[Rollcall Vote No. 187 Ex.]

YEAS—77

Alexander	DeWine	Lott
Allard	Dole	Lugar
Allen	Domenici	McCain
Baucus	Dorgan	McConnell
Bayh	Ensign	Mikulski
Bennett	Enzi	Miller
Biden	Feingold	Murkowski
Bond	Feinstein	Murray
Boxer	Fitzgerald	Nelson (FL)
Breaux	Frist	Nelson (NE)
Brownback	Graham (FL)	Nickles
Bunning	Graham (SC)	Pryor
Burns	Grassley	Reid
Campbell	Gregg	Roberts
Cantwell	Hagel	Schumer
Carper	Hatch	Sessions
Chafee	Hollings	Shelby
Chambliss	Hutchison	Smith
Cochran	Inhofe	Snowe
Coleman	Inouye	Stevens
Collins	Johnson	Sununu
Cornyn	Kohl	Talent
Craig	Kyl	Thomas
Crapo	Landrieu	Voinovich
Daschle	Lieberman	Warner
Dayton	Lincoln	

NAYS—17

Bingaman	Durbin	Reed
Byrd	Harkin	Rockefeller
Clinton	Kennedy	Sarbanes
Conrad	Lautenberg	Stabenow
Corzine	Leahy	Wyden
Dodd	Levin	

NOT VOTING—6

Akaka	Jeffords	Santorum
Edwards	Kerry	Specter

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

The Senator from Kansas.

MORNING BUSINESS

Mr. ROBERTS. Madam President, I ask unanimous consent that there now be a period of morning business, in the evening, with Senators speaking for up to 10 minutes each.

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

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On November 20, 2000, in Savannah, GA, the body of Billy Jean Levette, a transgender individual, was found in a secluded area. His body was face up with a wound to the back of the head, his pants pulled halfway down and his shirt pulled up. Levette was the second transgender individual killed in the Savannah area in a year.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

SECURITY FOR SUPREME COURT JUSTICES

Mr. LEAHY. Mr. President, I am pleased to be an original cosponsor of S. 2742, which is a short but important piece of legislation that Senator HATCH and I have cosponsored at the request of the Supreme Court. This legislation would renew authority to provide security for the Justices when they leave the Supreme Court. Recent reports of the assault of Justice Souter when he was outside of the Supreme Court highlight the importance of security for Justices. If no congressional action is taken, the authority of Supreme Court police to protect Justices off court grounds will expire at the end of this year.

Another provision in this legislation allows the Supreme Court to accept gifts ''pertaining to the history of the Supreme Court of the United States or its justices.'' The administrative office of the Courts currently has statutory authority to accept gifts on behalf of the judiciary. This provision would grant the Supreme Court authority to accept gifts but it would narrow the types of gifts that can be received to historical items. I think this provision strikes the proper balance.

Finally, this legislation also would provide an additional venue for the prosecution of offenses that occur on the Supreme Court grounds. Currently, the DC Superior Court is the only place of proper venue despite the uniquely Federal interest at stake. This legislation would allow suit to be brought in United States District Court in the District of Columbia.

ROTTERDAM CONVENTION ON PRIOR INFORMED CONSENT

Mr. JEFFORDS. Mr. President, this week, seventy-four nations are meeting in Geneva at the first Conference of the Parties to the Rotterdam Convention on Prior Informed Consent (PIC) for Certain Hazardous Chemicals and Pesticides. This important international agreement establishes a legally binding framework that requires exporters of listed substances to secure informed consent from governments of importing countries prior to any shipment of such chemicals. Simply put, the convention recognizes and incorporates the basic principle of right-to-know with respect to trade in hazardous chemicals. As such, it marks yet another positive step in the direction of a comprehensive international approach to chemicals management.

Unfortunately, the United States is not yet a party to the convention, and thus will not be at the table this week when important decisions are made regarding organization, scope, and future direction. Earlier this week, for example, the parties agreed to add fourteen new chemicals to the convention's list of substances requiring informed consent. Because we are not a party, the United States did not participate in that decision.

