warnings to go unheeded.

This bill will close an important loophole and answer the critical warnings issued by the FBI by extending the background check requirement to all foreign applicants to U.S. flight schools, regardless of the size aircraft they seek to learn to fly. It also transfers the entire security background check program from the Department of Justice to the Department of Homeland Security, specifically to the Transportation Security Administration. It is my expectation that the Transportation Security Administration, which provided excellent advice

in the fine tuning of this legislation, will apply a stringent level of background screening to all foreign nationals who seek flight training here in the United States. We cannot allow anyone to slip through the cracks. We cannot aid anyone who intends to do harm to Americans and to our Nation.

I thank the distinguished chairman and ranking member of the Commerce Committee, Senators MCCAIN and HOLLINGS, and their staffs, for working with me to ensure inclusion of this provision in the bill.

Mrs. FEINSTEIN. Mr. President, I thank Senator HUTCHISON for her work on the Air Cargo Security Act. Last year this bill passed the Senate and I look forward to passing this legislation again today. Hopefully the House will take up this legislation promptly and send it to the President's desk.

Earlier this year Senator HUTCHISON and I released a report from the General Accounting Office that demonstrates why the Congress and the Transportation Security Administration must—together—move quickly to shore up our vulnerabilities to protect against another terrorist attack.

I strongly believe that we must increase our defenses across the board to anticipate the next attack, not just correct the vulnerabilities that were already exploited by terrorists on September 11.

After September 11, Congress moved quickly to federalize the airport security screening workforce to prevent more hijackings, but we have not done enough to increase our air cargo security.

The General Accounting Office report shows that Congress must require the TSA to develop a strategic plan to screen and inspect air cargo to protect our Nation's air transportation system. According to this report, our air cargo system remains vulnerable to a terrorist attack because:

First, there aren't enough safeguards in place to ensure that someone shipping air cargo under the "known shipper" program has taken the proper steps to protect against use by terrorists;

Second, cargo tampering is possible at various points where cargo transfers from company to company;

Third, air cargo handlers are not required to have criminal background checks, and they do not always have their identification verified;

Fourth, and most importantly, most cargo shipped by air is never screened.

To address these problems, the GAO recommends that the Transportation Security Administration develop a comprehensive plan for improving air cargo security.

The air cargo legislation we are passing today, directs the TSA to: Develop a strategic plan to ensure the security of all air cargo; establish an industry-wide pilot program database of known shippers; set up a training program for handlers to learn how to safeguard cargo from tampering; and inspect air

cargo shipping facilities on a regular basis.

The Aviation Security Act Congress passed after September 11 required the Transportation Security Administration to screen and inspect air cargo "as soon as practicable." The GAO report shows we cannot wait any longer. The time is now for the Senate to again take up this legislation, again pass this legislation, and for the TSA to prevent terrorists from tampering with the cargo loaded into the underbelly of our airplanes.

The General Accounting Office recommends that the Under Secretary for Transportation develop a comprehensive plan for air cargo security that includes priority actions identified on the basis of risk, costs, deadlines for completing those actions, and performance targets.

The TSA has a great deal of options at its disposal. The TSA could: Screen air cargo for explosives; secure cargo with high-tech seals; control access to holding areas containing cargo; use cargo tracking systems; install more cameras in cargo areas at airports; use blast resistant containers; have more bomb-sniffing dogs; put cargo in decompression chambers before loading it onto an aircraft; require the identity of people making air cargo deliveries to be checked; establish an industrywide computer profiling system; require criminal background checks for employees at freight forwarders and consolidators; and require third party inspections.

We do not expect the TSA to X-ray and scan all cargo for explosives because shippers and carriers would be able to process only 4 percent of cargo received daily, which would severely disrupt the air cargo industry. However, the Federal Government can deploy a combination of the techniques I have listed to implement a comprehensive security plan for air cargo.

Since one half of the hull of each passenger aircraft is typically filled with cargo and 22 percent of all cargo transported by plane is loaded on passenger flights, I believe air cargo security is just as important as passenger security. In fact, you cannot keep passengers safe without stronger air cargo security.

