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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, Dr. Alan Keiran, chief of staff of the Senate Chaplain's Office.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

O God of might and power, give our Senators today Your passion. Give them a passion for people that will bring liberty and hope. Give them a passion for justice that will empower them to become our Nation's conscience. Give them a passion for unity that will break down the barriers that divide us. Give them a passion for action that they may not shrink from the new or be satisfied with the comfortable inertia.

Give us all a passion for progress that will enable us to see what is not and dream what can be.

We pray in Your precious Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006

The PRESIDENT pro tempore. Under the previous order, the Senate will re-

sume consideration of H.R. 3010, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3010) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2006, and for other purposes.

Pending:

Sununu amendment No. 2214, to provide for the funding of the Low-Vision Rehabilitation Services Demonstration Project.

Sununu modified amendment No. 2215, to increase funding for community health centers.

Thune further modified amendment No. 2193, to provide funding for telehealth programs.

Murray amendment No. 2220, to provide stop gap coverage for low-income Seniors and disabled individuals who may lose benefits or suffer a gap in coverage due to the implementation of the Medicare part D prescription drug benefit.

Harkin modified amendment No. 2283, to make available funds for pandemic flu preparedness.

Clinton/Schumer amendment No. 2313, to provide for payments to the New York State Uninsured Employers Fund for reimbursement of claims related to the terrorist attacks of September 11, 2001, and payments to the Centers for Disease Control and Prevention for treatment for emergency services personnel and rescue and recovery personnel.

Coburn amendment No. 2233, to prohibit the use of funds for HIV Vaccine Awareness Day activities.

Coburn amendment No. 2230, to limit funding for conferences.

Dayton amendment No. 2245, to fully fund the Federal Government's share of the costs under part B of the Individuals with Disabilities Education Act.

Dayton amendment No. 2289, to increase funding for disabled voter access services under the Help America Vote Act of 2002.

Santorum amendment No. 2241, to establish a Congressional Commission on Expanding Social Service Delivery Options.

Santorum amendment No. 2237, to provide grants to promote healthy marriages.

Durbin (for Boxer/Ensign) amendment No. 2287, to increase appropriations for after-school programs through 21st century community learning centers.

Bingaman (for Smith/Bingaman) amendment No. 2259, to provide funding for the

AIDS Drug Assistance Program within the Health Resources and Services Administration.

Bingaman amendment No. 2218, to increase funding for advanced placement programs.

Bingaman amendment No. 2219, to increase funding for school dropout prevention.

Bingaman/Salazar amendment No. 2262, to increase funding for education programs serving Hispanic students.

Harkin amendment No. 2322, to prohibit payments for administrative expenses under the Medicaid program if more than 15 percent of applications for medical assistance, eligibility redeterminations, and change reports are processed by individuals who are not State employees meeting certain personnel standards.

Cornyn amendment No. 2277, to increase the amount of appropriated funds available for Community-Based Job Training Grants.

Landrieu amendment No. 2248, to increase appropriations for the Federal TRIO programs for students affected by Hurricanes Katrina or Rita.

Landrieu amendment No. 2250, to provide funding to carry out the Mosquito Abatement for Safety and Health Act.

Landrieu amendment No. 2249, to require that any additional community health center funding be directed, in part, to centers in areas affected by Hurricane Katrina or Hurricane Rita.

Collins/Feingold modified amendment No. 2265, to fund grants for innovative programs to address dental workforce needs.

Murray amendment No. 2285, to insert provisions related to an investigation by the Inspector General.

Ensign amendment No. 2300, to prohibit funding for the support, development, or distribution of the Department of Education's e-Language Learning System (ELLS).

The PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. shall be equally divided between the majority and the minority.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the time until 10 a.m. will be equally divided for debate prior to the cloture vote. That cloture vote is scheduled to begin at 10 a.m. promptly. We

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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will be on the Labor-HHS appropriations bill. We started that bill now 6 days ago, last Friday. Senators have had ample opportunity to debate and offer amendments. Therefore, I expect that we will invoke cloture this morning. Once cloture is invoked, the chairman can begin the process of bringing that bill to a close. If we work together and Members are reasonable with their requests for amendments, we will be able to finish the bill tonight. If we are unable to get passage of the bill tonight, then we would return to session tomorrow and stay on the bill with votes until completion. That gives added incentive for people to finish it today, but we will be here tomorrow to vote if we do not finish it tonight.

Today we may also receive the Agriculture appropriations conference report from the House, and I will be talking to the Democratic leader about the scheduling for consideration.

Finally, we have some Executive Calendar nominations ready for Senate action, including a couple of judges. We need to dispose of those nominations as soon as possible.

WITHDRAWAL OF NOMINATION OF HARRIET MIERS

Mr. FRIST. Mr. President, over the last several minutes, Harriet Miers has formally requested to withdraw as a nominee to serve as Associate Justice of the Supreme Court. I had a conversation with Ms. Miers early this morning, and she told me that it was last evening that she spoke to the President and formally requested her nomination to be withdrawn. She stated clearly to me this morning and in a letter, which I will refer to shortly, that she felt that withdrawal was in the best interest of the United States. She came to this decision on her own, based on what she has experienced and witnessed and with the requests that are currently being made and as she projected forward to the hearings, again, in the best interests of the country. This morning she was gracious and forthcoming, confident, expressed appreciation for all of the work that has been done to date in the Senate and asked me to express that to each of the Senators, asking me to say thank you for their individual courtesy over the past several days and weeks. As one may expect, she was disappointed but confident and upbeat.

Earlier this morning, following that, I did talk to the President. It is appropriate, because things are moving so quickly for me, to quote from her letter, again, to use Harriet Miers' own words. As this is addressed by the political pundits and the commentators over the course of today, I think it would be helpful for our colleagues to hear directly what Ms. Miers sent to the President.

OCTOBER 27, 2005.

Dear Mr. President: I write to withdraw as a nominee to serve as an Associate Justice on the Supreme Court of the United States. I have been greatly honored and humbled by the confidence that you have shown in me, and have appreciated immensely your sup-

port and the support of many others. However, I am concerned that the confirmation process presents a burden for the White House and our staff that is not in the best interest of the country.

As you know, members of the Senate have indicated their intention to seek documents about my service in the White House in order to judge whether to support me. I have been informed repeatedly that in lieu of records, I would be expected to testify about my service in the White House to demonstrate my experience and judicial philosophy. While I believe that my lengthy career provides sufficient evidence for consideration of my nomination, I am convinced the efforts to obtain Executive Branch materials and information will continue.

As I stated in my acceptance remarks in the Oval Office, the strength and independence of our three branches of government are critical to the continued success of this great Nation. Repeatedly in the course of the process of confirmation for nominees for other positions, I have steadfastly maintained that the independence of the Executive Branch be reserved and its confidential documents and information not be released to further a confirmation process. I feel compelled to adhere to this position, especially related to my own nomination. Protection of the prerogatives of the Executive Branch and continued pursuit of my confirmation are in tension. I have decided that seeking my confirmation should yield.

I share your commitment to appointing judges with a conservative judicial philosophy, and I look forward to continuing to support your efforts to provide the American people judges who will interpret the law, not make it. I am most grateful for the opportunity to have served your Administration and this country.

Most respectfully,

HARRIET ELLAN MIERS.

Those are her words, and I think they are very direct. I did have a chance to talk to the President moments ago. He says that he accepted this withdrawal. Harriet Miers will continue as White House counsel, of course. And I believe that we can expect another nomination in the very near future. I will be talking to Chairman SPECTER a little bit later this morning.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

HARRIET MIERS

Mr. REID. Mr. President, I have heard, since I have been in Washington these many years, about what a tough town it is. I rarely have felt that in my work here. But today I feel what some have said. For Harriet Miers, this is a tough town.

Here is a fine woman, gentle and kind, has a lengthy career. Her record: First woman to become a member of a large law firm in Texas; first woman to be president of the Dallas Bar Association. The Dallas Bar Association is larger than most State bar associations. She followed that with being the president of the Texas Bar Association, one of the three or four largest bar associations in the United States. She has served in elective office for a short period. She has had extensive experience in the courts.

I was in Texas this past weekend with a bunch of Democratic lawyers,

members of the Democratic Party. They all said the nicest things about Harriet Miers. She was a fine litigator.

It is no secret I thought she would be an appropriate nomination for the President. I suggested that to the President in a meeting that was attended by the distinguished majority leader. I believe the 35 to 40 percent of the people who have served on the Supreme Court with no judicial experience before getting there have been equally as good as those people who have come to the Court with judicial experience. I believe those Justices with whom I had lunch a few months ago, who said, we would like to have people with no judicial experience come to the Supreme Court—that is what they said—were right. I believe they are still right.

I have talked a little bit about Harriet Miers. She called me this morning. I agree with the distinguished Republican leader that she was upbeat, but she wasn't happy. She was very disappointed. It was obvious she was very disappointed. Who wouldn't be? In her experience as a lawyer, elected city councilperson, in her whole career she has shown that she has been a strong supporter for law firm diversity policies, a leader in promoting legal services for the poor. She made statements, written and otherwise, where she spoke her beliefs on basic fairness.

I believe, without any question, that when the history books are written about all this, it will show that the radical rightwing of the Republican Party drove this woman's nomination right out of town. Apparently, Ms. Miers didn't satisfy those who want to pack the Supreme Court with rigid ideologists. The only voices heard in this process were the far right. She wasn't even given a chance to speak for herself before the Senate Judiciary Committee. Her credentials, which are excellent, weren't good enough for the rightwing. They wanted a nominee with a proven record of supporting their skewed goals.

I hope our President, in choosing a replacement for his lawyer—and that is what she is—will not reward the bad behavior of his rightwing base. President Bush should reject the demands of these extremists and choose a Justice who will protect the constitutional rights of all Americans. The President should listen to all Americans, not just extreme elements of his own party.

I repeat what the distinguished Senator from Maryland said, Ms. MIKULSKI, that she sensed a whiff—I think that is a direct quote—of sexism in all of the attacks on this nominee.

Mr. President, it is over with. She has given her withdrawal to the President. I don't think it is a good day for our country.

The PRESIDENT pro tempore. Who yields time?

Mr. REID. I yield to the distinguished Senator from New York.

How much time do we have, Mr. President?

The PRESIDENT pro tempore. Eight minutes 11 seconds.

Mr. REID. And that is equally divided; is that right?

The PRESIDENT pro tempore. The majority has 7 minutes 42 seconds.

Mr. REID. While the distinguished majority leader is here, Mr. President, through you to the distinguished Republican leader, we had a half hour set aside and I took more than my share. You didn't take much time. I ask unanimous consent that there be 30 minutes for morning business and the vote at 10 o'clock be scheduled at 10:15.

I understand the Senator from New York is not talking in morning business. I withdraw my request. I yield to her whatever time she may consume.

The PRESIDENT pro tempore. The Senator from New York is recognized.

AMENDMENT NO. 2313

Mrs. CLINTON. I thank the Chair. I ask unanimous consent that at the conclusion of my brief remarks my colleague, Senator SCHUMER, be recognized.

The PRESIDENT pro tempore. Subject to the control of the time, yes.

Mrs. CLINTON. I thank the Chair.

Mr. President, I believe amendment 2313 is pending before the Senate; is that correct?

The PRESIDENT pro tempore. Pending before the Senate is H.R. 3010.

Mrs. CLINTON. Is amendment 2313 at the desk?

The PRESIDENT pro tempore. The amendment is the pending amendment, the one we go on in regular business.

Mrs. CLINTON. Mr. President, parliamentary inquiry: Will we be going to regular business before the cloture vote?

The PRESIDENT pro tempore. We are on the bill at this time.

Mrs. CLINTON. Then if we are on the bill at this time, I wish to speak briefly about amendment 2313 and ask that it be pending before the Senate.