Lest one think this is an exceptional case, the Rotterdam Convention is one of three important international agreements on chemicals that the United States has signed, but so far failed to ratify. The two other agreements—the Stockholm Convention on Persistent Organic Pollutants (POPs) and the POPs Protocol to the Convention on Long Range Transboundary Air Pollution—ban or severely restrict the production and use of some of the most hazardous chemicals in existence. Both agreements have entered into force, and preparations are being made for the first meetings of the parties. Yet, the United States is not on board.

Although our Government played a leading role in negotiating all of these agreements and despite the fact that the United States is a signatory to each, the current administration along with the leadership in Congress has so far failed to move the necessary implementing legislation that would allow the United States to become a party. Such legislation involves the work of four different committees in the Congress. To date, however, only the Senate Environment and Public Works Committee has reported a bill, which I co-sponsored with Senator CHAFEE. This bill provides a reasonable and effective approach to meeting our current obligations under all three of these agreements, while also providing a robust mechanism for accommodating future decisions of the parties. I would urge my colleagues to follow our lead and swiftly enact sensible implementing legislation. The United States cannot afford to sit on the sidelines any longer.

LANHAM ACT CLARIFICATION

Mr. CRAIG. Mr. President, I ask unanimous consent to have printed in the RECORD some additional information about the genesis and intent of a bill introduced last week, strengthening and clarifying a provision of the Lanham Act. Specifically, S. 2796 was introduced to clarify that service marks, collective marks, and certification marks are entitled to the same protections, rights, privileges of trademarks.

It is my hope that the Congress will act on this measure in short order, and I offer this information to assist my colleagues in evaluating the bill.

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

AMENDMENTS TO LANHAM ACT

[Indicated by Brackets]

Sec. 3 [15 U.S.C. 1053]. Service marks registrable

Subject to the provisions relating to the registration of trademarks, so far as they are

applicable, service marks shall be registrable, in the same manner and with the same effect as are trademarks, and when registered they shall be entitled to the protection[s, rights and privileges] provided in this chapter in the case of trademarks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

Sec. 4 [15 U.S.C. 1054]. Collective marks and certification marks registrable

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, collective and certification marks, including indications of regional origin, shall be registrable under this chapter, in the same manner and with the same effect as are trademarks, by persons, and nations. States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection[s, rights and privileges] provided in this chapter in the case of trademarks, except in the case of certification marks when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

BACKGROUND AND JUSTIFICATION

Section 4 of the Lanham Act, 15 U.S.C. §1054, states that certification marks and collective marks ''shall be entitled to the protection provided'' to trademarks. This section expresses the congressional intention that all certification marks and collective marks be treated with equivalent rights and protections to trademarks, except where Congress, by statute, has expressly provided otherwise.

It is common in trademark, service mark, collective mark and certification mark licenses to include provisions under which licensees acknowledge the validity of an agree not to challenge the marks. These ''no challenge'' provisions play an important role in protecting the marks, reducing mark owners' litigation costs, and providing assurances to licensees that the marks they are investing in will have continued validity. After applying principles of equity, many courts have upheld such ''no challenge'' provisions in trademark licenses and dismissed validity challenges.

Recently, the Second Circuit Court of Appeals in the case of *Idaho Potato Commission* v. *M & M Produce Farm and Sales*, 335 F.3d 130 (2d Cir. 2003), interpreted the Lanham Act as requiring that certification marks be treated differently from trademarks with respect to ''no challenge'' provisions. The court reasoned that the public policy underlying certification marks was more analogous to the public policy underlying patents. As a result, the court ruled that licensee certification mark no challenge provisions are governed by the Supreme Court's decision in *Lear, Inc* v. *Adkins*, 395 U.S. 653 (1969). The Second Circuit's decision appears to have gone beyond congressional intent relating to certification marks. Certification marks have none of the preclusive effects of patents. Rather, the competitive effects of certification marks are the same as trademarks. Certification marks guard the public from deception and protect mark owners' and their licensees' investments. Like trademarks, certification marks provide information vital to consumers' purchasing decisions. Certification marks help consumers identify goods and services that have the quality and safety features they want.