Each time there is a major jet crash or bombing, we reexamine our aviation security. I hope it will not take another accident or attack for us to finally pass this legislation into law.

I thank Senator HUTCHISON, Senator MCCAIN, and Senator HOLLINGS for their leadership on this issue of transportation security, and I look forward to this bill being signed into law.

Ms. SNOWE. Mr. President, I rise today in support of legislation before the Senate that addresses what I feel is one of the most glaring loopholes in our homeland security net: that of the lax air cargo security infrastructure in our country.

In 2001, with the passage of the Aviation and Transportation Security Act,

we reinvented aviation security. We overturned the status quo, and I am proud of the work we did. We put the Federal Government in charge of security and we have made significant strides toward restoring the confidence of the American people that it is safe to fly. We no longer have a system in which the financial "bottom line" interferes with protecting the flying public. We also addressed the gamut of critical issues, including baggage screening, additional air marshals, cockpit security, and numerous other issues.

There is more work to be done. We must not lose focus, and we must maintain a continuity of commitment. If we are to fulfill our obligations to confront the aviation security challenges we face in the aftermath of September 11, we must remain aggressive. We need a "must-do" attitude, not excuses about what "can't be done," because we are only as safe as the weakest link in our aviation security system.

I am a strong supporter of legislation that we are considering today, the Air Cargo Security Act, a bill intended to strengthen the air cargo security system in this country. According to the GAO, a full 22 percent of all the cargo shipped by air in this country in 2000 was shipped on passenger flights—and half of the hull of a typical passenger plane is filled with cargo. The Department of Transportation Inspector General has recommended that current air cargo controls be tightened, particularly the process for certifying freight forwarders and assessing their compliance with security requirements, and has warned that the existing screening system is "easily circumvented." This must not be allowed to stand.

Moreover, according to a Washington Post report last year, internal TSA documents warn of an increased risk of an attack designed to exploit this vulnerability because TSA has been focused primarily on meeting its new mandates to screen passengers and luggage. This is clear evidence that cargo security needs to be bolstered. And time is not on our side.

At many of the Senate Commerce Committee's aviation security hearings since 9/11, I have expressed concern about the significant outstanding air cargo security issues that we face. On January 23, I introduced legislation which would require TSA to put together a comprehensive air cargo security plan. And while TSA was developing their plan, my bill mandated that interim security measures be put into place, which include random cargo screening, greater scrutiny of shippers and a training regime for air cargo handlers.

The bill before us today, the Air Cargo Security Act, incorporates many of the provisions of my bill. First of all, it would require TSA to establish a system to ensure the security of all cargo transported in the U.S. on both passenger aircraft and cargo aircraft, which must be finalized within 6

months of enactment. It is essential that TSA have a comprehensive plan in place as soon as possible, so that they can go after the most glaring security loopholes in the air cargo system. Secondly, the bill includes language I authored establishing a pilot program would be to allow the Secretary of Homeland Security to test various techniques for screening cargo being loaded onto passenger planes including random physical screening. Today, virtually no cargo loaded onto airliners is screened, and it is vital that TSA settle soon on the best method of cargo screening with an eye towards deploying those methods in airports around the country.

Also, in response to concerns that I had raised about security at foreign cargo facilities that ship to the U.S. by air, the legislation includes a provision requiring TSA to work with foreign countries to conduct regular inspections at facilities transporting air cargo to the U.S. Finally, the bill also includes a provision from my bill to develop a detailed training program for all persons that handle air cargo. This will ensure that the cargo is properly handled and safe-guarded from security breaches.

The Air Cargo Security Act would also require TSA to establish an industrywide database of shippers who ship on passenger planes. I know that the TSA has already been working on this database. The bill also seeks to greatly increase oversight of indirect air carriers, "freight forwarders," complete with a system of random TSA inspections.

On last September 11, terrorists exposed the vulnerability of our commercial aviation network in the most horrific fashion. The landmark aviation security legislation was a major step in the right direction, but we must always stay one step ahead of those who would commit vicious acts of violence on our soil aimed at innocent men, women, and children.