The PRESIDENT pro tempore. The Senator has the right to make that amendment the regular order if she desires.

Mrs. CLINTON. I do desire, Mr. President, to make amendment 2313 the regular order.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. CLINTON. I thank the Chair.

Mr. President, this amendment addresses a problem that is quite unprecedented with respect to the funds that were appropriated originally from this body following the attacks of September 11. The funds were part of the original emergency appropriation passed by the Congress and signed by the President. The money addressed in this amendment is intended for use for medical services and related matters on behalf of first responders, construction workers, and others who worked at Ground Zero, who were in a variety of ways injured, whose health was impacted, often leading to employment-ending disabilities. The people who gave so much in the immediate after-

math of those attacks include, of course, those who lost their lives and also those who as part of the rescue and recovery operations suffered long-lasting physical and mental damage.

A number of those people have not been able to return to work. They are suffering from ailments ranging from physical disability, loss of limbs, loss of the use of limbs. They have suffered an incredible range of lung-related and breathing diseases—asthma, respiratory dysfunction. Others have suffered greatly from the stresses they confronted, particularly working on what was called “the pile” day after day after day; some who worked out at Freshkills, the formerly very large landfill on Staten Island where the remains of so many who lost their lives, including the debris from the cleanup, were taken and deposited. Detectives worked there hour after hour after hour recovering evidence, and often that evidence included, tragically, body parts. Many of these people who were directly impacted continued to work as long as they could. They tried to return to some semblance of normalcy. Unfortunately, they often could not continue.

The money that was directed to be used for their medical and employment-related needs was caught up in some of the efforts to deal with the budget currently, and an unprecedented rescission of these funds previously appropriated was called for.

On both sides of the aisle, in the Senate as well as the House, we have a number of our colleagues who understand completely the need for these funds to be reinstated and available for the purposes they were intended. Certainly, the Governor of our State, the mayor of our city, along with representatives of many of the workers, the police officers, detectives, the firefighters, the construction workers, and others who were adversely impacted because they responded to the need for their services and their heroic efforts, are all united in our effort on both sides of the aisle at all levels of Government to make sure that what was promised is fulfilled.

I greatly appreciate the chairman of the committee and the ranking member working with us over the last weeks to make sure we correct this unprecedented rescission. I believe the amendment has been agreed to by the chairman and ranking member. I hope we are able to move forward with that expeditiously today.

This is a righting of an inadvertent wrong. I don't think the full intent and understanding of what these funds were for was perhaps appreciated, but there seems to be a great willingness, which I greatly appreciate, on behalf of the majority—

The PRESIDENT pro tempore. The Senator's time has expired.

Mrs. CLINTON. And so, Mr. President, let me, if I could—

The PRESIDENT pro tempore. There is no further time for the minority to yield.

Mrs. CLINTON. Mr. President, may we have unanimous consent to use the leader time?

The PRESIDENT pro tempore. The leadership time is reserved. The leadership is to use that time.

Mr. SCHUMER. Mr. President, I ask unanimous consent that I be given 2 minutes. It can be deducted from the Republican time.

The PRESIDENT pro tempore. Without objection, that request can be agreed to.

Mr. SCHUMER. I thank the Chair. I want to add my voice in support of this amendment on behalf of Senator CLINTON and myself.

We all know the help this country has generously offered those who put their lives on the line—some survived, some did not—after 9/11. Many emerged wounded. I want to add one other element here. When we negotiated with the President for the \$20 billion, there was a great moment of unity. When this Congress stood up, it was a great moment of unity. I have to say the President has never wavered in his commitment of the \$20 billion. In fact, the White House has been generous in granting us flexibility—seeking to take \$2 billion of the tax dollars and move them to transportation.

This one rescission is the only mark where there has been a wavering in the commitment made to New York in those bleak weeks right after 9/11. We don't know how it came about. I doubt it came from the President—maybe somebody in OMB. But removing this rescission rights that wrong and keeps the ledger unblemished about this Nation's commitment to \$20 billion to New York.

I thank Senator SPECTER and Senator COCHRAN for understanding that need, and Senator CLINTON and I look forward to the fact that this amendment, which will now be in the Senate bill, will prevail in the House and that the White House will help us make that happen.

The PRESIDENT pro tempore. The Senator's 2 minutes have expired.

Mrs. CLINTON. Mr. President, I ask unanimous consent that the remainder of the time be allocated to Senator SCHUMER and myself.

The PRESIDENT pro tempore. Without objection, it is so ordered. There is 5 minutes 44 seconds remaining.

Mrs. CLINTON. Mr. President, as you can tell from both Senator SCHUMER and myself, we are very grateful for this understanding and pending action that will give us a chance to right this wrong. Again I think it is difficult to trace how it happened. I believe it is in the rush of trying to figure out how to maybe make things balance a little bit more that this was seized upon.

I ask unanimous consent that letters from Governor Pataki and Mayor Bloomberg be printed in the RECORD.

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

EXECUTIVE CHAMBER,
STATE CAPITOL,
Albany, NY, October 21, 2005.

Hon. THAD COCHRAN,
Chair, Appropriations Committee, Senate Dirksen Office Building, Washington, DC.
Hon. ROBERT C. BYRD,
Ranking Member, Appropriations Committee, Senate Hart Office Building, Washington, DC.

DEAR SENATORS COCHRAN AND BYRD: I would like to voice my strong concerns over a provision in the House Labor-HHS Appropriations bill which would rescind \$125 million from the New York State Workers' Compensation Board sent to New York as part of the response to the September 11, 2001 terrorist attacks. As the Senate considers its own Labor-HHS appropriations bill, I would ask that this rescission not be included. If it is not feasible to reverse the rescission, then I would respectfully ask that you support passage of a new emergency appropriation.

Under P.L. 107-117, Congress provided New York a total of \$175 million for the Workers' Compensation Board. The funding was for paying benefits to the volunteers who responded to Ground Zero on the Staten Island Landfill and to pay claims to the employees of uninsured employers. These funds were made available "until expended."

Consistent with Congressional intent, I am requesting that all funds from the initial appropriation remain available to ensure that the continuing needs of affected individuals are met.

I appreciate that you have incredibly difficult decisions to make given the funding constraints under which you must pass the Labor-HHS bill. However, the aftermath of 9/11 continues to manifest itself with responders' illnesses emerging late and lasting longer than expected. To rescind the funding provided to deal with these needs would be turning our back on the very people who stepped up to the plate in the wake of a national emergency.

Thank you for your attention to this critical issue.

Very truly yours,
GEORGE E. PATAKI

THE CITY OF NEW YORK,
OFFICE OF THE MAYOR,
New York, NY, October 24, 2005.

Hon. THAD COCHRAN,
Chairman, Senate Appropriations Committee,
Capitol Building, Washington, DC.
Hon. ARLEN SPECTER,
Chairman, Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Dirksen Senate Office Building, Washington, DC.

Hon. ROBERT C. BYRD,
Ranking Member, Senate Appropriations Committee,
Capitol Building, Washington, DC.

Hon. TOM HARKIN,
Ranking Member, Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMEN COCHRAN AND SPECTER AND RANKING MEMBERS BYRD AND HARKIN: In the aftermath of the attacks on the World Trade Center (WTC), the Federal Government promised to appropriate \$20 billion to help New York City in its recovery efforts. As you are aware, \$125 million of that Federal funding has been rescinded. I am asking your support for an amendment to be offered by Senators Clinton and Schumer to restore these funds to meet the ongoing needs of those harmed by the September 11th attacks and (their aftermath. The funds in question were originally to be used to process workers' compensation claims, but have not proven necessary for that purpose.

It is impossible to predict exactly the needs of the governments, businesses and individuals hurt by such a crisis. Jurisdictions affected by major disasters, be they man-made or from natural causes, should get the benefit of hindsight to make full and proper use of allocated funds. Thus it is important that the Congress allow these jurisdictions to come back to Congress to make revisions in the federal assistance provided.

In New York, there is still a need for New York State to retain \$50 million of the aforementioned \$125 million, but we are writing you about the remaining \$75 million. New York has significant, ongoing needs for continued monitoring and possible medical treatment as a result of the September 11th attacks.

It is our understanding that Senators Clinton and Schumer will be offering an amendment to restore this \$75 million so it can be used to administer baseline and follow-up screening and clinical examinations and long-term medical health monitoring, analysis, and treatment for emergency services personnel and rescue and recovery personnel through the FDNY Bureau of Health Services and Counseling Services Unit, the NYPD, Project Cope, the Police Organization Providing Peer Assistance (POPPA), the World Trade Center Health Registry and the Mount Sinai Center for Occupational and Environmental Medicine working with the State and City of New York.

The New York City Fire Department (FDNY) estimates that this funding would enable the World Trade Center (WTC) Medical Monitoring Program, that the Department's Bureau of Health Services runs in partnership with Mt. Sinai Medical Center, and the FDNY Medical Treatment Program to continue for several more years, although additional funds would be needed beyond that time period. The WTC Medical Monitoring Program monitors and treats the WTC rescue and recovery workers and volunteers affected by environmental contaminants and other exposures at the WTC site. It is the only long-term, national program that provides periodic medical monitoring exams, as well as short- and long-term medical treatment, for the approximately 12,000 FDNY rescue workers and 12,000 other responders who could be at risk for WTC-related illnesses as a result of their efforts in rescue and recovery, service restoration or debris removal and clean up at the WTC site. Federal and private funding is due to expire in 2009 for the monitoring program and 2007 for the treatment program. This is a much-needed amendment that would continue this federal partnership for several more years.

The FDNY's workforce was the most severely affected by September 11, 2001. On that day alone, the Department suffered 343 fatalities, and 200 of our responders needed medical treatment—some for life-threatening injuries. In all, more than 12,000 FDNY rescue workers performed rescue and recovery efforts from September 11, 2001 through July 2002. Since then, nearly 4,000 have developed respiratory and/or mental health-related illnesses. Potentially disabling conditions that our rescue workers face include asthma, chronic bronchitis, chronic sinusitis, gastroesophageal reflux disorders and psychological distress as a result of their repeated exposures to the injured, the dying, the dead, human remains, potentially life threatening situations for themselves and other traumatic events. Our FDNY rescue workers are also concerned about other potential exposures to environmental toxins. More than 500 firefighters have qualified for early retirement disability.

This funding would also provide critical support for the New York City WTC Health Registry. The WTC Health Registry, oper-

ated by the NYC Department of Health and Mental Hygiene, tracks many highly affected subgroups present on 9/11, including Lower Manhattan residents, children, building survivors and visitors, as well as rescue workers and rescue/clean-up volunteers. The Registry has enrolled 71,000 persons, including those who were contacted from known employer and building listings, as well as eligible individuals who voluntarily enrolled. The Registry is designed to maintain contact with and systematically document potential health effects related to 9/11 through periodic monitoring of mental and physical health conditions over the course of the next 20 years. To benefit participants and others affected by the disaster, the Registry provides immediate information on health and mental health outcomes, as well as available resources and treatment options. It is a unique resource open to health experts around the country conducting more in-depth health investigations. Special studies by a number of academic institutions have already begun, with the Registry providing a means to contact interested participants. The findings of these studies will benefit individuals affected by 9/11 and physicians concerned with their care.

The Registry provides one of the few opportunities to conduct future population-based assessments of WTC health effects on different affected populations. It was established with funding provided through the federal Agency for Toxic Substances and Disease Registry (ATSDR). The cost of this program is modest and provides a platform to monitor the public health consequences of the WTC attacks and develops essential health and emergency preparedness information. This amendment will ensure that the Registry receives funding for several more years. It is also essential that the federal government keep faith with the 71,000 WTC survivors who enrolled by ensuring the stability and long-term survival of this crucial project.

