Supreme Court. I have a duty to protect the fundamental rights I believe our Constitution guarantees. I have a duty to preserve the incredible progress that has been made toward the realization of those rights for Americans. I have a duty to safeguard our national security, and to prevent the executive from using war as a blank check to violate both national and international law.

John Roberts will be confirmed. I hope and look forward to decisions that will allay all of my concerns. He may author or join opinions protecting the rights which we hold so dear, and in so doing he may prove all of my concerns to be groundless. I hope so. But the questions I have raised, the absence of critical documents, the lack of clarity surrounding fundamental issues on how he would interpret the Constitution, requires me to fulfill my constitutional duty by opposing his nomination to be the next Chief Justice.

I thank the Chair again, and I thank the Senator for his courtesy.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 2744, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2744) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2006, and for other purposes.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Utah.

NOMINATION OF JOHN ROBERTS TO BE CHIEF JUSTICE

Mr. BENNETT. Madam President, we are on the Agriculture bill, but the morning has been taken up with discussion of Judge Roberts. I think that is appropriate given the decision of the ranking member of the Judiciary Committee, Senator LEAHY, to support Judge Roberts and to announce that here this morning. That was perhaps unexpected by some of the commentators and, therefore, deserved a little time.

I will take the opportunity, having listened to the junior Senator from Massachusetts, to respond to some of the things he said, not with the understanding that it is going to change anything anywhere but for the satisfaction of getting a few things off my chest.

The Senator complained bitterly, as he and others have done with respect to other nominees, that the memos given to the Solicitor General are not being made public. He did not tell us that every Solicitor General—regardless of party, regardless of administration—who is currently living has agreed with Judge Roberts, with Miguel Estrada, with others who worked in the Office of the Solicitor General, that those memos should, in fact, not be made public.

They are, in fact, covered by the attorney-client privilege. Some say, ''Well, the American people are the client, not the Solicitor General.'' The Solicitor General is the attorney for the American people and has a right to attorney-client privilege within his own staff, as any attorney has for material within that attorney's own office, as if they are representing a private client.

This keeps coming up. It keeps being repeated in the hope that it catches on. We need to always remember that every single Solicitor General who is living—regardless of their party—says that is the bad thing to do. That is the wrong interpretation of the law. The Senator from Massachusetts did not point that out. I think it needs to be pointed out.

He made a reference to the bureaucrats who were involved here who, as he said, have not taken an oath to defend the Constitution as we Senators have. I have been a bureaucrat. I have taken an oath as a bureaucrat to defend the Constitution. Those who serve the United States in these positions are sworn in with the same oath Senators take. It should be made clear those people who took that position and were in that position were, in fact, under oath to defend the Constitution. It demeans them to suggest their actions were any less patriotic or anxious to protect the law than actions of Senators.

I will conclude by quoting from an editorial that appeared in the Los Angeles Times. The Los Angeles Times is not known as a paper supportive of Republican positions. Indeed, it is often thought of as being a companion publication with the New York Times. But the Los Angeles Times says:

It will be a damning indictment of petty partisanship in Washington if an overwhelming majority of the Senate does not vote to confirm John G. Roberts Jr. to be the next chief justice of the United States.

As last week's confirmation hearings made clear, Roberts is an exceptionally qualified nominee, well within the mainstream of American legal thought, who deserves broad bipartisan support. If a majority of Democrats in the Senate vote against Roberts, they will reveal themselves as nothing more than self-defeating obstructionists. . . .

Even if one treats this vote merely as a tactical game, voting against an impressive, relatively moderate nominee hardly strengthens the Democrats' leverage [on the upcoming second nomination].

If Roberts fails to win their support, Bush may justifiably conclude that he needn't even bother trying to find a justice palatable to the center. And if Bush next nominates someone who is genuinely unacceptable to most Americans, it will be harder for Democrats to point that out if they cry wolf over Roberts.

I am not sure that will change anything, but it makes me feel a little better having said it, after listening to the presentations we have heard over the last hour. I congratulate my friend, Senator LEAHY from Vermont, for his courage in standing up to internal pressures and his announcement that he will, following the advice of the Los Angeles Times and others who have examined this, in fact vote to confirm Judge Roberts. This guarantees that we will have a bipartisan vote out of committee, as we should, and that we will have strong bipartisan support here on the floor, as we should.

AMENDMENT NO. 1783

Returning to the Agriculture appropriations bill, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT] proposes an amendment numbered 1783.

Mr. BENNETT. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 173, at the end of the page, insert the following:

''SEC. 7____. (a) Notwithstanding subtitles B and C of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501 et seq.), during fiscal year 2006, the National Dairy Promotion and Research Board may obligate and expend funds for any activity to improve the environment and public health.

''(b) The Secretary of Agriculture shall review the impact of any expenditures under subsection (a) and include the review in the 2007 report of the Secretary to Congress on the dairy promotion program established under subtitle B of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501 et seq.).''.

Mr. BENNETT. Madam President, we need a little background on this amendment. It may be controversial. I understand there are some Senators who have opposed it and will be coming to the floor.

It would allow the producers on the National Dairy Promotion and Research Board to vote to fund or not fund the dairy air emission research required under the Environmental Protection Agency's Air Quality Compliance Agreement. This sounds fairly technical. In fact, the money that is available to the board has always been used for particular purposes, and most dairy producers want to make sure that it stays restricted to those purposes. But something has come up that requires research. It has come not from the Department of Agriculture but from the Environmental Protection Agency in a new agreement that affects dairy farmers. And in order to defend themselves against the position taken by the EPA, they need research. They need it now, and they need it badly.

This amendment would allow a one-time use of dairy promotion and research funds to fund the research. Most

dairy farmers are in favor of it. Dairy is the only program that does not have an option for funding its own research. The research will be conducted by Purdue University, according to protocols approved by the EPA. This is not in opposition to EPA procedures. The actual research will be performed by land grant universities in the States identified by the U.S. Dairy Environmental Task Force.

If we assume approval by the board, which would happen if my amendment were adopted, the funds will flow through an oversight organization, again approved by the EPA. The Agriculture Air Research Council, Inc., AARC, will contract with Purdue which will, in turn, contract with the universities in the States where the sites are selected. Dairy funds only will be used to fund the dairy research. AARC's board will include two members from the dairy industry and will monitor and audit the progress of the research and how the funds are spent.

The ultimate goal of all of this research will be to develop air emissions data that can be used in a process model that will allow any dairy farmer in the United States to input his dairy's operation information and find out what his emissions are. The information generated by this research, therefore, will benefit all dairy producers.

The reason is because the EPA has laid down rules with respect to emissions from dairy farmers. Most farmers have no clue as to how many emissions their farm is producing. The EPA has some fairly draconian restrictions to put on dairy farms, if the emissions go above a certain level. So how is a farmer to know whether he is in compliance, if there is no research on how the emissions can be measured? That is the reason we want the research done, and that is the reason farmers will benefit.

I believe Congress never intended the environmental statutes regarding emissions to apply to agriculture. When we talk about emissions, we are talking about smokestacks and automobiles and things that have been created by human beings. Now the EPA has said, no, we must monitor and, where necessary, control the emissions that come from cows. Cows have been generating emissions for a long time, perhaps even before human beings came along. So let's look at it, but let's not have a rule that arbitrarily disadvantages the dairy farmers without giving them an opportunity to know what is going on. That is what is behind this. In order to deal with the EPA regulations, the farmers need to know what is happening with respect to emissions. My amendment would fund a one-time study to give them the information they need. I believe without statutory changes, the courts will continue to rule that the environmental laws do, in fact, apply to dairy farms, and that is an issue for the authorizing committee. It is not something we should deal with on the Agriculture bill. Barring changes to the laws, I believe the collection of these data and the development of an emissions model will provide more certainty to producers.