The bill before us works towards that goal, and therefore I am pleased to support it.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 165

*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 "Air Cargo Security Improvement Act".

**SEC. 2. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.**

Section 44901(f) of title 49, United States Code, is amended to read as follows:

"(f) CARGO.—

"(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

"(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

"(B) all-cargo aircraft in air transportation and intrastate air transportation.

"(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1) within 6 months after the date of enactment of the Air Cargo Security Improvement Act.

"(3) PILOT PROGRAM.—The Under Secretary shall conduct a pilot program of screening of cargo to assess the effectiveness of different screening measures, including the use of random screening. The Under Secretary shall attempt to achieve a distribution of airport participation in terms of geographic location and size."

**SEC. 3. AIR CARGO SHIPPING.**

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

**"§ 44922. Regular inspections of air cargo shipping facilities**

"The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States."

(b) ADDITIONAL INSPECTORS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this subtitle.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, is amended by adding at the end the following:

"44922. Regular inspections of air cargo shipping facilities".

**SEC. 4. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.**

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is further amended by adding at the end the following:

**"§ 44923. Air cargo security**

"(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the results of the pilot program to improve the known shipper program.

"(b) INDIRECT AIR CARRIERS.—

"(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

"(2) ENSURING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

"(3) NOTICE OF FAILURES.—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

"(4) WITHDRAWAL OF SECURITY PROGRAM APPROVAL.—The Under Secretary may issue an order amending, modifying, suspending, or revoking approval of a security program of an indirect air carrier that fails to meet security requirements imposed by the Under Secretary if such failure threatens the security of air transportation or commerce. The

affected indirect air carrier shall be given notice and the opportunity to correct its noncompliance unless the Under Secretary determines that an emergency exists. Any indirect air carrier that has the approval of its security program amended, modified, suspended, or revoked under this section may appeal the action in accordance with procedures established by the Under Secretary under this title.

“(5) INDIRECT AIR CARRIER.—In this subsection, the term ‘indirect air carrier’ has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

“(C) CONSIDERATION OF COMMUNITY NEEDS.—In implementing air cargo security requirements under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities.”

(b) ASSESSMENT OF INDIRECT AIR CARRIER PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part 1548 of title 49, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 60 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, as amended by section 3, is amended by adding at the end the following: “44923. Air cargo security”.

#### SEC. 5. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

#### SEC. 6. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.

(a) IN GENERAL.—The Under Secretary of Transportation for Security shall establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed aboard such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) PLAN REQUIREMENTS.—The plan shall include provisions for—

(1) security of each carrier’s air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported aboard all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section 44901(f)(1)(B) of title 49, United States Code; and

(6) additional measures deemed necessary and appropriate by the Under Secretary.

(c) CONFIDENTIAL INDUSTRY REVIEW AND COMMENT.—

(1) CIRCULATION OF PROPOSED PROGRAM.—The Under Secretary shall—

(A) propose a program under subsection (a) within 90 days after the date of enactment of this Act; and

(B) distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply.

(2) COMMENT PERIOD.—Any person to which the proposed program is distributed under paragraph (1) may provide comments on the proposed program to the Under Secretary not more than 60 days after it was received.

(3) FINAL PROGRAM.—The Under Secretary of Transportation shall issue a final program under subsection (a) not later than 90 days after the last date on which comments may be provided under paragraph (2). The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

(4) SUSPENSION OF PROCEDURAL NORMS.—Neither chapter 5 of title 5, United States Code, nor the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the program required by this section.

#### SEC. 7. REPORT ON PASSENGER PRESCREENING PROGRAM.

(a) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the Attorney General, shall submit a report in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the potential impact of the Transportation Security Administration’s proposed Computer Assisted Passenger Prescreening system, commonly known as CAPPS II, on the privacy and civil liberties of United States citizens.

(b) SPECIFIC ISSUES TO BE ADDRESSED.—The report shall address the following:

(1) Whether and for what period of time data gathered on individual travelers will be retained, who will have access to such data, and who will make decisions concerning access to such data.