Thank you for all you have done to help us on behalf of those affected by September 11.

Sincerely,
MICHAEL R. BLOOMBERG,
Mayor.
NICHOLAS SCOPPETTA,
Commissioner, Fire Department of the
City of New York.
THOMAS R. FRIEDEN,
M.D., M.P.H., Commissioner,
Department of Health and Mental Hygiene.

FIRE DEPARTMENT OF NEW YORK—MT. SINAI PARTNERSHIP

To continue the existing medical monitoring and treatment program, the FDNY needs federal assistance for a 30-year medical monitoring program that to date has been funded by the Centers of Disease Control and Prevention (CDC) and the National Institute of Occupational Safety and Health (NIOSH). This would allow the FDNY Bureau of Health Services to continue to provide comprehensive periodic follow-up monitoring exams to FDNY WTC rescue workers (active and retired) at periodic (e.g., 18-month) intervals, thereby maintaining needed services and medical continuity for this group.

Based on current patient enrollment and the anticipated health/economic needs of this population, the FDNY needs federal assistance to support the medical treatment for the FDNY WTC rescue workers (active and retired). This funding would support necessary medical and mental health treatment programs already in place for what we estimate to be, conservatively, 30 percent of the FDNY WTC responder population. Funding for these monitoring and treatment programs would allow the FDNY to provide to

our WTC rescue workers the same level and number of medical and mental health services as Mount Sinai plans for the non-FDNY WTC responders.

The FDNY treatment program, treating an estimated 3,000 patients, has a current budget of \$15 million annually. The Mt. Sinai portion of this program has a similar budget. Funding for these programs is uncertain after 2007. The FDNY monitoring and evaluations program, treating an estimated 12,000 patients, has a current budget of \$5 million per year. Funding for this program is uncertain after 2009.

WORLD TRADE CENTER REGISTRY (WTCHR)

The World Trade Center Health Registry is designed to monitor the physical and mental health of the 71,000 enrollees for 20 years. The Registry is the only systematic way to document and verify the possible long-term consequences of the WTC disaster in groups most directly affected by the attacks, such as residents, children, building survivors, visitors, and rescue/recovery workers and volunteers. This is the largest effort ever in the U.S. to systematically monitor the health of persons exposed to a large-scale disaster.

The Registry has developed a comprehensive resource guide, which is updated regularly, to help WTC-affected persons find physical or mental health services and other 9/11-related assistance. It is the only comprehensive and updated resource directory for people affected by the attack. To accompany this, the Department is collaborating with Mt. Sinai Medical Center to develop a set of clinical guidelines for physicians treating patients affected by 9/11.

An average cost of \$46 per enrollee per year is required to support the registry for its 20 year life span—a modest cost to monitor the health consequences of this major disaster and to develop essential health and emergency preparedness information. Average annual and recurring support of \$3.31 million is needed to support the registry. A cooperative agreement between ATSDR and the New York City Department of Health and Mental Hygiene (DOHMH) provides partial and declining support only through 2007, leaving a shortfall averaging \$2.2 million through that date. After 2007, no funding has been committed to support the \$3.31 million need. New York City is working with our federal partners and representatives to secure long-term funding for WTCHR.

Mrs. CLINTON. This money has been counted on to meet the needs of so many of these workers, through the workers comp system, through the health care system. We fought very hard to make sure there was a sufficient amount of money for the diagnosis of the various physical and mental ills that people suffered after 9/11. I was very grateful we were able to do that. People are being diagnosed. They are being given some help. Unfortunately, without this money, that help cannot continue. After 9/11, we learned that many of the people who were involved in the horrible bombing in Oklahoma City years before were finally coming to ask for help, that they had been suffering in silence. Often there had been terrible memories that interfered with their ability to continue working. This is something that we know from experts is, unfortunately, a very long-term, slow-moving problem, that not everybody suffers the same way immediately. There are those for whom it takes longer to come to grips with what has happened. We are seeing

that. We are seeing still people who for the first time go to a physician, for the first time ask for help. I have worked closely with the fire department over the last 4 years and they have been absolutely superb in trying to make sure that help was available, people knew about it, but they are the first to tell you not every one of the firefighters was ready to ask for it. They had to be convinced it was OK to do.

So having this money reinstated will fulfill the promise we have made to all of these men and women that we are not going to forget them, we are going to take care of them; that when they are ready to ask for help, they will get help, and that the resources will be available for them to get that help.

It is very heartening, and I obviously understand we are going to have a challenge in the conference committee, but all of our colleagues on both sides of the aisle in the House, particularly those who serve on the Appropriations Committee, are part of this team and are working hard to make sure their leadership understands what our leadership does, which is that this is keeping faith with the people who kept faith with America, a lot of brave and heroic and very extraordinary human beings who ran toward danger instead of away from it. I am very grateful that this will be in the Senate bill and we will be able to go with a united front on behalf of the Senate joining with those in the majority and minority in the House to make sure we provide this funding as soon as possible.

I appreciate all the hard work we have seen from the chairman and the chairman's staff, from the ranking member and the ranking member's staff. This was a challenge they undertook because they supported what we were trying to do and understood how significant it was to correct this situation.

I also appreciate the chairman of the full committee and the ranking member of the full committee who have similarly been very supportive in helping us work out a solution to this issue.

I can only hope that when we get to conference the House will understand and accept how we have worked this out and give us a chance to make our case. I believe it is a worthy case. It has bipartisan support. I think the House will see that and understand it.

I am grateful to everyone who has helped us get to this point.

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

The PRESIDING OFFICER (Mr. VITTER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. 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. STEVENS. Mr. President, on behalf of the chairman of the subcommittee, Senator SPECTER, I want to

state that this amendment restores \$125 million previously appropriated to New York as part of the emergency supplemental bill under chapter 11, relief and recovery, passed by the Congress and signed into law by President Bush on January 10, 2002.

The funds would be used for such purposes as mental health treatment and long-term health monitoring of rescue and recovery personnel.

The amendment is fully offset.

I ask for a voice vote on this amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2313.

The amendment (No. 2313) was agreed to.

Mr. STEVENS. I move to reconsider the vote.

Mrs. CLINTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. I call for the regular order.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 10 a.m. having arrived, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on H.R. 3010: The Labor-HHS appropriate bill.

Bill Frist, Arlen Specter, Thad Cochran, Michael Enzi, Wayne Allard, Jon Kyl, Rick Santorum, Richard Lugar, Mike DeWine, Craig Thomas, Mel Martinez, Sam Brownback, Kay Bailey Hutchison, John Thune, Orrin Hatch, Robert Bennett, Mike Crapo.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on H.R. 3010, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 2006, shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE, and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The yeas and nays resulted—yeas 97, nays 0, as follows:

[Rollcall Vote No. 275 Leg.]

YEAS—97

Akaka	Bayh	Boxer
Alexander	Bennett	Brownback
Allard	Biden	Bunning
Allen	Bingaman	Burns
Baucus	Bond	Burr

Byrd	Grassley	Nelson (FL)
Cantwell	Gregg	Nelson (NE)
Carper	Hagel	Obama
Chafee	Harkin	Pryor
Chambliss	Hatch	Reed
Clinton	Hutchison	Reid
Coburn	Inhofe	Roberts
Cochran	Inouye	Salazar
Coleman	Isakson	Santorum
Collins	Jeffords	Sarbanes
Conrad	Johnson	Schumer
Cornyn	Kennedy	Sessions
Craig	Kerry	Shelby
Crapo	Kohl	Smith
Dayton	Kyl	Snowe
DeMint	Landrieu	Specter
DeWine	Lautenberg	Stabenow
Dodd	Leahy	Stevens
Dole	Levin	Sununu
Domenici	Lieberman	Talent
Dorgan	Lincoln	Thomas
Durbin	Lugar	Thune
Ensign	Martinez	Vitter
Enzi	McCain	Voinovich
Feingold	McConnell	Warner
Feinstein	Mikulski	Wyden
Frist	Murkowski	
Graham	Murray	

NOT VOTING—3

Corzine	Lott	Rockefeller
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The PRESIDING OFFICER. On this vote, the yeas are 97, the nays are 0. Three-fifths of the Senators duly sworn and chosen, having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. OBAMA. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(The remarks of Mr. OBAMA and Mr. DURBIN are printed in today's RECORD under "Morning Business.")

AMENDMENT NO. 2193

Mr. SPECTER. Mr. President, before moving ahead to the amendments on the flu pandemic, there are some amendments which have been cleared and which have been accepted on both sides.

I call up Thune amendment No. 2193.

This amendment provides \$10 million for the telehealth programs within the Department of Education. The amendment is fully offset. I believe it has been agreed to by my distinguished ranking member, Senator HARKIN.

Mr. HARKIN. We have no objections on this side.

Mr. SPECTER. I urge its agreement.

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

The amendment (No. 2193), as modified, was agreed to.

AMENDMENT NO. 2265

Mr. SPECTER. Amendment No. 2265, the Collins dental health workforce needs amendment, provides funding which will grant innovative programs an opportunity to move forward to address the dental workforce needs. The amendment has been cleared.

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

The amendment (No. 2265) was agreed to.

AMENDMENT NO. 2269

Mr. SPECTER. Amendment No. 2269, the Lautenberg amendment, provides

for a prohibition for the use of funds for abstinence education information that has proved medically inaccurate. Again, it has been cleared on both sides of the aisle.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for Mr. LAUTENBERG, proposes an amendment numbered 2269.

The amendment is as follows:

(Purpose: To prohibit the use of funds to provide abstinence education that includes information that is medically inaccurate)

At the appropriate place, insert the following:

SEC. _____. None of the funds made available in this Act may be used to provide abstinence education that includes information that is medically inaccurate. For purposes of this section, the term "medically inaccurate" means information that is unsupported or contradicted by peer-reviewed research by leading medical, psychological, psychiatric, and public health publications, organizations and agencies.

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

The amendment (No. 2269) was agreed to.

AMENDMENT NO. 2214, AS MODIFIED

Mr. SPECTER. Mr. President, I call up the Sununu amendment numbered 2214, as modified.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 2214), as modified, is as follows:

After section 221, insert the following:

SEC. 222. For carrying out the Low-Vision Rehabilitation Services Demonstration Project by the Secretary of Health and Human Services, an additional \$5,000,000: *Provided*, That both accounts made available on page 137, line 9 are reduced by \$5,000,000.

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

The amendment (No. 2214), as modified, was agreed to.

AMENDMENT NO. 2308, AS MODIFIED

Mr. SPECTER. Now the Alexander amendment 2308, as modified.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for Mr. ALEXANDER, proposes an amendment numbered 2308, as modified.

The amendment (No. 2308), as modified, is as follows:

At the end of title III (before the short title), add the following:

SEC. _____. (a) There are appropriated, out of any money in the Treasury not otherwise appropriated, \$7,000,000 to the National Assessment Governing Board for the purposes of implementing a National Assessment of Educational Progress test in United States history.

(b) On page 192, line 20, strike \$418,992,000 and insert \$411,992,000 in lieu thereof.

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

The amendment (No. 2308), as modified, was agreed to.

AMENDMENT NO. 2219, AS MODIFIED

Mr. SPECTER. Mr. President, I call up the Bingaman amendment numbered 2219, as modified.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for Mr. BINGAMAN, proposes an amendment numbered 2219, as modified.

The amendment (No. 2219), as modified, is as follows:

At the end of title III (before the short title), insert the following:

SEC. _____. (a) In addition to amounts otherwise appropriated under this Act, there is appropriated, out of any money in the Treasury not otherwise appropriated, an additional \$4,900,000 to carry out part H of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6551 et seq.).

(b) Notwithstanding any other provision of this Act, the amount made available under the heading Health Resources and Services Administration for construction and renovation is further reduced by \$4,900,000.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 2219), as modified, was agreed to.