I ask my colleagues to support this amendment. Those who are opposed have been notified. I understand there are conflicts on both sides of the aisle at this particular moment. I am not sure how many Senators will be able to come down. We are open for business. We are ready for amendments. We are anxious to proceed. I hope my colleagues will accommodate us.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. Madam President, as certainly the Senate knows, we are considering the Senate appropriations bill. There is an amendment that the chairman has brought at the request of the national dairy industry that is of great concern to me. As a result of that, I stand today in opposition to legislation that would seek to divert funds from the National Dairy Promotion Program to be used as a one-time-only source to fund EPA's dairy air quality studies.

While I am wholeheartedly in support of the need for research money to carry out air quality studies, dipping into a program that all producers, large and small, are required to pay into to promote their products does not seem to meet the test of where we want to now reallocate this resource.

The Dairy Production Stabilization Act of 1983 was established to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and use for fluid milk and dairy products. The act does provide for research dollars to be spent but only on research projects related to the advertisement and promotion of the sale and the consumption of dairy products. So should this act leave the door open as a slush fund available any time a select group needs quick money for a proposed unrelated intent of the law? I would hope not, I would think not, and I am afraid the amendment takes us in that direction.

On September 9, 2005, I and the entire Idaho congressional delegation sent a letter on this issue to Secretary Johanns. I ask unanimous consent that this letter be printed in the RECORD.

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

IDAHO CONGRESSIONAL DELEGATIONS,
September 9, 2005.

Hon. MIKE JOHANNS,
Secretary, U.S. Department of Agriculture, Independence Avenue, SW., Washington, DC.

DEAR SECRETARY JOHANNS: We write to express opposition to a proposal to divert funds from the National Dairy Promotion Program to fund the Environmental Protection Agency's (EPA) dairy air quality studies.

We understand that a proposal has been put forward to provide for a ''one time'' use of National Dairy Promotion Program funds for dairy air quality studies. We support necessary environmental research. However, we share the concern of Idaho dairy producers that this proposal would provide a misdirection of funds that are intended, according to the Dairy Production Stabilization Act of 1983, to be used for dairy promotion and related research and education. In authorizing the program, Congress clearly stated that the assessments were to be used for ''carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the United States.''

The Act and the Dairy Promotion and Research Order, which implements the program, also defines research to be provided through the fund as ''studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for dairy products. ''Therefore, it is clear that the fund is meant to be used for research related to the promotion of dairy products and not for other purposes. If implemented, we are concerned with the precedent the proposal would set toward possible future diversion of these important promotion funds.

The dairy industry, the Administration, Congress, and interested parties must work to find the best ways to fund dairy environmental research that do not jeopardize promotion efforts. Last year, dairy producers in Idaho voted to assess themselves an extra $0.005/cwt. to fund environmental research. This is raising approximately $500,000 per year, enabling the establishment of a broad based research coordination team that includes the State and Regional EPA officials. This effort serves as an example of how the industry is working to enable research, while not compromising promotion.

Thank you for your attention to this matter. We look forward to continuing to work with you to ensure the continued success of U.S. agriculture.

Sincerely,

MIKE CRAPO,
United States Senator.
MIKE SIMPSON,
Member of Congress.
LARRY E. CRAIG,
United States Senator.
C.L. ''BUTCH'' OTTER,
Member of Congress.

Mr. CRAIG. Madam President, Idaho recently became the fourth largest dairy producer in the Nation, and coupled with that new status are our inherent growing pains. Over the past 15 years, Idaho's expansion in the dairy industry has been swift. So has the growth of the State's population. The two have come in conflict with each other over the need for Idaho's dairy industry to be good players in the environmental arena. That is a critical issue, and they have, in most instances, been successful in working out their problems.

Even with the increased pressure of urban encroachment and stringent environmental regulations—and our State has not turned its back on this issue—producers in my State continue to surprise me in their work, in their

innovation, and the progressive thinking as it relates to resolving the environmental problems that I suggested are inherent with large concentrated herd and dairy development that is on going.

Idaho's industry realized a few years ago that it was vital they work collectively to support research to find new technologies and methods to mitigate the impact of the operations on the environment. So in 2004, Idaho dairy producers voted to assess themselves an extra half cent per hundredweight to fund environmental research. In other words, they didn't ask the country to do it, they didn't ask the Nation to do it, they did it themselves. This initiative raised about a half a million dollars per year, enabling the establishment of a broad-based research coordination team that includes Idaho and regional EPA officers.

This effort serves as an example of how the industry ought to be working to solve critical research problems rather than asking us now to dip into a fund that was dedicated to advertisement, promotion, and product development.

I am aware of EPA's work on the livestock ''air consent agreement'' to provide limited immunity from frivolous environmental lawsuits to producers who voluntarily allow EPA to conduct their quality research on their operations. I know that those who support this onetime dollar-dipping have good intentions, and I support all of their intentions fully. I have been working with them for a good number of months on other ways to shape Federal policy on air quality issues. However, asking Congress to allow a one-time-only access to the pool of money never intended for that purpose defies the integrity of the dairy promotion program that has worked so very effectively for now 22 years.

Supporters of this proposal say it would only cost around $5 to $8 million, but if it is that small amount, then if you look at the assessment that Idaho did on themselves, you would suggest that more and more could be raised if other States were to do as Idaho has done. The program assesses all producers to promote the products that these producers all provide to the consumer. The money from the promotion program that some, not all, in the industry now seek would only benefit a specific group of producers—about 1200—for a purpose completely unrelated to the intent of the program. Why should we allow a precedent to be set that robs Peter and the rest of his family to pay Paul? Never mind that this has never been done in the program's history.

Mr. President, again, I would like to express my support for the critical need for Federal investment in air quality and other environmental research programs for the dairy industry, but we should not open the gate to a flood that might never cease from a program that is intended for an entirely different purpose. With that, I will have to oppose the amendment.

Mr. BENNETT. Madam President, I listened to my friend from Idaho with great interest and great sympathy, and if, indeed, we could get all the other dairy producers to follow Idaho's example and put an assessment on themselves in order to come up with this money, I would agree with him this amendment is not necessary. Unfortunately, I believe there is an urgency here. The research needs to be done as quickly as possible, and this seems to be the logical place to which we should go.

I will say to the Senator from Idaho and to my other colleagues the fundamental problem here is not the research. The fundamental problem in my view is the absurdity of the EPA position with respect to the underlying question. That, as I said earlier, is not a matter for the appropriations subcommittee to deal with. It is a matter for the authorizing committee. But I will pledge to my friend from Idaho that to the degree we can have some influence on the EPA's position in conference, I will do everything I can to try to get a little common sense into this regulatory pattern.

With that, Madam President, I call for a voice vote on the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1783) was agreed to.

Mr. BENNETT. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BENNETT. Madam President, I suggest the absence of a quorum.