(2) How the Transportation Security Administration will treat the scores assigned to individual travelers to measure the likelihood they may pose a security threat, including how long such scores will be retained and whether and under what circumstances they may be shared with other governmental, non-governmental, or commercial entities.

(3) The role airlines and outside vendors or contractors will have in implementing and operating the system, and to what extent will they have access, or the means to obtain access, to data, scores, or other information generated by the system.

(4) The safeguards that will be implemented to ensure that data, scores, or other information generated by the system will be used only as officially intended.

(5) The procedures that will be implemented to mitigate the effect of any errors, and what procedural recourse will be available to passengers who believe the system has wrongly barred them from taking flights.

(6) The oversight procedures that will be implemented to ensure that, on an ongoing basis, privacy and civil liberties issues will continue to be considered and addressed with high priority as the system is installed, operated and updated.

#### SEC. 8. MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.

(a) IN GENERAL.—Section 44939 of title 49, United States Code, is amended to read as follows:

##### “§ 44939. Training to operate certain aircraft

“(a) IN GENERAL.—

“(1) WAITING PERIOD.—A person subject to regulation under this part may provide training in the United States in the operation of an aircraft to an individual who is an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) or to any other individual specified by the Under Secretary of Homeland Security for Border and Transportation Security only if—

“(A) that person has notified the Under Secretary that the individual has requested such training and furnished the Under Secretary with that individual’s identification in such form as the Under Secretary may require; and

“(B) the Under Secretary has not directed, within 30 days after being notified under subparagraph (A), that person not to provide the requested training because the Under Secretary has determined that the individual presents a risk to aviation security or national security.

“(2) NOTIFICATION-ONLY INDIVIDUALS.—

“(A) IN GENERAL.—The requirements of paragraph (1) shall not apply to an alien individual who holds a visa issued under title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and who—

“(i) has earned a Federal Aviation Administration type rating in an aircraft or has undergone type-specific training; or

“(ii) holds a current pilot’s license or foreign equivalent commercial pilot’s license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation,

if the person providing the training has notified the Under Secretary that the individual has requested such training and furnished the Under Secretary with that individual’s visa information.

“(B) EXCEPTION.—Subparagraph (A) does not apply to an alien individual whose airman’s certificate has been suspended or revoked under procedures established by the Under Secretary.

“(3) EXPEDITED PROCESSING.—The waiting period under paragraph (1) shall be expedited for an individual who—

“(A) has previously undergone a background records check by the Foreign Terrorist Tracking Task Force;

“(B) is employed by a foreign air carrier certified under part 129 of title 49, Code of Federal Regulations, that has a TSA 1546 approved security program and who is undergoing recurrent flight training;

“(C) is a foreign military pilot endorsed by the United States Department of Defense for flight training; or

“(D) who has unescorted access to a secured area of an airport designated under section 44936(a)(1)(A)(ii).

“(4) INVESTIGATION AUTHORITY.—In order to determine whether an individual requesting training described in paragraph (1) presents a risk to aviation security or national security the Under Secretary is authorized to use the employment investigation authority provided by section 44936(a)(1)(A) for individuals applying for a position in which the individual has unescorted access to a secured area of an airport designated under section 44936(a)(1)(A)(ii).

“(5) FEE.—

“(A) IN GENERAL.—The Under Secretary may assess a fee for an investigation under this section, which may not exceed \$100 per individual (exclusive of the cost of transmitting fingerprints collected at overseas facilities) during fiscal years 2003 and 2004. For fiscal year 2005 and thereafter, the Under Secretary may adjust the maximum amount of the fee to reflect the costs of such an investigation.

“(B) OFFSET.—Notwithstanding section 3302 of title 31, United States Code, any fee collected under this section—

“(i) shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Under Secretary for those expenses; and

“(ii) shall remain available until expended.

“(b) INTERRUPTION OF TRAINING.—If the Under Secretary, more than 30 days after receiving notification under subsection (a)(1)(A) from a person providing training described in subsection (a)(1) or at anytime after receiving notice from such a person under subsection (a)(2)(a), determines that an individual receiving such training presents a risk to aviation or national security, the Under Secretary shall immediately notify the person providing the training of the determination and that person shall immediately terminate the training.