AMENDMENTS NOS. 2220, 2241, 2237, AND 2249, EN BLOC

Mr. SPECTER. Mr. President, I ask unanimous consent it be in order to make a germaneness point of order against the following amendments en bloc: Senator MURRAY, 2220; Senator SANTORUM, 2241; Senator SANTORUM, 2237; Senator LANDRIEU, 2249. I now raise a point of order that the amendments are nongermane.

The PRESIDING OFFICER. Without objection, the Senate may make a point of order, en bloc.

Mr. SPECTER. Technically, I raise a point of order that the amendments are nongermane.

The PRESIDING OFFICER. The point of order is sustained. The amendments fall.

Mr. HARKIN. Mr. President, what is the pending amendment or business before the Senate?

The PRESIDING OFFICER. The pending amendment is the Ensign amendment No. 2300.

AMENDMENT NO. 2283

Mr. HARKIN. I ask unanimous consent to set the pending amendment aside and return to amendment No. 2283.

The PRESIDING OFFICER. Without objection, the matter before the Senate is amendment 2283.

The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, before I talk about this amendment that has to do with avian flu, I add my congratulations to the Chicago White Sox for a sterling performance—four straight games in the World Series—to congratulate the team, and to congratulate their owner, Jerry Reinsdorf. The last time the Chicago White Sox won

the World Series was 1917. Of course, they were the Black Sox at that time. And the outstanding performer during that 1917 classic was a guy by the name of Joseph Jefferson Jackson from Greenville, SC. Baseball fans and aficionados perhaps may not recognize his real name, but they will recognize the name Shoeless Joe Jackson.

In 1999, along with Senator Thurmond and Senator Hollings, we introduced a sense-of-the-Senate resolution. It was accepted by the Senate. Commissioner Selig agreed to review the Shoeless Joe Jackson case to reinstate him to baseball. However, 6 years have passed and Mr. Selig has done nothing.

With the winning of the World Series by the Chicago White Sox, it is time to revisit this issue. In that regard, Senator DEMINT from South Carolina and I have submitted a resolution. We will be talking about it later today at an appropriate time when Senator DEMINT and I can both be on the Senate floor. I want Senators to know we have a sense-of-the-Senate resolution that Senator DEMINT and I will be submitting similar to the one we offered in 1999 once again trying to honor one of baseball's all-time great players who suffered a great injustice at the hands of the then Commissioner Landis, Kenesaw Mountain Landis, who was a commissioner of baseball for almost 40 years. It was Commissioner Landis who banned Shoeless Joe Jackson from baseball, and robbed him of his rightful place in the Baseball Hall of Fame. We will have more to say about that later today.

I congratulate the Chicago White Sox on a great victory and thank my colleague and my friend from South Carolina for working to get this new resolution. Hopefully, we will take it up in the Senate this afternoon and pass it sometime this afternoon.

Mr. President, we have an amendment before the Senate that is crucial to maybe even our most basic survival as a nation, perhaps crucial to the survival of our economy and the future. I know that sounds like overblown rhetoric, but everyone has probably been reading lately about the threat of an avian flu pandemic. It has been on all the news magazines and all the news shows. Newsweek magazine last week had a very comprehensive exposé or at least a delineation of the flu, how it is spread, how virulent it is, and what it can do to us. So I don't think it is overblown to say this perhaps could be the biggest threat our country has faced in the last 100 years.

As has been pointed out in numerous articles and I think elsewhere in the Newsweek article I referred to earlier, what this pandemic could do to us as a people is even more threatening than what a few terrorists could do and, as they point out, even a few terrorists with a nuclear-type device. This pandemic could literally—estimated by the experts, not by me—cause the death of anywhere from 200,000 to 2 million Americans, with tens of mil-

lions of Americans hospitalized without any capacity to take care of them. This would cause a disruption in our economy the likes of which we have probably never seen.

I have been involved in looking at avian flu for the last several years, tracking it and keeping in close contact with the National Institutes of Health and the Centers for Disease Control and Prevention in Atlanta. I always try to be careful we do not unduly alarm people. I don't want to put myself nor do I think we should put ourselves in the position of unduly alarming or generating a phobia that paralyzes our country, but alarm bells must be rung. The warning signs are there. We have to start preparing. The time for planning and thinking about it has passed. We have to do something immediately.

The amendment we are debating allows the United States to dramatically step up emergency preparations for an avian flu pandemic. Last month, I offered on the Defense appropriations bill a similar amendment that provided \$3.9 billion to prepare for such a pandemic. At that time, we did not know when or if the Labor-HHS bill would ever come to the Senate. Obviously, this is the appropriate place for it since this appropriations subcommittee under the leadership of Senator SPECTER has jurisdiction over both the Department of Health and Human Services and also the Centers for Disease Control and Prevention and also the National Institutes of Health.

Between last month when this amendment was adopted on the Defense appropriations bill and now, I have gone back to NIH, the Centers for Disease Control and Prevention, and a number of drug companies involved in either vaccine production or the production of antivirals to get a better handle on what it is we need to do. Just what is it?

I will admit that in the first amendment, which I offered on the Defense appropriations bill, we were missing some information. But now we have that information. So the amendment we have before us today is a more robust version of that earlier amendment we had on the Defense appropriations bill which was adopted by the Senate. This version is based on more and better information.

There is a broad consensus in the scientific community as to the steps we need to take to get ready for a potential pandemic. Reflecting that scientific consensus, this amendment will do four broad things.

One, as our first line of defense, it will dramatically step up international surveillance of avian flu outbreaks overseas.

Two, it will ramp up our vaccine production infrastructure here in the United States.

Three, it will give us resources to build up both stockpiles of vaccines currently believed to be effective against avian flu as well as stockpiling

antiviral medications that you take if, in fact, you get infected.

Fourth, this amendment will strengthen our public health infrastructure at the Federal, State, and local levels, which today is simply not equipped to cope with a major pandemic.

Some have suggested that we be patient and we wait for the administration to put forward a plan to fight avian flu. We have already waited too long. I am not saying we don't need a plan. We do need an action plan. But we have been warned for years. The first warning came in 1997 that an avian flu pandemic was not just possible but likely, just as we were warned for years that the levees in New Orleans would fail in the case of a major hurricane. Yet the Federal Government did not come forward with any plan of action. I am not saying this Government under President Bush. It was previous Federal Governments. We did not heed the warnings. As I might even say, we were warned in 1997 about a coming avian flu pandemic. Well, nothing was done then either. There is a lot of blame to go around. I am not blaming anyone. I am saying, look, we have turned a blind eye and a deaf ear to our warnings. Now we have to take action.

Within the last year, the threat of a pandemic has become even more urgent and immediate. The alarm bells are ringing at full volume, and we in Congress cannot in good conscience wait any longer. We need to act. If the administration offers a plan at a later date, that is fine. It will almost certainly have to include the elements we have in our amendment. We are all talking to the same people, after all.

But here is the thing. I do not know when they are going to come up with their plan. I do know at least there is talk around here that we are going to adjourn by Thanksgiving, finish our business, be out of here by Thanksgiving. Well, if the administration comes up with a plan next week, or the week after, and we are out of here, what happens in terms of needing the resources, the money? That is what we have.

Our responsibility as appropriators is to come up with the money. That is what this amendment does, so that if the administration does come up with a good action plan, we will not have lost any time. The money will be there, and we can move ahead as rapidly as possible.

There is no question the United States is woefully unprepared for a major outbreak of human-to-human transmitted avian flu. We have had clear warnings, as we did prior to 9/11, prior to Katrina, but, again, the Federal Government did not do anything. Now we have been warned in no uncertain terms about avian flu, but, again, under two administrations, nothing has happened.

As many of my colleagues know, avian flu—or H5N1, as it is called in the scientific community—has passed from

bird to bird and from birds to humans. We know of one specific case—we know of one specific case—where it went from human to human. Now, there may be others, but we do know of them. And we do know that 50 percent of the humans who have been infected with avian flu have died—50 percent. It has a 50-percent mortality rate. We also know another thing: Every chicken, every member of the poultry family that has been infected with avian flu dies—100 percent. This is a very virulent strain.

Experts in virology at the Department of Health and Human Services say it is only a matter of time before the virus mutates and human-to-human transmission becomes both widespread and sustained. That has not happened yet. We have had some cases of the avian flu jumping from a bird to a human. As I said, we have had one known case of it going from one human to another; and, I might add, both died. We have had no cases where the transmission is both sustained and pervasive, widespread, but the virologists say it is only a matter of time before that happens.

An outbreak in China, Vietnam, Cambodia, or anywhere such as that, could trigger within weeks a worldwide outbreak, facilitated by air travel, the mass movement of people across borders. As I said, 50 percent of the individuals who have been infected have died. You can envision a nightmare scenario, a kind of 21st century “Black Death” that is not difficult to picture. Indeed, most experts say it is not a matter of if but when.

Let me quote from an article that was in the recent *Newsweek* magazine of October 31, an article by Fareed Zakaria, entitled “A Threat Worse Than Terror”:

“A flu pandemic is the most dangerous threat the United States faces today,” says Richard Falkenrath, who until recently served in the Bush administration as deputy Homeland Security adviser. “It’s a bigger threat than terrorism. In fact it’s bigger than anything I dealt with when I was in government.”

One makes a threat assessment on the basis of two factors: the probability of the event, and the loss of life if it happened. On both counts, a pandemic ranks higher than a major terror attack, even one involving weapons of mass destruction. A crude nuclear device would probably kill hundreds of thousands. A flu pandemic could easily kill millions.

Mr. President, I ask unanimous consent that the *Newsweek* article be printed in the RECORD.

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

[From *Newsweek*]

A THREAT WORSE THAN TERROR

(By Fareed Zakaria)

“A flu pandemic is the most dangerous threat the United States faces today,” says Richard Falkenrath, who until recently served in the Bush administration as deputy Homeland Security adviser. “It’s a bigger threat than terrorism. In fact it’s bigger than anything I dealt with when I was in

government.” One makes a threat assessment on the basis of two factors: the probability of the event, and the loss of life if it happened. On both counts, a pandemic ranks higher than a major terror attack, even one involving weapons of mass destruction. A crude nuclear device would probably kill hundreds of thousands. A flu pandemic could easily kill millions.

Whether this particular virus makes the final, fatal mutation that allows it to move from human to human, one day some virus will. The basic factor that is fueling this surge of viruses is China’s growth. (China is the natural habitat of the influenza virus.) As China develops, it urbanizes, and its forests and wetlands shrink. That forces migratory birds to gather closer together—and closer to human habitation—which increases the chances of a virus spreading from one species to the next. Also, growth means a huge rise in chicken consumption. Across thousands of homes in China every day, chickens are slaughtered in highly unhygienic ways. “Every day the chances that this virus or another such virus will move from one species to another grow,” says Laurie Garrett, author of “The Coming Plague,” who has been writing brilliantly on this topic for years.

Nobody really disputes that we are badly unprepared for this threat. “If something like this pandemic were to happen today,” says Falkenrath, “the government would be mostly an observer, not a manager.” The government can’t even give intelligent advice to its citizens because it doesn’t actually know what to say. We don’t know whether people should stay put, leave cities, stay home or go to the nearest hospital. During the cold war, hundreds of people in government participated in dozens of crisis simulations of nuclear wars, accidents and incidents. These “tabletop exercises” were conducted so that if and when a real crisis hit, policymakers would not be confronting critical decisions for the first time. No such expertise exists for today’s deadliest threat.

Beyond short-term measures for this virus—mainly stocking up on Tamiflu—the only credible response to the development of countermeasures. The best response would be a general vaccine that would work against all strains of the flu. That’s a tall order, but it could be achieved. The model of the Manhattan Project is often bandied about loosely, but this is a case in which it makes sense. We need a massive biomedical project aimed at tackling these kinds of diseases, whether they’re natural or engineered by terrorists.