Mr. CRAIG. Madam President, prior to the call of the roll, I wish to thank the chairman of the agriculture appropriations subcommittee for his work on this issue and his cooperation. Certainly, this industry, as it is important to my State, is important to his State. We work very cooperatively together. We have a lot of commonness across State lines as it relates to the dairy industry, and we share a great deal of work and research. I appreciate the urgency of the need as he has expressed it, but I felt it was extremely important that Idaho's position be heard and understood by the rest of the States because this could be done by the industry itself from another resource, not unlike how Idaho has approached it. And I hope that other States would recognize the need to resolve this issue, and I certainly agree with Senator BENNETT that the authorizing committee has a responsibility here and EPA needs to get their act together on this issue.

I yield the floor, noting the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection it is so ordered.

Ms. SNOWE. Mr. President, I ask unanimous consent to proceed in morning business.

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

(The remarks of Ms. SNOWE, and Ms. MILKULSKI pertaining to the submission of S. Res. 246 are located in today's RECORD under ''Submitted Resolutions.'')

Ms. SNOWE. I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I thank the Chair. First of all, I rise to encourage my colleagues to vote for the appropriations bill that is before us. It is the appropriations bill to fund The Department of Agriculture and the Food and Drug Administration. I would like to thank the chairman of the committee, the distinguished Senator from Utah, Mr. BENNETT, as well as the ranking member, for the excellent bill that they have put together, and therefore it warrants our support because it does fund the agricultural needs of our communities, and also funds the Food and Drug Administration.

Mr. President, Maryland is an agricultural State. It might surprise people because usually we are thought of as the home of high-tech research, Johns Hopkins University, the National Institutes of Health, but we are agricultural in soybeans and poultry. Also, we are the proud home of the Food and Drug Administration. We are so proud of the fact that the FDA is in Maryland and that the agency is charged with the mission of food safety and also with the safety of our drugs and our medical devices.

One might ask why is FDA in Agriculture appropriations. Well, because its original mission was food safety. But now it has expanded to the mission of ensuring the safety of our drugs and also of our medical devices.

It is wonderful to have them in the State, these competent people who work very hard putting America first, putting the safety of our people first, and also ensuring that drugs and medical devices move to areas of clinical practice.

But I am telling you I am really worried about what is going on at FDA currently. FDA has always been the gold standard in maintaining drug safety and drug efficacy. Yet today this agency is being politicized and degraded. The current administration has shown a persistent pattern of bringing incompetent leaders into critical positions. We have seen it at FEMA. We have seen it at other agencies. And now it is true at FDA. I see appointments being made on the basis of ideology instead of competency. I have seen people who have worked and devoted their

lives to FDA resigning because they saw science being politicized. I am worried about this.

Now, I voted against the current FDA Director, not because he is not a pleasant man but because there were so many problems under his watch. And they are not getting better. Let's take the situation that occurred in the consideration of something called plan B. Regardless of how you feel about whether plan B emergency contraception should be available over the counter, I think we would all agree that a decision should be made. I understand it is controversial from a cultural standpoint, but the question is was it controversial from a scientific standpoint? Well, delay, delay, delay, delay. Even the head of the FDA recently promised Senators CLINTON and MURRAY that a decision would be made. Guess what happened? What happened was after the scientists made their decision, the Director delayed it because he said: How can we prevent teenagers from getting it? Well, Madam President, you are a mom. You know if we can keep alcohol and cigarettes out of the hands of teenagers, surely the Food and Drug Administration would know how to handle this issue of contraceptives with teenagers. Put it behind the counter. Dr. Susan Wood, the Director of the FDA Office of Women's Health, resigned in protest. Dr. Wood is a distinguished scientist. She is a competent policymaker. She headed up the Office of Women's Health that the distinguished Senator from Maine, Senator SNOWE, and I worked to establish, to be sure that as drugs and clinical devices went through the evaluation, special needs of women would be taken into consideration and also children—another aspect led by our colleague from Ohio, Senator DEWINE.

So this is what Wood's job was. Did she quit because of pay? Did she quit because she got some big job with the pharmaceutical industry? Why did she quit? She quit because, she said, ''after spending the last 15 years to ensure that science forms policy decisions, I can no longer serve when scientific and clinical evidence are being overruled by the leadership.''

Well, she quit. So what happened? Guess who they announced would serve as the acting director of the office last week? They announced a male, a guy, with a background in veterinary medicine. What a dismissive attitude of the Office of Women's Health.

Now, I am not saying a man could not handle that job. He probably would have to work twice as hard to prove himself. But nevertheless, an individual with a background in veterinary medicine in charge of the Office of Women's Health? I admire the veterinarian community. They play a very important role in our community. They are respected. They are admired. They have sophisticated training. But I do not believe, as we are looking at the impact of a drug on pregnancy, or of postmenopausal women that someone with a background in veterinary medicine should be in charge.

Guess what. Advocates and scientists pounded the table, and they put someone else in charge. And the FDA doesn't even have the guts to stand up for the immediate appointment it made. It backed off, saying: Oh, we never announced his appointment. However a lot of people have that e-mail. I do not know the qualifications of the new acting director, but we are not heading in a good direction.

I want FDA to be the gold standard on safety and efficacy. There are many countries around the world that are poor. They rely on what is approved by FDA because they could never afford to have an FDA. Doctors in clinical practice rely on the FDA to tell them what is a good and safe drug, or what is a good and safe medical device, or an effective device. This is phenomenal. I had the benefit of this myself. I wore a heart monitor, invented in the United States of America, that could tell my doctor whether the drugs they were giving me controlled a condition of arrhythmia that I have. It was wonderful to know it had been approved by FDA, that it could tell me if what I was doing was safe, and could give advice to my physician on how best to treat me. This is what we want the FDA to be able to do.

We have a lot of problems. Look what is happening. We know what happened to Vioxx, out there prematurely, or with data withheld. We have all of these questions.

If you want to worry about teenagers, let's worry about antidepressants. I worry they can get antidepressants faster than they can get plan B. That is up to parents and others to control. But these antidepressants have had a very negative and dangerous effect on some teenagers. Where was FDA?

Now we have these implantable defibrillators that can go into your body, wonderful devices that can jumpstart a heart. But guess what. They are found to have short circuits. The manufacturer knew about it, FDA knew about it, and they took no action on this. What is happening to our FDA?

I have fought for the right resources, I fought for the right legislative framework for FDA, and I am going to fight for the right leadership.

I wish Dr. Crawford would, No. 1, take charge of his agency. I am not calling for his resignation today, though he has to think about what he is doing over there. He cannot continue to politicize this agency. I am saying to him now that if he continues to politicize it, we will have to look at further action. I believe he is a decent person, but either he is getting direction from somewhere else or he has lost direction. This is meant to be a scientific agency, standing sentry over the safety of our food supply, doing the necessary evaluations as to whether a drug should come into clinical practice, and making decisions about whether a medical device can be safe and reliable and be the tool it was supposed to be, such as the one I had the benefit from.

So I say let's support the appropriations, let's make sure they have the right resources, but I sure in heck want them to have the right leadership so we can come to the right conclusions, and people all over the world—doctors, clinicians, and the American people can rely on FDA. I want to rely on FDA for science and not politics.

I yield the floor.

The PRESIDING OFFICER (Mr. THUNE). The Senator from New Mexico.

NOMINATION OF JOHN ROBERTS

Mr. BINGAMAN. Mr. President, I rise today to state my intention to support the nomination of John G. Roberts to be the next Chief Justice of the U.S. Supreme Court.