“(c) COVERED TRAINING.—For purposes of subsection (a), the term ‘training’—

“(1) includes in-flight training, training in a simulator, and any other form or aspect of training; but

“(2) does not include classroom instruction (also known as ground school training), which may be provided during the 30-day period described in subsection (a)(1)(B).

“(d) INTERAGENCY COOPERATION.—The Attorney General, the Director of Central Intelligence, and the Administrator of the Federal Aviation Administration shall cooperate with the Under Secretary in implementing this section.

“(e) SECURITY AWARENESS TRAINING FOR EMPLOYEES.—The Under Secretary shall require flight schools to conduct a security awareness program for flight school employees, and for certified instructors who provide instruction for the flight school but who are not employees thereof, to increase their awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school.”.

(b) PROCEDURES.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Under Secretary of Homeland Security for Border and Transportation Security shall promulgate an interim final rule to implement section 44939 of title 49, United States Code, as amended by subsection (a).

(2) USE OF OVERSEAS FACILITIES.—In order to implement section 44939 of title 49, United States Code, as amended by subsection (a), United States Embassies and Consulates that possess appropriate fingerprint collection equipment and personnel certified to capture fingerprints shall provide fingerprint services to aliens covered by that section if the Under Secretary requires fingerprints in the administration of that section, and shall transmit the fingerprints to the Under Secretary or other agency designated by the Under Secretary. The Attorney General and the Secretary of State shall cooperate with the Under Secretary in carrying out this paragraph.

(3) USE OF UNITED STATES FACILITIES.—If the Under Secretary requires fingerprinting in the administration of section 44939 of title 49, United States Code, the Under Secretary may designate locations within the United States that will provide fingerprinting services to individuals covered by that section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on the ef-

fective date of the interim final rule required by subsection (b)(1).

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, in reducing risks to aviation security and national security.

#### SEC. 9. PASSENGER IDENTIFICATION.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air carriers and labor organizations representing individuals employed in commercial aviation, shall develop guidelines to provide air carriers guidance for detecting false or fraudulent passenger identification. The guidelines may take into account new technology, current identification measures, training of personnel, and issues related to the types of identification available to the public. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any meeting held pursuant to this subsection.

(b) AIR CARRIER PROGRAMS.—Within 60 days after the Under Secretary issues the guidelines under subsection (a) in final form, the Under Secretary shall provide the guidelines to each air carrier and establish a joint government and industry council to develop recommendations on how to implement the guidelines.

(c) REPORT.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of this Act on the actions taken under this section.

#### SEC. 10. PASSENGER IDENTIFICATION VERIFICATION.

(a) PROGRAM REQUIRED.—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of the identification verification technologies the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

(b) TECHNOLOGIES EMPLOYED.—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, retinal, iris, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

(c) COMMENCEMENT.—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.

#### SEC. 11. BLAST-RESISTANT CARGO CONTAINER TECHNOLOGY.

Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security, and the Administrator of the Federal Aviation Administration, shall jointly submit a report to Congress that contains—

(1) an evaluation of blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) an examination of the advantages associated with the technology in preventing

damage and loss of aircraft from terrorist action and any operational impacts which may result from use of the technology (particularly added weight and costs);

(3) an analysis of whether alternatives exist to mitigate the impacts described in paragraph (2) and options available to pay for the technology; and

(4) recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

#### SEC. 12. ARMING PILOTS AGAINST TERRORISM.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress makes the following findings:

(A) During the 107th Congress, both the Senate and the House of Representatives overwhelmingly passed measures that would have armed pilots of cargo aircraft.

(B) Cargo aircraft do not have Federal air marshals, trained cabin crew, or determined passengers to subdue terrorists.

(C) Cockpit doors on cargo aircraft, if present at all, largely do not meet the security standards required for commercial passenger aircraft.

(D) Cargo aircraft vary in size and many are larger and carry larger amounts of fuel than the aircraft hijacked on September 11, 2001.

(E) Aircraft cargo frequently contains hazardous material and can contain deadly biological and chemical agents and quantities of agents that caused communicable diseases.