The total funding request for influenza-related research this year is about \$119 million. To put this in perspective, we are spending well over \$10 billion to research and develop ballistic-missile defenses, which protect us against an unlikely threat (even if they worked). We are spending \$4.5 billion a year on R&D—drawings!—for the Pentagon’s new joint strike fighter. Do we have our priorities right?

The final sense in which we are unprepared is that we have weak global organizations to deal with pandemics. The bird flu is a problem that began in Guangdong, China, and spread to Indonesia, Russia, Turkey, Romania and now possibly Iran. It may move next into Africa. Some of these governments are competent; others are not. Some hide information from everyone; others simply refuse to share it with the United States. We need a system that everyone will follow. The World Health Organization should become the global body that analyzes samples, monitors viruses, evaluates cures and keeps track of the best practices. Yet the WHO leads a hand-to-mouth existence, relying on the whims and grants of governments. A year ago its flu branch had five people. Now

it has 12. It needs a much, much larger staff and its own set of laboratories around the world that would allow it to fulfill this clearinghouse function. Countries have finally agreed to a new set of conventions that give the U.N. and the WHO some of the authority they need. And Kofi Annan has appointed one person to coordinate the global efforts to fight pandemics.

Many people believed that globalization meant that government would become less important. But as we see, today’s world has actually made government more crucial. Only government can tackle a problem like this one, not by being big but by being smart and effective. And we need good governance not just at home but beyond. Without effective international coordination, we are doomed to failure. John Bolton once said that you could chop off 10 floors of the United Nations and we’d all be better off. Let’s hope that the scientists fighting global diseases aren’t on any of those floors.

Mr. HARKIN. We have to ask some very tough questions now. Where do our preparedness efforts stand? What can we do better? We are facing a threat, a huge threat. We are doing nothing. We can do better. We must do better for the American people to prepare for an avian flu pandemic.

First, let’s look at the issue of global surveillance, which is No. 1 in terms of the first part of our amendment that we have addressed.

The Centers for Disease Control and Prevention is doing a great job working in cooperation with the World Health Organization and governments in affected regions to detect the disease and to help stop its spread. Dr. Gerberding, the head of the Centers for Disease Control and Prevention in Atlanta—I don’t know if she is getting any sleep now because this is topmost on their agenda. They are on the case.

Surveillance can alert us to an outbreak, and governments can then take measures to isolate the disease. This is our first line of defense. The sooner we identify and contain an outbreak of human-to-human transmitted avian flu virus, the better off we will be. To coin a well-worn phrase: It is better to fight them over there than to fight them here. It is better to stop H5N1, isolate it, contain it where it might break out, rather than having it transmitted and brought to other countries and brought to America.

Again, the Centers for Disease Control and Prevention know how to do this. We had success with surveillance during the SARS outbreak a couple years ago. The Centers for Disease Control and Prevention managed to control its spread. It never got to America. I think the closest it got, if I am not mistaken, was Toronto. But we also learned some invaluable lessons from the SARS episode. We learned we have to be prepared, that our surveillance efforts have to be more than they have been in the past.

Secretary Leavitt, who I know has also been on top of this, recently took a tour of Southeast Asia. He took Dr. Fauci, the Director of the National Institute of Allergy and Infectious Diseases, Dr. Gerberding, and others. I

know they met with people in various parts of the governments of several countries in Southeast Asia.

What I heard back from that is, while the governments are willing to work with us, and to report and survey, a lot of times they do not have the capacity, they do not have the knowledge, they do not have the wherewithal of the Centers for Disease Control and Prevention. They could use our help. Many of these outbreaks of avian flu in those countries are in remote locations, and the central government may not have a lot of control over that.

If you take a small village where they have a lot of poultry, and maybe that is one of their major sources of livelihood, and where they do not understand the dimensions of avian flu and what it means, well, maybe they do not report it, or it may be reported in a minor way. We need people there on the ground who can move rapidly to the sites to see whether a case of avian flu has broken out.

As I understand it, the governments of these countries are willing to work with us to allow us to do that, but we do not have the resources to do that right now because the Centers for Disease Control and Prevention simply does not have the money. That is what is in our amendment: to give the Secretary of Health and Human Services the money to be able to respond and get CDCP action prone, right now, in those countries.

Secondly, what is the status of our capacity to produce vaccines here in the United States? Unfortunately, the news is almost all bad. It is astonishing that the United States has one plant—one plant—capable of manufacturing flu vaccines. That plant happens to be in the State of our distinguished chairman, Pennsylvania. It is a great company. They do great work. I have met with them. They use one technology. It is egg-based technology. That is basically the technology we have been using for a long time in which to grow vaccines from a virus strain.

So since we only have that one plant right now, in the event of a worldwide pandemic, the U.S. would have to rely on imported vaccines, vaccines other countries may not be willing to ship to us. In other words, the first responsibility of any government is to protect its own people. If this pandemic ever breaks out, I doubt any other government is going to be willing to ship us vaccines. They are going to want it for their own people.

We are very vulnerable. We need to play some catch-up ball. The Federal Government needs to help private industry develop more vaccine manufacturing capacity. These should be next-generation cell-based facilities, which would then be capable of producing vaccines at twice the rate of egg-based facilities.

This is the only way we are going to be able to produce enough vaccine rapidly enough to deal with a major outbreak. Right now it is all egg-based. As

I understand it, the manufacturing plant I mentioned is in the process of enlarging its capacity for egg-based vaccines. That is all well and good, but that still will not be enough to protect us in the future. It will not be sufficient to take a strain of the virus and develop a vaccine specifically for that virus in a short period of time. Some say it would take 2 to 3 years to produce a nonegg-based production capacity. I don't accept that. This is a matter of incredible urgency. We have already given one grant to a company—it is public, I can mention it—Sanofi Pasteur, which is the company based in Pennsylvania that already has a cell-based vaccine manufacturing plant which they are increasing. The Government has already given them a grant—it was under a competitive bid situation—to build a cell-based plant. That is all well and good. But we have to do a lot more than that. We need two or three on line being built now, not just one.

Our goal should be to have the research and production capacity to isolate a virus, convert it to a vaccine, produce enough vaccine for the American populace, all within a timeframe of 3 to 6, maybe 9 months at the most. We can do that. That can be done. We don't have the capacity to do it right now, and we are a long way from reaching that goal.

Again, keep in mind that H5N1, the strain of the virus that is there now, we have a vaccine for that. The National Institutes of Health, under the great leadership of Dr. Zerhouni and Dr. Fauci at the National Institute of Allergy and Infectious Diseases—Dr. Fauci got a strain of the virus earlier this year. They then began a crash program to develop a vaccine. They have. That vaccine is now in clinical trials. It looks as though it is going to be pretty good against H5N1. But we have been warned by experts that H5N1 may not be the strain that comes here. It could be H5N2, N3, N4, N5, something else just as virulent. Experts believe the vaccine being developed will have some effect, perhaps, on different strains, but they can't be sure.

What we need is a vaccine manufacturing capacity, cell-based, so you can manufacture a vaccine in a hurry, so if a different strain were to hit here, we could again isolate the virus, develop the vaccine, and have a vaccine within 6 to 9 months, not just developed but also manufactured in sufficient capacity to vaccinate our people. That is also in our amendment.

I hasten to add that in our amendment, we don't specify exactly how this is to be done. We will leave that up to the Secretary—hopefully, working with us in a collaborative effort—to figure out the best way of doing it. The point is to get the money out there now, to know it is there, that we can move ahead with contractual relationships, cost-share agreements, guaranteed purchases, whatever it takes to get these facilities constructed in the shortest possible timeframe.

The third part of our amendment, we need an aggressive program of purchasing and stockpiling vaccines and antivirals. I just talked about vaccines. Vaccines are what you take to prevent getting the illness. Antivirals are what would you take if you get the illness so you don't get very sick. The World Health Organization a few years ago recommended that nations stockpile enough antiviral medication to cover at least 25 percent of the population. Guess where we are right now. One percent. We have enough antiviral medication to cover 1 percent of our people. Again, we have to play catch-up ball. Antivirals are the medications one would take if they get sick. It will prevent a lot of people from dying, help them get through the illness.

I had Senator KENNEDY prepare this chart, which illustrates how unprepared we are. These are the stockpiles of antiviral medicine. Australia has enough for 20 percent of the population; Great Britain has enough for 25 percent, the World Health Organization recommendation; France has 25 percent; Japan is rapidly building up, they are at 17 percent. The U.S.A. is at 1 percent stockpile of medications. Again, if the pandemic hits here, are we going to go to Britain and say: Send us some of yours, or Japan or France or some other place? No. They are going to keep their antivirals for their own people. That is why we need to put the money out right now to begin the purchase of antivirals and to stockpile them. It has a long shelf life so we don't have to worry about it. That is the antivirals.

As for vaccines, we are facing a catch-22 situation. We won't be able to produce a vaccine until we actually see what the variant is, H5N1, H5N3, whatever it might be that causes the outbreak. Scientists at NIH have developed a vaccine for H5N1. They believe it will be effective against some of the future variants, but we don't know exactly how effective. It is the best we have. It will at least provide some protection. We should be stockpiling it now.

The fourth part of our amendment is the public health infrastructure. Right now our public health infrastructure is simply not capable of dealing either with an avian flu pandemic or even a major act of bioterrorism. Let's assume we build up adequate stocks of the vaccine. Let's say we are able to get a crash course and we can get up to 25 percent, like Great Britain, in our antivirals. Let's say we can do that in a short period of time. I believe we can, if we put the funds out there. Let's say we have all that. It is going to go for naught if we don't have a public health infrastructure to deliver it, to identify the people who need it, to make sure these drugs and antivirals and vaccines get out there.

One thing I am upset about—the President's budget for fiscal year 2006 proposed to cut \$120 million from State public health agencies. That is the

wrong way to go. Our amendment doesn't just restore that; it goes a lot further. It is not enough just to restore the funding. That funding would basically take care of "normal" illnesses people get around the country. It wouldn't even come close if we had an outbreak of avian flu. We need to hire more public health professionals, epidemiologists, physicians, lab technicians, others. We need people who are trained and educated to recognize, to know how to isolate, to know how to put the rings around populations if avian flu breaks out, and how to distribute it, who gets these, who is the first line of individuals.

Someone is detected having avian flu; let's say they do get H5N1. How do we find out who that person came in contact with in the last 48 hours, track them down, get them the vaccines immediately, or the antivirals? Did the person work in a building that had central air-conditioning that could have taken the virus and spread it around? Who works there? Get them the antivirals and the vaccines immediately. This takes expertise. This takes people. This takes a knowledge base and education.

The Centers for Disease Control and Prevention know how to do it. They can do it for minor outbreaks now. But something this big, we need to do more to build up that public health infrastructure. In consonance with the public health infrastructure, we need to dramatically increase the surge capacity of hospitals all across the country. Most hospitals right now have trouble coping if we have a bad flu season with what we call ordinary flu. They would be overwhelmed by an avian flu pandemic.

Dr. Rick Blum, president of the American College of Emergency Room Physicians, recently said:

We have pumped billions of dollars into preparedness since 9/11, but virtually none of that has gone to the one place where we know 80 percent of patients go first, [the emergency room].

For example, most victims of avian flu would need ventilators to help them breathe. Right now there are only 105,000 ventilators in the entire United States, three-quarters of them in use on any given typical day. So we have to prepare for surge capacity. Where do the tens of millions of Americans go? Don't take my word. Ask the experts. That is what they are saying: a million to as high as maybe 10 million hospitalizations.