He has the experience, judicial temperament, and qualifications necessary to be Chief Justice, and his testimony before the Senate Judiciary Committee has given me reason to believe he is not an ideologue and that he will make decisions based on sound legal reasoning that is within the mainstream of judicial thought in this country. I do not believe that he has an agenda to reverse our Nation's historic commitment to civil rights, and I take him at his word when he says that he will take each case on its facts and apply the law regardless of his personal views. It is for these reasons that I intend to vote in favor of Judge Roberts' nomination.

Many people have raised legitimate concerns about views that Judge Roberts expressed in the past. As a 26-year-old staff attorney in the Reagan White House Counsel's Office, Roberts wrote a series of memos that raised concerns about his commitment to civil rights. At his confirmation hearing he said that he no longer held certain views and it was important to distinguish between his personal views and those of an advocate seeking to uphold the policies of his client.

Due to the limitations the Senate faced in obtaining documents, in making my decision I had to primarily rely on Judge Roberts' testimony before the Judiciary Committee. The assurances he provided in his testimony give me what I believe is a reasonable expectation regarding how he will approach cases if placed on the Court. I would like to take a moment to briefly discuss some of these expectations that I believe are reasonably based on what he said at that set of hearings.

First, Judge Roberts repeatedly stressed that he respects the rule of law and recognizes the importance of considering stare decisis in the decision making process. I agree that looking to settled precedent should always be the starting point in this process. It is essential that the decisions of the Supreme Court provide reliable guidance to the American people, Congress, and the executive branch, and I believe that the whimsical reinterpretation of settled law is not in the best interest of our Nation. Based on the answers that

Judge Roberts gave, I believe it unlikely that Judge Roberts will chart a new right-wing course for the Court based on his own personal views. His answers indicate that he will apply the law in a fairminded way and that he will afford longstanding precedent adequate deference.

Second, when asked about whether the Constitution contains a right to privacy, which provides the legal basis for a woman's right to choose and the use of birth control, Judge Roberts made clear that he believed that it did. He stated clearly that the right to privacy was protected by the ''liberty'' due process clauses of the fifth and fourteenth amendments. More importantly, Judge Roberts asserted that the right to privacy conferred under the Constitution was a substantive and not merely a procedural right. This view is in stark contrast to that of Justice Scalia, who has argued for a strict constructionist interpretation of the Constitution and believes the right to privacy is an artificial construct that lacks any foundation in the Constitution.

Third, Judge Roberts also distinguished his views from those who see Constitution as a static document and only recognize recourse to the ''original'' intent when interpreting it. I believe strongly that the Constitution was intended to be a living document, and that we must have a constitution that is able to address the challenges and adversities that we face as a modern society. When our country was founded we were living in very different times, and it is important that our Constitution reflect the new world we are living in. In his testimony, Roberts noted that although it was impermissible to contradict the plain text of the Constitution, where the Constitution uses general terms, such as ''liberty'' or ''equal protection,'' it is acceptable to interpret the text in light of today's notions of liberty and equal justice, not just those concepts as they were contemplated in 1787.

Fourth, with regard to recent Supreme Court decisions that have restricted the ability of Congress to enact certain laws pursuant to the commerce clause, Roberts' answers indicated a willingness to interpret these cases in the context of the overwhelming jurisprudence supporting Congressional authority in this area. Further restrictions on the power of Congress to legislate under the commerce clause could have profound implications concerning the ability of Congress to pass laws with respect to the environment, civil rights, and many of the basic advancements we made during the Warren court.

In addition, Judge Roberts also specifically rejected the tenets of the Supreme Courts' 1905 decision in Lochner v. New York, which drastically curtailed the ability of Congress to pass critical workers' rights legislation, such as wage and child labor laws. Of course this decision has since been overruled, but some jurists nominated by President Bush, Judge Janice Rogers Brown, have advocated that the decision was correctly decided.

There is one other issue that I would like to discuss. Some of the most challenging issues that the Supreme Court will likely face over the next decade will involve how we balance civil liberties with the need to confront terrorism. The President has asserted tremendous authority in this area, including the right to indefinitely detain a U.S. citizen that he unilaterally deems an ''enemy combatant.'' The Court will have to decide issues involving the detention of suspected terrorists, due process rights, constraints regarding the use of torture, and many other questions that will define our commitment to longstanding principles of civil rights and civil liberties. During the hearings, Judge Roberts rejected the Supreme Courts' decision in Korematsu, which upheld the mass detainment of Japanese Americans during World War II. Although this decision is a sad part of our history, in a technical sense it is still legally binding. Judge Roberts' complete rejection of this approach gives me hope that he understands that governmental powers are not without limit in times of war.

When asked whether he considers himself in the mold of Justices Scalia or Thomas, Judge Roberts stated clearly that he would be his own man. As I have stated, I expect that Judge Roberts will afford adequate deference to Congress, will follow longstanding precedent, and will apply the law in a fair and straightforward way. It is my hope that Judge Roberts will uphold these expectations.

TEAM NUTRITION

Mr. President, I now speak on a different issue. This is in relation to an amendment I have filed on the current pending legislation, the Agriculture appropriations bill. I will not offer that amendment at this point because we are still in discussions with the bill's manager and the ranking Democrat and their staffs to see if we can find an appropriate offset for this amendment. It is one I offer with Senator LUGAR as my cosponsor. I believe it is a very important amendment. It is an amendment to provide $10 million in additional funding to expand and develop new team nutrition programs across the country.

Senator LUGAR and I offer this amendment in light of the growing and profound evidence that our Nation must confront what both the Department of Agriculture and the Department of Health and Human Services refer to as our ''growing epidemic of childhood obesity.''

As Eric Bost, the Under Secretary for Food, Nutrition, and Consumer Services, testified before Congress in April of this year:

> Nearly 365,000 deaths a year are related to poor diet and physical inactivity; poor diet and inactivity are the second leading cause of preventable death after smoking.

He added:

> In the past 20 years the percentage of children who are overweight has doubled and the percentage of adolescents who are overweight has more than tripled. If we do not stem this tide, this may be the first generation of children who will not have a longer life expectancy than their parents.

According to a 2005 Institute of Medicine report, there are approximately 9 million children nationwide over the age of 6 who are considered obese, resulting in increases in children being diagnosed with type II diabetes and hypertension. In addition to the negative effects on the health and well-being of these children, the rise in childhood obesity has a profound economic cost for our country.

Between 1979 and 1999, obesity-associated hospital costs for children between the ages of 6 and 17 more than tripled, according to a study published in Children Pediatrics. To combat this, the administration has launched an initiative it refers to as part of its larger healthier U.S. initiative. It is called the Healthier U.S. School Challenge, which is focused on helping children live longer, better, and healthier lives.

Secretary Ann Veneman and the U.S. Department of Agriculture announced in July of this year:

> The school challenge builds upon the Team Nutrition Program and recognizes schools that achieve nutrition and physical activity standards.

The School Challenge and Team Nutrition requires schools to do essentially five things: One, to serve national school lunch meals that are verified to meet nutrition standards; second, to offer nutrition education, which is the purpose of the amendment Senator LUGAR and I are offering; third, to maintain national school lunch participation above certain levels; fourth, to offer physical activity for students in those schools; and fifth, to ensure that all foods offered through the school meet healthy standards as reflected in the dietary guidelines for Americans.