(F) Approximately 12,000 of the Nation's 90,000 commercial pilots serve as pilots and flight engineers on cargo aircraft.

(G) There are approximately 2,000 cargo flights per day in the United States, many of which are loaded with fuel for outbound international travel or are inbound from foreign airports not secured by the Transportation Security Administration.

(H) Aircraft transporting cargo pose a serious risk as potential terrorist targets that could be used as weapons of mass destruction.

(I) Pilots of cargo aircraft deserve the same ability to protect themselves and the aircraft they pilot as other commercial airline pilots.

(J) Permitting pilots of cargo aircraft to carry firearms creates an important last line of defense against a terrorist effort to commandeer a cargo aircraft.

(2) SENSE OF CONGRESS.—It is the sense of Congress that a member of a flight deck crew of a cargo aircraft should be armed with a firearm to defend the cargo aircraft against an attack by terrorists that could result in the use of the aircraft as a weapon of mass destruction or for other terrorists purposes.

(b) ARMING CARGO PILOTS AGAINST TERRORISM.—Section 44921 of title 49, United States Code, is amended—

(1) by striking “passenger” in subsection (a) each place that it appears;

(2) by striking “or,” and all that follows in subsection (k)(2) and inserting “or any other flight deck crew member.”; and

(3) by adding at the end of subsection (k) the following:

“(3) ALL-CARGO AIR TRANSPORTATION.—For the purposes of this section, the term air transportation includes all-cargo air transportation.”.

(c) IMPLEMENTATION.—

(1) TIME FOR IMPLEMENTATION.—The training of pilots as Federal flight deck officers required in the amendments made by subsection (b) shall begin as soon as practicable and no later than 90 days after the date of enactment of this Act.

(2) EFFECT ON OTHER LAWS.—The requirements of subparagraph (1) shall have no effect on the deadlines for implementation

contained in section 44921 of title 49, United States Code, as in effect on the day before the date of enactment of this Act.

**SEC. 13. REPORT ON DEFENDING AIRCRAFT FROM MAN-PORTABLE AIR DEFENSE SYSTEMS (SHOULDER-FIRED MISSILES).**

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall issue a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on how best to defend turbo and jet passenger aircraft from Man-Portable Air Defense Systems (shoulder-fired missiles).

(b) ISSUES TO BE ADDRESSED.—The report shall include an analysis of—

(1) actions taken to date, countermeasures, risk mitigation, and other activities;

(2) existing military countermeasure systems and how those systems might be adapted to commercial aircraft applications;

(3) means of reducing the costs of military countermeasure systems by modifying them for use on commercial aircraft; and

(4) the extent of the threat and the need for countermeasures.

(c) REPORT FORMAT.—The report may be submitted in classified form.

**SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this Act and sections 44901(f), 44922, and 44923 of title 49, United States Code, for fiscal years 2004 through 2008.

Mr. WYDEN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WYDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

**MOTHER'S DAY**

Mr. BYRD. Mr. President, this coming Sunday is Mother's Day. For a few short hours, families will dust off a rarely used pedestal and attempt to pay homage to a woman who likely will hop right back off that pedestal in order to straighten her husband's tie, or apply a bandage to a skinned knee, or do one of the countless other small tasks that keep a mother's hands in perpetual motion.

This Sunday, families may try to still those busy hands by serving mom a homemade breakfast in bed or taking her to a nice restaurant for brunch. They will shower her with cards, and flowers, and presents in an attempt to say "thank you, Mother" for all of the hours that she has labored over them. The cards that are smudged with small blurry fingerpainted handprints will be especially savored, as will the bouquets of short-stemmed, wilting flowers plucked forcibly from weeds and beds

in the backyard by loving and determined children, and presented in lumpy homemade vases painted with the wild abandon of childhood joy. Each gift and each gesture, whether suggested to a youngster by a loving husband or father or proffered by an awkward teenager who otherwise prefers his connection to the family be kept secret, will bring smiles, even tears, of gratitude.

On Sunday, mothers will revel in each moment, delight over each expression of caring, and give back tenfold, as they always do, the love offered from their most precious charge, their families.