We have our work cut out for us. We face enormous technical and logistical challenges. We have no time to waste. This amendment would provide for nearly \$8 billion for a comprehensive national effort to prepare in the ways I have outlined. More specifically, the total is divided up as follows: \$3.080 billion would be allocated for stockpiling antivirals and the necessary medical supplies to deal with a pandemic once it has broken out; \$3.3 billion would go to stockpiling flu vaccines, expanding

the U.S. flu vaccine manufacturing capacity and for vaccine-related research; \$600 million in additional grants to State and public health agencies for their own emergency preparedness; \$750 million to improve hospital preparedness and surge capacity—where is the overflow going to go—and for health technology information networks; \$60 million for stepped-up global surveillance—this would quadruple the current level of surveillance we have right now, our first line of defense—\$75 million allocated for communication and outreach to the public in case of an avian flu pandemic.

Again, this is where you have to tread lightly. You want to get people informed. People should be understanding of this. If a case of avian flu were to break out in this country, we don't want panic to ensue. People need to be adequately informed and advised. This has to do with communications and outreach.

Lastly, \$100 million will be channeled into research and CDC lab capacity related to an avian flu pandemic.

Now, this is about double what we had in the Defense appropriations bill almost a month ago. And the reason for that is simply because in the meetings we have had with Government officials, with drug companies, and others, it has become clear that the big gap in the amendment we offered earlier was the \$3.3 billion in stockpiling flu vaccine and getting money out there to rapidly build cell-based technology through vaccine-manufacturing plants. We have to do that right away.

I know the analogy may not be correct, but when people say you can't do that in a big hurry, I say just think about the Pentagon over here, how big it is. Have you ever seen the Pentagon? We built the Pentagon in 9 months during World War II, by the way. Now, I know that vaccine manufacturing is not the same but, come on, we can do it. We can build the facilities. A lot of it is in equipment. But if the money is there, we know we can get the equipment built. Maybe we can't do it in 9 months, but don't tell me we can't do it within a year and a half, or at least have a couple on line within a year. That is really the big difference between this amendment and the one that was offered a month ago on the Defense appropriations bill.

Let me again sum up by saying this is the proper bill for it to be on. If we had had Labor-HHS earlier, we would have offered the amendment to that. This is the proper place for it. We do have the jurisdiction. It ought to be here. And, again, we are not tying the hands of the Secretary or anyone else. We are not being absolutely specific on how you do things in the amendment. We want the money to be there. When the administration comes up with their plan and they want to move ahead, it is there. We have 3 more weeks—I don't know how many weeks. Everybody tells us 3 more weeks. Let's face it, there are a lot of things happening in

the administration—Supreme Court Justices, other things that are bouncing around here that divert attention. We cannot divert our attention. We cannot. We have to get this money out there and get it appropriated.

I will have more to say perhaps later on. I know there are other Senators who wish to speak on this amendment and about the threat of an avian flu pandemic. So I will yield the floor at this time and just say I hope we can have a strong vote or have this amendment accepted as we did under the Defense appropriations bill that was taken up earlier. And, again, this is emergency funding—emergency funding. It ought to be emergency funding. It is something we have to do. We just cannot wait any longer.

So I will yield the floor and ask any Senators who want to speak on this amendment to come over and speak.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I commend my distinguished colleague from Iowa for his leadership on this very important issue. I spoke briefly yesterday about the matter and expressed my agreement with the basic thrust of what the Senator from Iowa is seeking to accomplish. There is no doubt that we face a tremendous potential problem with the impact, which could be devastating, as Senator HARKIN has outlined.

We have been awaiting a plan from the administration because in the normal course of events, with the expertise at the Department of Health and Human Services and the Centers for Disease Control, we would look to the administration to give us an appraisal as to what their plans are, what their evaluation has been, and how much money they think they need.

Senator HARKIN has gone over a number of facts and factors, but the executive branch has more at its disposal than does the Congress, at least at this stage. Our subcommittee has scheduled a hearing on this issue. It is fair to say that we have been under a heavy workload in preparing this bill, and we have had other very heavy commitments, most notably in the confirmation proceedings which were recently concluded for Chief Justice Roberts, and the confirmation hearings which have been intense for Ms. Harriet Miers until her withdrawal this morning.

We have been in touch with the executive branch and have sought to get information from them as to what they would like to have done. And I have a call in to Secretary Leavitt at the moment, the Secretary of Health and Human Services, to get as much information as we can from the executive branch.

We have been exploring an alternative and are in the process of modifying the amendment from the Senator from Iowa to call for the disbursement of these funds at the discretion of the President after consultation with certain designated Members of the Congress. We are now talking about the

breadth of what we have in mind: The chairmen and ranking members of the Appropriations committees of both Houses, perhaps adding the chairmen and ranking members of the Appropriations subcommittees on labor, health and human services and education. Also, the suggestion has been made about having the chairmen and ranking members of the committees on health, education, labor, and pensions. We are trying to sort through that now to have a workable consultation but leaving the judgment to the President.

We are well aware of the very substantial sum of money which is in this amendment, in the range of \$8 billion. We are also well aware of the scope and magnitude of the problem. It would have to receive 60 votes to have an emergency designation but, again, with the expenditures in the hands of the President, there is about as good an assurance as you can have it would be wisely disbursed.

At any rate, we are in the midst of trying to work this through. If the Congress does not act—we are not too far away from adjournment—the funding will not be present. The President can't spend money without the appropriation coming from the Congress. If there is to be an emergency supplemental, all of that takes time. And once you go through a supplemental, then there is the risk of it becoming a Christmas tree with many other items being included.

So when we have the appropriations for the Department of Health and Human Services and this subcommittee working with that Department and with the Centers for Disease Control, we are the logical subcommittee to take up the issue and to grapple with it. We, obviously, are very concerned about the responsibility for appropriating this kind of funding.

So that is where we stand. I note the senior Senator from Illinois has come to the floor, and Senator HARKIN and I would urge anyone else who wants to speak to come to the floor now because we are going to be moving for a vote on this subject in the immediate short timespan.

Mr. HARKIN. Will the Senator just yield for a minute?

Mr. SPECTER. I do.

Mr. HARKIN. I want to respond by thanking the chairman and my good friend from Pennsylvania for his great leadership on this issue. You said it about me, but you have been the chairman. You have led this subcommittee. You know what is needed. You have been first and foremost in insisting that we get the funds necessary for both CDC and for NIH for this research.

I might just say again for public knowledge, obviously our chairman, the Senator from Pennsylvania, has to wear other hats. As chairman of the Judiciary Committee he has been tied up a lot on Supreme Court nominees, and I recognize he has had to deal with that on his side, in chairing that committee. It is an awesome responsibility,

and I commend him for the work he has done, by the way. I thought the hearings on Judge Roberts were superb, and I commend my friend for his leadership in chairing that committee.

So we find ourselves in the situation now where we have asked for information in the past, but things happen around here and we move on and our focus gets diverted a little bit on this and that. That is human nature. I understand that. I hope we can hear back from the administration.

I say to my friend from Pennsylvania that I have no problem in modifying the amendment or whatever it might be that would say that the money is there. In fact, the amendment does not say how they would spend it. It would be there for them. If there is any way we can modify that, if they have some other ways on what to do, that is fine with me. I do not mind that at all. I am just concerned that we have it there so that we don't have to come back at some point and they can't say, well, we would do it, but Congress didn't appropriate the money.

I sure do not want to have that sitting on our plate, I say to chairman.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I rise in support of the amendment being offered by the Senator from Iowa. It might not be this winter, it might not be next winter, but it is going to happen. The virtual certainty of a pandemic flu is what public health leaders are telling us we as a country need to be prepared for. So are we prepared? The obvious answer is no.

Last week, HCD Research polled 846 doctors from across the country about their sense of how well prepared America is to face a pandemic flu. Four out of five of the doctors surveyed said America is not prepared for a public health crisis that we have been told is virtually certain to occur.

When it comes to public health challenges, America can do better. What is our national leadership on this issue? We still do not have a national pandemic preparedness plan. The administration has been working on a plan, literally, for years.

As we head into this flu season, still there is no plan coming from this administration. Communities need Federal guidance. This is not an issue where every village, every town, every State can make its own policy.

California's State health officer said:

While state and local officials have been taking what steps they can to prepare for avian flu, they've been eagerly anticipating a national preparedness plan to tell them how to seal up those gaps. And where is that plan? The administration tells us to expect one sometime soon but it is long, long overdue.

Japan has had its national pandemic preparedness plan in place since 1997. Canada, Austria, Great Britain, all have a national preparedness plan in place. We look forward to seeing this plan from this administration.

In the meantime, I am joining Senators HARKIN, OBAMA, and KENNEDY to offer this pandemic flu amendment. Senator HARKIN has been our voice and our leader on this issue. Senator KENNEDY has made a lifetime of public service devoted to public health issues. Senator OBAMA, my new colleague from the State of Illinois, was one of the first to speak out in our State and bring this to my attention and the attention of so many Members. I salute all three of them for their extraordinary leadership.

This proposal would make \$8 billion available to immediately ramp up preparation for the flu pandemic, whether it is the H5N1 strain now rampant in birds or another virulent strain that might threaten us. We know this pandemic is virtually inevitable, in the words of Dr. Gerberding of the Centers for Disease Control.

What does this amendment do? It gives the Federal health agencies what they need to move immediately and aggressively to get this country ready for a global pandemic flu.

Let's start with hospitals. That is an important line of defense for people sick with flu. Communities and hospitals need to develop surge capacity to figure out how to take care of people when the beds are filled and the emergency room is overwhelmed and the neighboring counties face similar situations. The Trust for America's Health anticipates U.S. hospitals will swell by more than 2 million people if we face this flu pandemic. But Health and Human Services Secretary Leavitt has worried aloud that communities haven't even prepared for this surge in hospital admissions.

The American College of Emergency Physicians President Rick Blum says:

We've pumped billions of dollars into preparedness since 9/11 but virtually none of that has gone to the one place where we know that 80 percent of the patients go first.

Whether it is a terrorist attack, a natural disaster, or a public health disaster, hospitals are stretched now to have staff to handle the daily flow of patients. They are already operating with a real shortage of nurses and other health professionals.

Realistically, aren't a significant percentage of those health care workers going to get sick themselves if we have a new pandemic or stay away from the clinical setting once the pandemic hits?

These are serious and important questions we need to ask, answer, and be prepared to face.

The Harkin amendment provides \$750 million for communities to prepare for additional hospital beds and working with shortages of doctors, nurses, and other health professionals.

The amendment also provides \$3 billion so the Federal Government can get in line to buy antiviral medicines to have on hand for an outbreak of flu. Until there is cash in hand to purchase the drugs, the Government cannot contractually commit to buy them; they cannot even get in line to buy them.

The United States has about 2.3 million courses of antiviral medications stockpiled—2.3 million for a nation of our size. We expect another 2 million by the end of next month. That is enough to treat about 2 percent of the U.S. population, far short of the international standard of 20 to 25 percent.

Senator FRIST has asked the Secretary to try to increase that stockpile to ensure treatment so that we could treat 50 percent of America. Our amendment would provide Secretary Leavitt with the resources he needs to make it happen. We go beyond political rhetoric to political reality.

Our amendment also provides \$3.3 billion so we can intensify our search for a vaccine that could protect Americans from contracting flu in the first case. If we can develop and manufacture a vaccine that is effective against the pandemic flu, we might be able to stop this flu epidemic in its tracks. Testing drugs is expensive. It is time consuming. We have to invest in it and invest in it now.

The amendment also adds \$60 million for global surveillance. I heard one public health official describe this as “situational awareness.” Margaret Chan, who leads the pandemic flu planning efforts for the World Health Organization, estimates there is a window of only “20 to 21 days” in which a local outbreak could be controlled before it is turned loose on the world.