Although there are 28,000 schools nationwide that are participating as of October of last year as Team Nutrition schools, that is far from adequate. There are way too many schools that are not participating that should be participating. In fact, these programs are chronically underfunded. Team nutrition has once again been proposed by the administration, and in the current spending bill before the Senate the proposed funding is $10 million. This is equivalent to 21 cents per year for every child in public school in this country. There is nobody who could credibly argue that 21 cents per child per year is an adequate funding level for nutrition education. Unfortunately, the $10 million that has been proposed this year for funding in this program is what was proposed last year. It is what was proposed the year before. Essentially, we are on auto pilot in the Department of Agriculture with regard to this program. There is no effort to

move ahead and deal with the very real, new challenges we have in trying to teach nutrition to the young people of this country.

Furthermore, there is not a single set of funding in over half of the States in the country as Team Nutrition dollars are only going to 21 States. Unfortunately, New Mexico is one of those States and is not able to participate in Team Nutrition at any level because the funding is so inadequate.

Today, one in seven young people is obese in this country; one in three is overweight. Obese children are twice as likely as nonobese children to become obese adults. Only 2 percent of children consume a diet that meets the five main recommendations of a healthy diet from the food guide pyramid that is published by the Secretary of Agriculture, and three out of four children in the United States consume more saturated fat than is recommended in the dietary guidelines for Americans published by the Secretary of Agriculture.

We need to support any effort we can to curb this growing obesity problem. We need to support making our children healthier today by teaching them and the adults in their lives about the importance of healthy eating habits and physical activity.

I urge the support of my amendment and Senator LUGAR's amendment. As I indicated, we will not call it for consideration or a vote at this time, but hope we are able to find an appropriate offset and get agreement to add this amendment to the legislation.

I would argue, I think without any reservation, that this is a small investment. It is a first step, but it is an important step we should be making as a Nation to confront the profound and growing problem many children in our society face.

I yield the floor.

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

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

Mr. BURNS. Mr. President, we understand in the House bill there is one section that deals with the country-of-origin labeling. This has been one of the most heated debates we have had in the livestock industry. It seems like it comes up every year.

In 2002, a mandatory country-of-origin labeling law was passed in the farm bill. I remind my colleagues it is the law of the land. It was signed into law. USDA was directed to start writing the administrative rules that all meat being imported into the United States have a label on it and also that meat domestically produced would also have a label saying: ''Made in the U.S.A.'' That was in 2002. That was 3 years ago. We have gone through this debate, and I know sometimes it gets carried away and is very emotional. I understand in the House bill there is another delay in putting the rules into effect.

Now, whether you agree or do not agree with the mandatory law, it is the law of the land. This old business of delay and delay and delay does not do anything for our beef or pork producers because there is no consistency in the law. They do not know what to expect and what to do.

In Montana, my producers are tired of waiting. The USDA published a proposed rule on mandatory country-of-origin labeling on October 27, 2003.

The public had a chance to comment. In fact, they even extended the comment period to give folks extra time to weigh in on this important issue. Three years have gone by, and here we are—no progress on labeling. This is unacceptable. The Department needs to publish a final rule, and they need to do it now. It is long past time to implement country-of-origin labeling. It is the law of the land. If you don't like the law, then repeal the law. But let's move on. At a minimum, at least let us take a look at the rule. Congress voted to delay COOL once already, and the anti-COOL forces are at it again. But we don't know what the labeling requirements will look like. So the USDA needs to act and to take a leadership role, and it needs to be published.

My producers in Montana will not tolerate another day of delay in this important program. We need to get it done, and it needs to be done right. And it needs to be mandatory. If Congress votes to make COOL voluntary, they may just as well repeal the law because voluntary COOL, or country-of-origin labeling, will not work.

In October of 2002, the Secretary did publish guidelines for a voluntary labeling program. Any retailer who chose could begin labeling their products. There is a lot of misconception and misinformation. Some would contend that if we have a mandatory labeling law, that would take precedence over a marketing label. In other words, if you wanted to label beef as certified Angus beef, they couldn't do that. Sure, they can do that. They can do it as long as it is domestically produced, and the vast majority of it is, or any other marketing tool that a State should have or that a product should have can still be published, but we have to have a label USA.

Since we put it off and the voluntary rule has been in effect, I wonder if anybody knows how many people took advantage of that voluntary program. It doesn't take long to count them: zero, none, zilch. Some of my friends say before we mandate a program, let's try making it voluntary. Well, we tried that. It has been a 3-year period. Nobody has used it. Nobody participated in a voluntary labeling program. Now it is time to shift the balance of power to the world of agricultural marketing.

Overwhelmingly, the folks who support country-of-origin labeling are small cow/calf producers. These are the people who work hard every day to raise healthy calves, produce a product, highest quality beef in the world. They take a lot of pride in their products. They want consumers to know that their beef was made in America, made in the good old USA. But they don't have a whole lot to say about this decision, though, because after they sell their calves, they go to a feedlot, and from the feedlot they go into processing. From processing they go into the retail channels. Somebody doesn't want to say this is a product of the USA. Costly, have to trace, herd ID—all of those things, yes, there will probably be a little work to it. But labeling is no more than putting the label on of their own logo. It is time we did it.

Cow/calf people right now have not had much luck in sharing our pride with our product. That is why Congress must act. Congress has acted. We have passed mandatory COOL 2002. It is the law of the land. That is the way it should be. Yet every year when Congress takes up Agriculture appropriations, we face another attempt on the part of some to prevent cattle producers from marketing their products as U.S. origin. What I am saying today is; enough is enough. Congress passed the law. Let's implement it. Producers are tired of waiting around. If you don't like the law, then repeal the law. But don't keep us in this limbo of standing here and waiting for something to happen, knowing that it never will.

I know we will try and deal with this, whether it be on the Senate floor—I would probably prefer not because the chairman of the Agriculture appropriations said maybe this is a time that we should have a little scrap in conference, and that is where I think it should be done. I trust his judgment on that. But, nonetheless, I want everybody to know—and I want the House of Representatives to know—that this is irresponsible. You passed that law just like we did. If you didn't like the law, then for goodness' sake, stand up and have nerve enough to repeal it. But if it is not repealed, let's implement it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENTS NOS. 1803, 1804, AND 1805, EN BLOC

Mr. BENNETT. Mr. President, I send to the desk a series of cleared amendments and ask that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT] proposes amendments numbered 1803, 1804, and 1805, en bloc.

Mr. BENNETT. These amendments have been cleared on both sides. I ask for their approval by voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendments.

The amendments were agreed to, as follows:

AMENDMENT NO. 1803

At the appropriate place in the bill, insert the following new paragraph:

''SEC. . Section 274(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)) is amended by adding at the end the following:'' (C) It is not a violation of clauses (ii) or (iii) of subparagraph (A), or of clause (iv) of subparagraph (A) except where a person encourages or induces an alien to come to or enter the United States, for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year.