It is important to remove any perceived distinction between certification marks and collective marks as compared to trademarks, except as expressly provided otherwise by statute. Therefore, this bill clarifies Congress, original intentions regarding the treatment of certification marks and collective marks through this amendment to Section 4 of the Act. Licenses governing certification marks, and the provisions contained in such licenses, should be treated no less favorably than licenses for trademarks and other marks. ''No challenge'' provisions, and other non-quality related provisions in certification mark licenses or agreements are to be accorded the same respect and treatment, and are to be the subject to the same principles of equity, as like provisions in trademark licenses and agreements. While nothing in this revision to the Lanham Act should be read as impairing a court's ability to apply existing principles of equity, where their application is appropriate, such licensing provisions are essential to preserving the public benefits of such marks without increasing the litigation and other transactional costs for certification mark owners. Similarly, certification and collective mark owners have the same remedies for infringement of their marks that are available to trademark owners.

Section 3 of the Lanham Act, 15 U.S.C. §1053, is amended in the same manner as Section 4 to maintain the parallel language of the two sections and to evidence congressional intent that all four marks protected by the Lanham Act are to be accorded the same rights and protections except as specifically provided by statute.

HONORING WORLD WAR II VETERANS

Mr. BAYH. Mr. President, throughout my service to the State of Indiana, I have been honored to represent thousands of Hoosier veterans who have fought bravely for our country. It is with great honor that I recognize the sacrifices of these three courageous men, Private First Class Leo Wilson Landess, Private First Class Robert Eugene Osborn, and Private First Class John Lee Reynolds, who were called to service in World War II to safeguard American freedom. These valiant young men defended our Nation and our liberty in the face of evil, before they had a chance to receive a high school diploma. It was more than 60 years ago that these three men left Governor I.P. Gray High School and were inducted into the Army. I applaud the Jay County High School Corporation for honoring these three World War II veterans, on June 12, 2004.

Their effort and unwavering commitment along with 120,000 other Hoosier World War II veterans, played a vital role in the long and difficult process of helping others enjoy freedom and democracy. By the end of the war, almost 13,000 Hoosier soldiers lost their lives. I am reminded by a quote by Douglas MacArthur, ''The soldier, above all other people, prays for peace, for he must suffer and bear the deepest wounds and scars of war.'' I would like to express my deep appreciation for their dedicated service and the many sacrifices they made on behalf of our Nation.

MISSOURI RIVER DROUGHT CONSERVATION PLAN

Mr. JOHNSON. Mr. President, last Tuesday, September 14, the Senate Appropriations Committee reported out the Fiscal Year 2005 Interior Appropriations bill on a unanimous and bipartisan vote. The bill funds several of the Federal agencies that are responsible for managing millions of acres of land in South Dakota, including the U.S. Forest Service, the Fish and Wildlife Service, and the National Park Service. Included in that bill was a provision directing the Corps of Engineers to immediately implement the drought conservation measures outlined in the 2004 Missouri River Master Water Control Manual. This is an important provision that will better balance the competing uses of Missouri River water and, more importantly, bring a sense of equity and fair play to a process longslanted toward a single group of navigation interests.

Perhaps no Federal agency has a more direct impact on South Dakotans than the U.S. Army Corps of Engineers. The Corps of Engineers has a tough job in South Dakota, balancing a host of competing and, it appears from time to time, mutually exclusive interests. However, on the key issue of managing the Missouri, the Corps has consistently come up short as a steward of America's longest river. With a current water storage rate of 35.9 million acrefeet, the main-stem Missouri River reservoirs are at the lowest level in history. The provision included in the Interior Appropriations bill faces up to this reality by taking a strong step toward conserving our water resources.

Unfortunately, yesterday, in an unprecedented maneuver to strike out and cancel the express will of the Appropriations Committee, a provision was inserted in the fiscal year 2005 Veterans, Housing and Urban Development, and Independent Agencies Appropriations bill that cancels out the drought conservation plan. The proponents of this new provision had already been rebuffed last week when attempting to change the original section. Surely we can find some common ground for the upstream states struggling with the lack of water flow. I expect an uphill battle, but I will do everything I can to fight for the needs of upstream states.

JUMPSTART OUR BUSINESS STRENGTH ACT

Mr. SMITH. Mr. President. I rise to speak about an important piece of legislation that is pending before Congress. The Jumpstart Our Business Strength, JOBS, Act, also known as FSC/ETI. This bill was passed by both the House and the Senate earlier this year and now awaits the appointment of conferees by the House of Representatives. As a Senate conferee, I am hopeful that we can move quickly toward a conference with the House and