Fareed Zakaria, in the recent issue of *Newsweek* on this particular issue of the flu pandemic, wrote as follows:

Many people believed that globalization meant that government would become less important. But as we see, today's world has actually made government more crucial. Only government can tackle a problem like this one, not by being big but by being smart and effective. And we need good governance not just at home but beyond. Without effective international coordination, we are doomed to failure.

If we hope to contain this flu, we have to know where and when the first outbreak occurs, and we can only do that if we step up the work we are doing with other countries to monitor contagious diseases.

Karen Hughes, a confidante of President Bush, now with the State Department, recently spoke about the \$5.5 million the United States has spent on technical assistance to other countries—\$5.5 million. That is not enough, and we know it.

Secretary Leavitt concluded his trip to seven Asian countries with this observation:

Right now, the world's surveillance is not adequate to protect us.

Many people in the Bush administration are acknowledging the problem. What we want them to do is acknowledge the solution, the Harkin-Kennedy-Obama amendment. We need this money. Americans deserve Federal leadership. We need leadership that prepares us for a disaster, not just telling us it is coming but doing something. America can do better to make

our individuals and families safe from these public health threats.

A few weeks ago, President Bush praised John Barry's book, “The Great Influenza,” a historical account of the 1918 pandemic flu. If you read the book, you will find John Barry was critical of the role of Government in that influenza outbreak. He blamed lack of preparation in this country on Congress. Here is what he said:

They cut every budget request in half.

Are we facing the same thing today? Are we doomed to repeat that same mistake when it comes to this avian influenza? We will not be if we take the leadership initiative of Senator HARKIN. We are not seeing the leadership from the White House at this moment that the country needs. It is time for Congress to move decisively, to enact this amendment, to provide direction in funding and progress to prepare the United States for the virtual certainty of a pandemic flu outbreak.

Senator FRIST has made it clear he wants the Senate to finish its business and go home by Thanksgiving, but unless and until we address the avian flu pandemic, we should not go home. We should go home to an America that gives thanks that its leaders in Congress—in the House and the Senate—had the vision and determination to deal with this public health challenge. Our work will not be completed until we do.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

WITHDRAWAL OF THE NOMINATIONS OF HARRIET MIERS

Mr. KENNEDY. Mr. President, the Harriet Miers confirmation process has been one of the most unusual and troubling Supreme Court nominations in our modern history.

The loudest voices heard in this process were the voices of the extreme factions of the President's own political party.

They had a litmus test, and they decided Harriet Miers didn't meet that test even before giving her a fair chance to have her own voice heard. That is not what the confirmation process is about, and their litmus test is not what the Supreme Court is about.

The more Ms. Miers's record indicated that she might in fact be personally committed to the basic constitutional rights and liberties that make our country what it is for all Americans, the more committed those extreme groups and their partisan voices in the media became to prevent her nomination from being confirmed by the Senate.

Most of us in the Senate were ready to give Harriet Miers a fair chance and a fair hearing. We wanted to have a dignified process in which the evidence would come first, and then the decision, and Harriet Miers deserved that chance.

It is disingenuous for the President to suggest that Senators' insistence on

White House records was somehow responsible for the withdrawal of the Miers' nomination. If the President were willing to stand up to the extremists in his party, a realistic compromise could easily have been found on this issue.

The fact that the White House and Senate Republicans were not willing to stand up for principle and fairness against the extremists in their midst should be disturbing to all Americans. But now we have all seen that fringe of our society at its worst, and we know that their agenda is not the Nation's agenda.

President Bush has an opportunity now to unite the country. In choosing the next nominee, he should listen to all Americans, not just the far right.

If he does, we can have a smooth and dignified confirmation process and avoid the kind of harsh battle that the extremists on the right seem bent on provoking.

President Bush should take whatever time is necessary to find a consensus nominee to fill Justice O'Connor's seat on the Court.

Justice O'Connor is willing to serve the Court and the Nation for as long as it takes, so there is no need to rush to send a new nominee to the Senate. Hopefully, the next selection will share Justice O'Connor's values and her commitment to the Nation's progress in achieving equal rights for all.

We are reminded that the nomination of Justice O'Connor was sent to the Senate by President Reagan and had a unanimous vote in the Senate. She has served with great distinction and eloquence and is a beloved figure in the United States.

That kind of nomination brought the country together. It certainly is an opportunity now for the President to follow what President Ronald Reagan did in bringing the country together on a Supreme Court nominee. It seems to me that would best serve the country, best serve the Constitution, and best serve the Supreme Court.

AMENDMENT NO. 2283, AS MODIFIED

Mr. President, I thank my friend from Iowa, Senator HARKIN, for his extraordinary leadership on the issue of avian flu. I thank my other colleagues in the Senate—Senator REID, Senator BARACK OBAMA, Senator DURBIN, and others—who have been important voices in helping us focus the attention of this body on the issue of avian flu.

I also acknowledge the support that has been given to the Harkin proposal by the chairman of the appropriations subcommittee dealing with health, Senator SPECTER. I also acknowledge and commend the work of my colleagues and friends, the chairman of our Health, Education, Labor, and Pensions Committee, Senator ENZI, and Senator BURR, the chairman of the Subcommittee on Bioterrorism and Public Health Preparedness. He has spent a great portion of his time in the Senate, working on biodefense and related public health threats, and the

challenges in developing countermeasures, vaccines and antivirals to deal with new public health challenges.

We are at a very important step. We are on an issue which is of such central importance to health care that we have seen the Senate come together. There are a lot of issues that are divisive, but it seems that we are making remarkable progress in this area.

Our legislation is timely. I remind the Senate that this issue, pandemic flu, has been a concern of the world community for some time. This chart says, "The U.S. Missed the Warning Signs of the Flu Pandemic." The Institute of Medicine warned us about this in 1992; then we had the General Accounting Office warning us in November of 2000. This is what the General Accounting Office had stated:

Influenza pandemic. Plan Needed for Federal and State Response, November 2000.

Despite these warnings, we still do not have a plan.

The warnings continue: In the year 2001, we had the warning of the European Commission, and in 2002 the World Health Organization. And then we have had recent outbreaks take place in South Korea and Vietnam.

The current avian flu strain poses a deadly threat. If you have this virus, this chart displays the chances of survival. One can see from this chart that there is only a 50-percent chance of survival. Granted, there have only been several dozen cases in each of these countries, but nonetheless, this figure, of 50 percent, does show that we are in great danger if there is a pandemic.

We have seen other countries move ahead: Japan released its pandemic plan in October 1997; Canada, February 2004; the Czech Republic, April 2004; Hong Kong, February 2005; Britain, March 2005; and the United States, we're still waiting.

What is important here is the fact that we are taking three major approaches to preparing for a pandemic.

One, we are going to have an important commitment to stockpiling antivirals and vaccines. That is going to be enormously important, particularly given the fact that we have such an inadequate stockpile today. We've stockpiled antivirals for only 1 percent of the population. This is incredibly low in comparison to other countries. With this amendment, we will have the opportunity to stockpile what is needed.

Secondly, we will be supporting efforts to detect the potential spread of the virus globally and in the United States, and we provide resources to contain it and improve our surge capacity, which is enormously important.

I know there are some differences with our friends and colleagues on the other side about the public health aspects of this. And I know Senator BURR is strongly committed to doing a review of the entire public health system and making a series of recommendations—which I think are going to be enormously important, and I look for-

ward to joining him—but this is a small downpayment to ensure we begin making progress in the area of pandemic preparedness and public health.

A review of any other country's pandemic preparedness plan will show that it is not only the stockpiling of the vaccines and antivirals that's needed, but also the public health component. So this has that dimension, which is very important: improving the public health system, and stockpiling antivirals and vaccines.

The third aspect, which will be included in the proposal by Senator ENZI and Senator BURR and others, will deal with the incentives that will be made available to industry to develop countermeasures and vaccines, and also, hopefully, some compensation, for example, for first responders who might take a particular vaccine or antiviral that might not have gone through the complete safety process at the FDA and still, as a first responder, be committed and dedicated to protecting the public. We want to make sure that if those individuals, who are committed to protecting the public, suffer from an adverse reaction to the vaccine or antiviral, they won't be left high and dry. They deserve protection for themselves and for their families.

This is a complex issue, but I think the Senate has come together and will come together with the succeeding legislation in a very important way.

The final dimension is where the administration, HHS, will be in terms of their plan. We eagerly await its release. We understand it will be forthcoming in a very short period of time, but we don't have it yet.

We have seen examples of national pandemic plans, for example, the Canadian plan which was issued in 2004, that talks about what does this plan address? Who is responsible for pandemic planning? It goes into the roles and responsibilities of all of the different governmental agencies.

Why is this an important health issue? It goes into great detail about what is going to be communicated to the public, the legal considerations, the ethical considerations, and then it goes into what preparations are being made. It addresses specific components of the preparation: surveillance, vaccine, antivirals, health service, emergency planning, emergency service, public health interests, communications, and then what needs to happen to ensure a comprehensive response. It goes into a whole series of recommendations and details what will be involved in the recovery.

This plan is very thorough. I think the American people are entitled to that kind of plan in order to protect their health and safety.

I thank Senator HARKIN, Senator SPECTER, my friend and colleague Senator ENZI, Senator BURR, and others who have been involved. I think this is going to be an enormously important and historic action by the Senate when it is completed.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Wyoming.

Mr. ENZI. Mr. President, I express my appreciation for the comments of Senator KENNEDY, Senator HARKIN, and others on the floor, discussing the importance of this biodefense legislation in the overall response to bird flu and other potential infectious diseases.

I express special thanks to Senator BURR and Senator KENNEDY for their help on the subcommittee that has been in charge of this, for the extensive hearings they have had, which have included a number of meetings many of us attended with experts from around the world who deal with these problems, and for coming up with a comprehensive solution that will address whatever happens to come up, whether it is avian flu, SARS, or some other pandemic we have not envisioned yet.

We have a bill that was reported out of the committee a little over a week ago that deals with that comprehensive response. I am hoping everybody will take a look at the work we did on that. Again, I want to express my thanks to Senator BURR for his work and the leadership he has provided.

One of the key principles of that legislation is that our response activities must be more broadly focused, not focused solely on the latest, newly emerging disease. So that, even if bird flu never becomes a pandemic, we will be prepared for the next infectious disease, as I mentioned, perhaps even a new SARS outbreak. The money spent will not be wasted because the process that will be set up will be able to handle a wide range of things.

Given that, I believe the additional funding for a potential flu pandemic should be focused on broader response activities. In examining the initial amendment proposed by Senator HARKIN, and as Senator KENNEDY discussed on the floor yesterday, the overall funding was intended for stockpiling antivirals, strengthening public health responses, increasing global health surveillance, dramatically increasing the vaccine infrastructure, improving hospital preparedness, including surge capacity and health information technology systems, and other key elements.

These elements are broader than bird flu. If targeted appropriately and implemented properly, it will mean that we Americans will be better prepared for whatever new infectious disease comes our way, not just bird flu. That is why I have worked with Senator HARKIN to come up with an amendment that clarifies we are going for the broader picture that all of us worked on in committee.

I was pleased with the unanimous response we had for getting it out of committee. So rather than the funding provided in the Labor, HHS bill being for a very limited thing, we want to focus on the broader context we have all worked on and agreed on, for the most part. We will be bringing a bill to the floor, I hope, to cover this in great

detail and then a second bill that will deal with public health.

I appreciate the work Senator HARKIN has done on this and the way he has brought it to the attention of the American public. I appreciate the work of Senator BURR on this to have a bill that actually does this comprehensively. I also appreciate the way people are working together to come up with a safe, secure United States.