AMENDMENT NO. 1804

On page 170 strike Section 767 and replace it with the following new paragraph:

''SEC. . Notwithstanding any other provision of law, none of the funds provided for in this or any other Act may be used in this and each fiscal year hereafter for the review, clearance, or approval for sale in the United States of any contact lens unless the manufacturer certifies that it makes any contact lens it produces, markets, distributes, or sells available in a commercially reasonable and non-discriminatory manner directly to and generally within all alternative channels of distribution: Provided, That for the purposes of this section, the term 'manufacturer' includes the manufacturer and its parents, subsidiaries, affiliates, successors and assigns, and 'alternative channels of distribution' means any mail order company, Internet retailer, pharmacy, buying club, department store, mass merchandise outlet or other appropriate distribution alternative without regard to whether it is associated with a prescriber: Provided further, That nothing in this section shall be interpreted as waiving any obligation of a seller under 15 USC 7603: Provided further, That to facilitate compliance with this section, 15 USC 7605 is amended by inserting after the period: ''A manufacturer shall make any contact lens it produces, markets, distributes or sells available in a commercially reasonable and non-discriminatory manner directly to and generally within all alternative channels of distribution; provided that, for the purposes of this section, the term 'alternative channels of distribution' means any mail order company, Internet retailer, pharmacy, buying club, department store, mass merchandise outlet or other appropriate distribution alternative without regard to whether it is associated with a prescriber; the term 'manufacturer' includes the manufacturer and its parents, subsidiaries, affiliates, successors and assigns; and any rule prescribed under this section shall take effect not later than 60 days after the date of enactment.''

AMENDMENT NO. 1805

At the appropriate place in the bill, insert the following new paragraph:

''SEC. . The Federal facility located at the South Mississippi Branch Experiment Station in Poplarville, Mississippi, and known as the ''Southern Horticultural Laboratory'', shall be known and designated as the ''Thad Cochran Southern Horticultural Laboratory'': Provided, That any reference in law, map, regulation, document, paper, or other record of the United States to such Federal facility shall be deemed to be a reference to the ''Thad Cochran Southern Horticultural Laboratory''.

AMENDMENT NO. 1752, AS MODIFIED

Mr. BENNETT. Mr. President, I ask unanimous consent that notwithstanding the adoption of amendment No. 1752, the amendment be modified with the changes at the desk.

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

The amendment, as modified, is as follows:

On page 173, after line 24 insert the following:

''SEC. . The Secretary of Agriculture may establish a demonstration intermediate relending program for the construction and rehabilitation of housing for the Mississippi Band of Choctaw Indians: *Provided*, That the interest rate for direct loans shall be 1 percent: *Provided further*, That no later than one year after the establishment of this program the Secretary shall provide the Committees on Appropriations with a report providing information on the program structure, management, and general demographic information on the loan recipients.''

AMENDMENTS NOS. 1806 AND 1807

Mr. BENNETT. Mr. President, there are cleared amendments at the desk, one from Senator KYL and one from Senator LEAHY. I ask unanimous consent that they be agreed to and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. KYL, proposes an amendment numbered 1806.

The Senator from Utah [Mr. BENNETT], for Mr. LEAHY, proposes an amendment numbered 1807.

The PRESIDING OFFICER. Without objection, the amendments are agreed to en bloc.

The amendments were agreed to, as follows:

AMENDMENT NO. 1806

(Purpose: To convey title in certain real property)

On page 173, after line 24, insert the following:

SEC. 7_____. As soon as practicable after the Agricultural Research Service operations at the Western Cotton Research Laboratory located at 4135 East Broadway Road in Phoenix, Arizona, have ceased, the Secretary of Agriculture may convey, without consideration, to the Arizona Cotton Growers Association and Supima all right, title, and interest of the United States in and to the real property at that location, including improvements.

AMENDMENT NO. 1807

(Purpose: To direct the Secretary of Agriculture to submit to Congress a report on whether to restore the National Organic Program)

On page 173, after line 24, insert the following:

SEC. 7_____. The Secretary of Agriculture shall—

(1) as soon as practicable after the date of enactment of this Act, conduct an evaluation of any impacts of the court decision in Harvey v. Veneman, 396 F.3d 28 (1st Cir. Me. 2005); and

(2) not later than 90 days after the date of enactment of this Act, submit to Congress a report that—

(A) describes the results of the evaluation conducted under paragraph (1);

(B) includes a determination by the Secretary on whether restoring the National Organic Program, as in effect on the day before the date of the court decision described in paragraph (1), would adversely affect organic farmers, organic food processors, and consumers;

(C) analyzes issues regarding the use of synthetic ingredients in processing and handling;

(D) analyzes the utility of expedited petitions for commercially unavailable agricultural commodities and products; and

(E) considers the use of crops and forage from land included in the organic system plan of dairy farms that are in the third year of organic management.

AMENDMENT NO. 1808

Mr. BENNETT. Mr. President, there is an amendment from Senator FEINGOLD at the desk which I would like to call up and have a voice vote on at this time.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. FEINGOLD, proposes an amendment numbered 1808.

The amendment is as follows:

(Purpose: To direct the Administrator of the Animal and Plant Health Inspection Service to publish uniform methods and rules for addressing chronic wasting disease)

On page 173, after line 24, insert the following:

SEC. 7_____.(a) Not later than 90 days after the date of enactment of this Act, the Administrator of the Animal and Plant Health Inspection Service (referred to in this section as the ''Administrator'') shall publish in the Federal Register uniform methods and rules for addressing chronic wasting disease.

(b) If the Administrator does not publish the uniform methods and rules by the deadline specified in subsection (a), not later than 30 days after the deadline and every 30 days thereafter until the uniform methods and rules are published in accordance with that subsection, the Administrator shall submit to Congress a report that—

(1) describes the status of the uniform methods and rules; and

(2) provides an estimated completion date for the uniform methods and rules.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1808) was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The journal clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1809

Mr. BENNETT. Mr. President, there is an amendment at the desk offered by

Senator MCCONNELL which I would like to call up for consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. MCCONNELL, proposes an amendment numbered 1809.

The amendment is as follows:

(Purpose: To provide for livestock assistance)

On page 173, after line 24, insert the following:

SEC. 7_____.(a) In carrying out a livestock assistance, compensation, or feed program, the Secretary of Agriculture shall include horses within the definition of ''livestock'' covered by the program.

(b)(1) Section 602(2) of the Agricultural Act of 1949 (7 U.S.C. 1471(2)) is amended—

(A) by inserting ''horses'', after ''bison''; and

(B) by striking ''equine animals used for food or in the production of food,''.

(2) Section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387; 114 Stat. 1549A–51) is amended by inserting ''(including losses to elk, reindeer, bison, and horses)'' after ''livestock losses''.

(3) Section 10104(a) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1472(a)) is amended by striking ''and bison'' and inserting ''bison, and horses''.

(4) Section 203(d)(2) of the Agricultural Assistance Act of 2003 (Public Law 108-7; 117 Stat. 541) is amended by striking ''and bison'' and inserting ''bison, and horses''.

(c)(1) This section and the amendments made by this section apply to losses resulting from a disaster that occurs on or after July 28, 2005.

(2) This section and the amendments made by this section do not apply to losses resulting from a disaster that occurred before July 28, 2005.

Mr. BENNETT. Mr. President, I ask that the amendment be agreed to with a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1809) was agreed to.

Mr. BENNETT. I ask unanimous consent that the motion to reconsider be laid upon the table.

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

Mr. BENNETT. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The journal clerk proceeded to call the roll.

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

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

COUNTRY OF ORIGIN LABELING

Mr. THOMAS. Mr. President, I come to the floor to talk about part of the Senate bill that has to do with the identification of livestock products and the country of origin labeling. This is an issue we have talked about for some time and one that I think is very important. It is important to my State and to livestock producers there.

Country of origin labeling is a very simple thing: When you go into the store to buy a package of meat, it says on there where it comes from. That is not a unique idea. We do it on T-shirts and jackets and everything else and often many other foods. I think people would like to know, and have the right to know, where that product comes from.