It does not matter whether she is a business executive, an hourly laborer, or an unpaid stay-at-home mom—the best mothers invest the best of themselves in their families. They are high stakes brokers and we, their families, are the stocks on their exchange. They may spend many hours at work, but they still manage to make their children feel loved. They still manage to make each house a home. They still manage to create and sustain the traditions and customs that make each family unique. They enforce discipline on homework and at bedtime. They ice the birthday cakes and pack the lunches. They cool fevered brows and beam at graduations. They set high standards and higher expectations. They glory in our successes and consol us in our defeats. Like ripples in a pond, their investment spreads across the generations. The memories deep within each of us that connect us to our families are often closely linked to our mothers. From the food dishes that make each holiday special, to customs that range from the right way to fold clothes to the way we choose to raise our own children, our mother lives on in us. It is up to us to live up to our mother's expectations, to be the kind of adults she always believed we could be and would be. And if we simply try our best, she will consider the return on her investment to be well met.

I still remember, from growing up in a time when children memorized and recited poetry, particularly poetry that taught a lesson, the following poem by Margaret Johnston Grafflin:

**LIKE MOTHER, LIKE SON**

Do you know that your soul is of my soul  
such a part,  
That you seem to be fibre and core of my  
heart?  
None other can pain me as you, dear, can do,  
None other can please me or praise me as  
you.

Remember the world will be quick with its  
blame,  
If shadow or stain ever darken your name.  
"Like mother, like son" is a saying so true,  
The world will judge largely the "mother"  
by you.

Be yours then the task, if task it shall be,  
To force the proud world to do homage to  
me.  
Be sure it will say, when its verdict you've  
won,  
"She reaped as she sowed. Lo! This is her  
son."

An old adage avers that "As the twig is bent, so grows the tree." Countless

studies have demonstrated the essential role that mothers play in family life, and their role in shaping the personality of their children, for good or for ill. I know from personal experience that a mother's influence reaches even beyond the grave. My own sweet mother died when I was just a year old, leaving me to be raised by my aunt and uncle. But my mother's serene face shone, and still shines, from a photograph that I keep in my office. Ada Kirby Sale; I have always felt her gentle presence, her soft urging to do my best to make her proud, to live the lesson of that poem.

She died of influenza in 1918, during the great pandemic that took many millions of lives worldwide, her final struggle that of ensuring her baby's fate, my fate. It was her wish that a particular aunt and uncle take me to raise. I had three older brothers and sister, but she wanted the Byrds, Titus Dalton and Vlurma Byrd, to have the baby, Robert. At that time my name was Cornelius Calvin Sale, Jr.

As concerns of a SARS epidemic sweeping the globe make today's headlines, I fear that other children may also be similarly orphaned. If that is the sad case, I hope that these children may also be able to keep their mother's memory and influence with them throughout their lives, as I have been fortunate to do.

You see, I do not remember ever having seen that mother. But it is as though she were there beside me often. I feel that I am here because of that mother's wish, and I feel that she is watching today. I hope that other members of their families will be so willing to take them in and raise them as their mothers would have wished, as my Aunt Vlurma and my Uncle Titus Dalton Byrd did for me. They took me in. They gave me a new name to share with them and to be proud of, and they brought me to the land of my heart, if not my birth, West Virginia.

West Virginia is the birthplace of my wife, Erma Ora Byrd. As I have said before, and I am happy to say again and again, she is a wonderful mother, a wonderful grandmother and great-grandmother. The ripples of her influence have spread now to the third generation. Erma and I are proud parents, grandparents, and now great-grandparents of a brood of fine people, individuals that distinguish any group. Erma's investment in her family has paid off a hundredfold.

Good mothers are so special—you know that; you know that; you know that—so essential to our families and our society that I am especially gratified that the U.S. national celebration of mothers has its own origins in the town of Grafton in Taylor County, WV. The only surprise is that it is such a recent holiday, first established in 1907, when Ms. Anna Jarvis of Philadelphia persuaded her mother's church, which was in Grafton, WV, to celebrate Mother's Day on the second anniversary of her mother's death on the second Sunday in May. By the next year, Mother's