Country of origin labeling actually was put on the Agriculture bill about 3 years ago, I believe. I was one of the original sponsors of the amendment that put it on the Agriculture bill in 2002, as a matter of fact. It has been around since. It simply says that consumers have the right to know what was the origin of this particular product that they are buying. It can be done by identifying the product as it comes off the farm or range and following it through the process. It does not require the same thing for hamburger or mixed food, which would be very difficult.

I believe most consumers support mandatory labeling and many nations require it on many kinds of foods and other products, including the United States. But this bill, even though it passed originally, has been postponed several times. I think there is something to that effect in the House appropriations bill now. It is time we do it. We ought to come to the snubbing post and get something done. It can be done. It has been done other places. I think there is support for doing it.

There is labeling of fish, shellfish, and other foods, and that appears to be working. As I said, it has been delayed more than once, and I think the idea is it would be put in place in 2006.

I am asking, as we bring this bill to completion and come on to working with the House in the conference, that we make sure we allow this bill, that has been passed and approved by the House and the Senate in the past, to go on and become law.

I will not take a great deal more time. I wish to point out it is something, No. 1, that can be done; No. 2, that there has been support for doing it. What we have done is kept postponing doing it. There are some people, some of the retailers and so on, who do not want to have to go to the trouble. But I think the process, for the consumers, is a good idea. People should have the right and they have the desire, I believe, to know the source of the product that they and their family are going to consume. I ask, as we go forward with this bill, we should keep that in mind and seek to complete this whole action, allowing it to move forward.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENTS NOS. 1786, 1800, 1785

Mr. BENNETT. Mr. President, I understand that there are three amendments at the desk; one offered by Senator GORDON SMITH, one offered by Senator JOHN MCCAIN, and one offered by MAX BAUCUS.

I ask these amendments be called up and considered en bloc. They are amendments No. 1786, for Senator SMITH; No. 1785, for Senator MCCAIN; and No. 1800, for Senator BAUCUS.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT] proposes amendments numbered 1786, 1800, and 1785, en bloc.

Mr. BENNETT. I ask unanimous consent that the amendments be agreed to.

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

The amendments were agreed to, as follows:

AMENDMENT NO. 1786

(Purpose: To allow the Secretary to authorize the use of certain funds that would otherwise be recaptured under the rural business enterprise grant program)

On page 173, after line 24, insert the following:

SEC. 7_____. With respect to the sale of the Thermo Pressed Laminates building in Klamath Falls, Oregon, the Secretary of Agriculture may allow the Klamath County Economic Development Corporation to establish a revolving economic development loan fund with the funds that otherwise would be required to be repaid to the Secretary in accordance with the rural business enterprise grant under section 310B(c)(1)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)).

AMENDMENT NO. 1800

(Purpose: To express the sense of the Senate regarding public sector funding of agricultural research and development)

On page 173, after line 24, insert the following:

SEC. 7_____.(a) The Senate finds the following:

(1) Research and development have been critical components of the prosperity of the United States.

(2) The United States is entering an increasingly competitive world in the 21st century.

(3) The National Academy of Sciences has found that public agricultural research and development expenditures in the United States were the lowest of any developed country in the world.

(4) The Nation needs to ensure that public spending for agricultural research is commensurate with the importance of agriculture to the long-term economic health of the Nation.

(5) Research and development is critical to ensuring that American agriculture remains strong and vital in the coming decades.

(b) It is the sense of the Senate that, in order for the United States to remain competitive, the President and the Department of Agriculture should increase public sector funding of agricultural research and development.

AMENDMENT NO. 1785

(Purpose: To express the sense of the Senate regarding funding directives contained in H.R. 2744 or its accompanying report)

On page 173, after line 24, insert the following:

SEC. 7_____. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds the following:

(1) In a time of national catastrophe, it is the responsibility of Congress and the Executive Branch to take quick and decisive action to help those in need.

(2) The size, scope, and complexity of Hurricane Katrina are unprecedented, and the emergency response and long-term recovery efforts will be extensive and require significant resources.

(3) It is the responsibility of Congress and the Executive Branch to ensure the financial stability of the nation by being good stewards of Americans' hard-earned tax dollars.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that any funding directive contained in this Act, or its accompanying report, that is not specifically authorized in any Federal law as of the date of enactment of this section, or Act or resolution passed by the Senate during the 1st Session of the 109th Congress prior to such date, or proposed in pursuance to an estimate submitted in accordance with law, that is for the benefit of an identifiable program, project, activity, entity, or jurisdiction and is not directly related to the impact of Hurricane Katrina, may be redirected to recovery efforts if the appropriate head of an agency or department determines, after consultation with appropriate Congressional Committees, that the funding directive is not of national significance or is not in the public interest.

AMENDMENT NO. 1785

Mr. MCCAIN. Mr. President, this sense-of-the-Senate amendment is nearly identical to the amendment that was adopted unanimously last week during debate on the Commerce-Justice-Science appropriations bill. It is another attempt to reign in wasteful spending, particularly during this time when portions of our country along the gulf are enduring the devastating impact of Hurricane Katrina—indeed, a national tragedy.

As our Nation continues to manage the aftermath of Hurricane Katrina, the Congress and the administration must do what it can to help the hundreds of thousands of victims of one of the worst natural disasters in our history. And now, another hurricane is gaining momentum which could cause even more serious destruction to the region.

The costs of the recovery and relief effort will be enormous. We have already appropriated more than $62 billion, and that is likely a mere down-payment on the yet to be determined total expenditures that will be required. Indeed, we live in times of great need and limited resources.

Americans are being called to sacrifice, and so many are selflessly contributing what they can to the recovery efforts—they are donating money, opening their homes, or offering other useful assistance. Congress needs to do its part too. To the extent that it is possible, we should pay for this effort now rather than pass on even more debt to future generations. We should also make better use of taxpayers' money by eliminating wasteful spending, and that is what this amendment is about.

This year's Agriculture appropriations bill, and particularly its accompanying report, contain numerous questionable earmarks, the majority of which warrant further review, particularly given the circumstances that have arisen since the bill was reported by the Appropriations Committee in July.

Here are just a few examples: $2,000,000 for the National Sheep Industry Improvement Center; $50,000 earmarked to study the shiitake mushroom; $300,000 for USDA research at the Utah State University Space Dynamics Laboratory to accurately measure gaseous emissions from agriculture operations; $200,000 for grapefruit juice/drug interaction research in Winterhaven, FL; $140,000 to the University of Nevada Reno to conduct a feasibility study for a cooperative sheep slaughter facility; $1,000,000 for grasshopper and Mormon cricket pest control in the State of Utah; $24,066,000 above the budget request for boll weevil pest management; $1,150,000 above the budget request for grasshopper pest management; $300,000 for biological weed control in Sidney, MT; $300,000 for the healthy beef initiative, Little Rock, AR; $200,000 to study sudden oak death in Oregon; $600,000 for cranberry production assistance in the States of Massachusetts and Wisconsin; $6,000,000 for the construction of the Animal Waste Management Research Laboratory in Bowling, KY; $1,000,000 for multiflora rose control in the State of West Virginia; $1,500,000 for the construction of the Center for Grape Genomics in Geneva, NY; $100,000 earmarked for animal identification and tracking in the State of Washington; $100,000 for brown tree snake management in Hawaii and Guam; $248,000 to reduce beaver damage to cropland and forests in the State of Wisconsin; and $400,000 earmarked for preventing blackbird damage to sunflowers in North and South Dakota.

Certainly I must not be the only one who questions these kinds of earmarks. We simply cannot afford ''business as usual'' around here.

The sense-of-the-Senate amendment that I am proposing would allow for a redirection of the funding for any of the earmarks that have not been authorized, have not been requested by the President, or are not related to the impact of Hurricane Katrina to be used for recovery efforts. This would occur if the agency or Department head determines, after consultation with the appropriate congressional committees—and this would mean authorizers as well as appropriators—that such an earmark is not of national significance or is not in the public interest. Since almost all of these earmarks are in the report language, which is not something I can amend, this amendment at least sends a strong message to the agencies that they will be held accountable for reviewing these directives and ensuring they are only funded if found to be in the public interest.

I hope the amendment can be easily adopted and not take much of the Senate's time, particularly since a similar provision was agreed to last week. In a time of national catastrophe, it is the responsibility of the U.S. Congress to take quick and decisive action to help those in need. It is not appropriate to continue the practice of wastefully earmarking scarce funds in the face of such a great tragedy. This should be a time of sacrifice for the sake of our suffering citizens.

Mr. President, despite high gas prices, despite a swelling $331 billion deficit, despite our military operations overseas, and despite our domestic emergencies, pork continues to thrive in good times and bad. The cumulative effect of these earmarks erodes the integrity of the appropriations process and, by extension, our responsibility to the taxpayer.

I thank the chairman and ranking member of the subcommittee for agreeing to accept this amendment.

Mr. BENNETT. 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.

The PRESIDING OFFICER. The Senator from Wisconsin.

AMENDMENT NO. 1741

Mr. KOHL. Mr. President, I send an amendment to the desk on behalf of Senator DEWINE.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL], for Mr. DEWINE, proposes an amendment numbered 1741.

Mr. KOHL. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To pledge continued support for international hunger relief efforts and express the sense of the Senate that the United States Government should use resources and diplomatic leverage to secure food aid for countries that are in need of further assistance to prevent acute and chronic hunger)

On page 173, after line 24, insert the following:

SEC. 7_____. It is the sense of the Senate that—

(1) the Senate—

(A) encourages expanded efforts to alleviate hunger throughout developing countries; and

(B) pledges to continue to support international hunger relief efforts;

(2) the United States Government should use financial and diplomatic resources to work with other donors to ensure that food aid programs receive all necessary funding and supplies; and

(3) food aid should be provided in conjunction with measures to alleviate hunger, malnutrition, and poverty.

Mr. KOHL. Mr. President, I have worked a great deal with my friend from Ohio on international hunger issues and encourage my colleagues to support his amendment.

I also ask that I and Senator CHAMBLISS be added as cosponsors.

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

Mr. KOHL. In recent weeks, we have witnessed disaster and hunger and displacement on our own shores. Those images are compelling. They remind us that hunger and displacement and enormous human need are chronic conditions in many parts of the world. For the people living in these circumstances, U.S. food aid is as important as it has ever been.

I hope this amendment forces policymakers to rethink and recommit themselves to international hunger relief.

I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1741) was agreed to.

Mr. KOHL. 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. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1812

Mr. BENNETT. Mr. President, I send an amendment to the desk for the senior Senator from Nevada, Mr. REID.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. REID, proposes an amendment numbered 1812.

Mr. BENNETT. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide that funds made available for the Plant Materials Center in Fallon, Nevada, shall remain available until expended)

At the appropriate place, insert the following:

SEC. ____. Amounts made available for the Plant Materials Center in Fallon, Nevada, under the heading ''CONSERVATION OPERATIONS'' under the heading ''NATURAL RESOURCES CONSERVATION SERVICE'' of title II of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2823) shall remain available until expended.

Mr. BENNETT. Mr. President, I ask that this amendment be agreed to on a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1812) was agreed to.

Mr. BENNETT. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENNETT. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

RECESS

Mr. BENNETT. There is a briefing going on in the Capitol with Members of the Senate invited to attend. Accordingly, with the approval of leadership, I ask unanimous consent that the Senate stand in recess until 5 o'clock.

There being no objection, the Senate, at 4:01 p.m., recessed until 5 p.m. and reassembled when called to order by the Presiding Officer (Mr. COBURN).

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I say to Senator BENNETT that I know he is managing a bill, and I see no one else is here on that bill at this time and I would like to make a statement about Judge Roberts.

NOMINATION OF JOHN ROBERTS

Mrs. BOXER. Mr. President, when a seat on the Supreme Court opened in July, I made a promise to the people of California. I promised I would only support a nominee I believed would protect their rights and freedoms.

After much thought, I have concluded that I cannot in good conscience give my constituents that assurance with the nominee we have before the Senate, Judge John Roberts. In fact, I am very worried that with Judge Roberts on the Supreme Court, the rights and freedoms that have made America a light to the rest of the world could be in serious jeopardy.

The question before the Senate is not whether Judge Roberts is a brilliant lawyer and not whether he is well qualified or well spoken or affable or unflappable. He is certainly all of those. But examining his credentials is where our analysis must begin, not end. The American people understand this. In poll after poll after poll, the American people say that before we vote, it is important to know where Judge Roberts stands on key issues that define us as Americans and what kind of country we will leave behind for our children.

The next Chief Justice will have the opportunity to steer a deeply divided Court and influence our lives and the lives of our families for generations. In recent years, the Court has issued 5-to-4 decisions to protect our air, to safeguard women's reproductive health and the rights of the disabled, to give HMO patients the right to a second opinion, to allow universities to use affirmative action, and to guarantee government neutrality toward religion.

With so many of our fundamental rights hanging in the balance, it is not good enough, in my view, to simply roll the dice, hoping a nominee will change his past views. It is not good enough to think this is the best we can expect from this President. I simply do not buy into that reasoning. And no, I don't buy into this reasoning either: Let's support this nominee because the next one might be worse. I will tell you why that rationale does not work for me and it will never work for me as long as the Constitution gives me and my colleagues in the Senate an equal role in this process.

It fails the bar that I set—the bar that says that I must be able to look into the eyes of my constituents and assure them that I feel confident in this choice. I said I could only vote for a nominee who would protect the rights and the freedoms of the people I represent.

I need to be able to look into the eyes of my constituents and to assure them I have made that judgment before I vote yes in their name. I can't do it here. We must demand far more in a nominee because the people we represent deserve no less.

I will vote no on this nomination because of what we know and what we do not know about Judge Roberts.

Long before President Bush made this nomination, we knew that his model judges were Justices Scalia and Thomas.

Now, President Bush isn't known for changing his mind, so that doesn't leave us in a good place if we're hoping for a moderate. Nor does a reading of Judge Robert's record while he served in the Reagan Administration 20 years ago.

In fact, some of Judge Roberts's writings raise serious concerns about whether he understands the ugly history of discrimination and injustice in our country, or the proper role of government in injustice and discrimination.

Of course, we were told over and over again by Judge Roberts and by this administration and some of his supporters: Do not pay attention to those memos; they were written long ago; he was just a young man; he was just a lowly staff attorney. Here is the point: Judge Roberts never backed away from those memos. When given the chance, he said over and over again they were written for someone else. Someone else is not up for the Supreme Court; Judge Roberts is up for the Supreme Court. So to simply say, Yes, I wrote that, but I wrote it for someone else, just does not pass the test.

Then we try to examine Judge Roberts' tenure years later as a top political appointee under the first President Bush. That is when he worked as Deputy Solicitor General for Ken Starr,