I particularly thank the Senator from Texas for her indulgence, and I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I do thank the Senator from Wyoming for the great leadership he is providing for our Nation to start preparing us for the different types of flu viruses that might come our way. I know he has worked very hard on this in his chairmanship of the Health, Education, Labor, and Pensions Committee. I certainly was pleased to hear his comments on this very important issue. It is one that is important for all of us to assure that our country is ready if we have the kind of pandemic that could happen. It reminds me of Y2K when many were concerned that computers would crash all over America when we turned into the next century, and because we were prepared, there was no crisis. That is what I hope is the result of our addressing the potential flu strains that may be making their way across the world and could affect Americans in the future.

HARRIET MIERS

Mr. President, I particularly will talk today about my friend Harriet Miers. All of us were stunned this morning—I certainly was—when I heard she had submitted her resignation as a nominee to the Supreme Court because I have total confidence in her. I have total confidence she would have been a superb Justice of the Supreme Court of the United States. I have that confidence because I know her.

Many people were making judgments before they knew her. They were not giving her the benefit of the opportunity to come into an open forum and talk about her views.

She wrote today to the President: As you know, Members of the Senate have indicated their intention to seek documents about my service in the White House in order to judge whether to support me. I have been informed repeatedly that in lieu of records I would be expected to testify about my service in the White House to demonstrate my experience and judicial philosophy. While I believe that my lengthy career provides sufficient evidence for consideration of my nomination, I am convinced the efforts to obtain executive branch materials and information will continue.

This is a letter that was written by a woman who cares more about our country, more about our President and his role and the respect for his role under

the separation of powers in the Constitution, than she cares about a wonderful cap for a wonderful career, and that is her career. I admire her even more, if that is possible, for the decision she has made. I have to say I am disappointed in that decision because I know she would have been a superb Justice. She would have been a strict constructionist. She would have been a judge who knew the place of a judge, not to make law, which is a requirement and responsibility for those elected for that purpose. She would have been a Justice who looked at and interpreted the law.

I will tell my colleagues what else Harriet Miers would have done that I think is very important. She would have known what it was she could do on the Supreme Court to give guidance to legislatures, to Members of Congress, to clients who are being represented by lawyers throughout the country, about how the law should be interpreted. She would have given the guidance to legislatures about what the constitutional requirement would be.

When one is giving tests for discrimination, for instance, the Supreme Court has said there are varying tests for discrimination. There are rigid tests in some circumstances, there are more moderate tests in other circumstances. I would like to have had someone on the Court with real-world experience to more clearly define those tests so that Congress, so that legislatures, would know when they pass a law more how the Court would interpret that law in light of a more clear path to the right result.

I would have liked someone who has had the experience of living in a part of the country that is different from other members of the Court. I think we need diversity of geography. I think there are different issues in eminent domain, in business and commerce, in regard for private property rights, in States that have a lot of Federal lands versus States that do not have a lot of Federal lands. There are different approaches to these issues by people who live in different parts of the country and I think that kind of diversity is important.

This is a woman who has been a leader in the legal field. She worked her way through SMU Law School. She was also case notes editor of the Southwestern Law Journal, which is now the SMU Law Review. She became one of the first women to be hired by a major Dallas law firm as an associate. She then rose to lead that law firm, to be the managing partner, the first woman to do so in the State of Texas. She worked in the leadership of the bar association, which is the legal organization that sets the standards of ethics, propriety, and practice for our lawyers in this country. She rose to be the first woman president of the Dallas Bar Association and later the first woman president of the State Bar Association.

I graduated from law school about the same time she did. I graduated

from the University of Texas. She graduated from SMU. I know how hard it was to get a job. I know the obstacles she faced. I know she did not have the door opened for her with her outstanding record at SMU that many of our male colleagues in law school had. Yet, she attacked those barriers with a positive attitude and spirit. She knew if she proved herself, she would be rewarded as anyone else. She never gave up.

She caught the eye of a Governor of Texas, and she had been a Democrat. I think everyone knows she was a Democrat in the early years. Most people in Texas were. In 1989, she made a decision that she wanted to support a Republican, George W. Bush. That changed her views in many things. I think some of the things that were being brought up from before she changed her views and her support have been used to indicate she is not firm in her views. Well, I think she is firm in her views. I think she is firmly a strict constructionist, a person who has proven herself intellectually in business, in experience, and in leadership. She would have been a terrific Justice. I do not think she was given her due.

I am disappointed, but I do not question her decision because I know she made the decision on the right points and for the right reasons. She wanted to protect the Presidency from invasion of the rights of the President.

Can you imagine if a President had to stop and think—before asking advice from his legal counsel or his top staff as he is trying to make an important decision for our country: If I ask this question in writing, is that going to be recoverable in the public arena? Do I then have to temper what I say?

A President cannot talk to each of his staff members all day. He has many other responsibilities, so he has to communicate in writing. I think he should be able to communicate with his key staff people as he is in the decision making process, and I think he should not have to worry that it is going to, all of a sudden, be misconstrued in the public arena when it was part of his decision making process.

That is what Harriet Miers is also trying to protect. She is giving up probably something she never dreamed she would be, because it is the pinnacle of a legal career to be a Justice on the Supreme Court. She is giving that up because she believes that right of the President would either be invaded or it would be made a cause celebre, and that would not be healthy for our country or for the President. So she gave up what could have been a dream of hers, to do what is right for our country.

I want to reaffirm my view that she would have been an excellent Supreme Court Justice, that she had the right background and experience, that she would have brought a viewpoint that is a very important viewpoint to the Court. You know, if we didn't want diversity of experience in making these

important decisions, we would have one Justice of the Supreme Court; we wouldn't have to have nine. Our Founding Fathers decided to have nine. I think they were right, as they are in so many parts of the Constitution that they thought would be important for the Constitution to last over 200 years. I think diversity of experience and background is very helpful for a Court of nine Justices.

I am disappointed today, but I am very supportive of her decision because it was her decision and because she made it for the right reasons. I wish her well and I am very pleased she is going to stay as White House Counsel, one of the most important jobs in the White House. She will continue serving our country. When I talked to her this morning she was upbeat, she was positive, she was strong, and I know she will be a great contributor to the United States of America and to the President she serves. I commend her today, with all that she has gone through, for the grace with which she has gone through it.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. I understand there are other speakers who wish to be heard on the pandemic amendment. I urge them to come to the floor now. We still have quite a list of amendments to deal with. It is Thursday afternoon. I know that is a signal of Members' special interest.

To those who have amendments they want to have heard and disposed of before we go to third reading and final passage, I urge them to come to the floor at this time.

In the absence of any Senator seeking recognition, 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. GREGG. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. GREGG. Mr. President, I rise to address the issue which is being debated here relative to the amendment by Senator HARKIN regarding the avian flu and how we are going to address this very serious potential pandemic. We all recognize this is a threat of dramatic proportions, not only to our society but to the world generally. As a Congress, we have tried to begin to address this matter relative to other issues that could have an equal impact, involving biologics that could be used

against our society in a terrorist attack.

Three years ago I authored a bill called the BioShield bill. Along with a number of Members of this Senate, including Senator KENNEDY, who was the ranking member of the committee I chaired at that time, the HELP Committee, we put together a package which basically created a structure which we hoped would lead to development of vaccines to address the threat which was posed by the use of biological weapons against our country, specifically things such as smallpox, anthrax, botulism, and plague.

That proposal, the BioShield bill, was funded at \$5.6 billion, which is a lot of money. The reason we put that much money in the pipeline was because we wanted to create an incentive for the pharmaceutical industry and for start-up biological companies to begin to develop vaccines.

Our country, regrettably, has seen basically a devastation of the vaccine industry. We used to have 30 to 40 companies that were involved in the production of vaccines. Regrettably, that number is down to three or four. The reason we have seen this dramatic reduction in companies that are willing to invest in research and then develop vaccines is pretty simple. The return on investing in a vaccine is significantly less than the cost of investing in that vaccine as looked at through the eyes of a pharmaceutical company or those of a biological company, because of the threat of lawsuit.

The fact is, the potential liabilities created by doing a vaccine are so huge that no amount of projected return on investment, from an investment standpoint, ever justifies creating a vaccine. So the vaccine companies have essentially contracted in this country and the assets which were being used to develop vaccines historically are now being used to develop other types of pharmaceuticals.

The second reason there has been a contraction, at least in these areas, is there is no use for these vaccines unless an event occurs because there is no smallpox in this world right now, thank goodness, and vaccines against smallpox would not be necessary unless there were a smallpox outbreak. And there could not be a smallpox outbreak unless there were a terrorist event that uses smallpox as a weapon. It is a fact that you cannot have a smallpox outbreak in this world today unless there were an intentional decision to spread the smallpox by somebody who had a terrorist intent. So for a company to go in and develop a vaccine for that means they would be developing a vaccine which has no market.

The BioShield theory was: Put a lot of money in the pipeline to create an economic incentive for companies and researchers and biological groups to pursue creation of vaccines only in those areas where there is no vaccine today or there is limited vaccine availability today and where the threat is

not a common threat that would be spread in a way other than through terrorism.

We listed the top six threats, No. 1 being smallpox, No. 2 anthrax, followed by things such as botulism and plague spread by a terrorist event, and said we would use this \$5.6 billion to try to develop these vaccines.

We thought we had therefore moved the issue along and started to resolve the issue. It turns out we did not. It turns out the BioShield bill, even though it had \$5.6 billion behind it, has not energized the market or research atmosphere we hoped for. It turns out that only \$1 billion has been spent on purchasing smallpox capability, the known manufacturing process for which had already existed. So we have learned a fairly significant lesson here which needs to be applied to the avian flu issue, and that is why it is important. The lesson is this: Even though you put a lot of money in the pipeline, you are not going to resolve the problem—the problem being resolved, of course, by having scientists being willing to develop ways to address these types of disease threats—unless you also put in place the mechanisms to create the atmosphere for the production of the vaccine.

So last week or 2 weeks ago the HELP Committee passed a creative and strong bill, which was authored primarily by the Senator from North Carolina, Mr. BURR, which attempted to address the entire issue in a packaged way of how you energize the American creative spirit to produce responses and vaccines which will protect us from not only terrorist threats but things such as avian flu.

One of the key elements of that is money. But another key element of that is the liability protection. So I came to the floor today to make it clear that even though it is correct that we need to put a significant amount of money in place, and put it in place soon—the amendment offered by the Senator from Iowa relative to the Defense bill, I think is the right approach. This amendment as an emergency supplemental, if it is put in place with the defense money being considered and in the context of what the administration is going to send up here as a proposal, probably within the next week, also may well be the right course. But all this money that is going to be put on the table is not going to solve the problem unless we are also sensitive to the fact that there are other forces out there that are limiting the willingness of the research community and the vaccine development community to pursue solutions. We have to take all those hurdles out of the way, not just one of them out of the way.

It is critical that we do a comprehensive approach to this. I understand within a week or so the White House is going to send us a comprehensive approach. It is critical that we get that type of leadership on this. But we, as a

Senate, at least, have already proposed a comprehensive approach through the proposal of Senator BURR, and we should make sure any movement in this area be tied to the proposal of Senator BURR and the HELP Committee, which was reported out, and the much more comprehensive amendment of Senator ENZI.

This is a much more complex problem than putting money into it. We already know from our personal experience through the BioShield that putting money into it is not going to get the type of response we need. It has to be more than dollars; it has to be policy.

Some of the specific things we need to do, beyond reforming the liability structure so we have people willing to participate in the vaccines, is to purchase a vaccine where it is available. Some obviously are available now, but the vaccine for avian flu is limited. Tamiflu has some serious limitations in its applicability, although there are other things in development which may work a lot better.

We also have to have research capacity to handle an event like this in basic things such as surgical masks and hypodermic needles and bed capacity.

All this has to be put together in a comprehensive structure, and there has to be a clearer form of how we would execute were we to be hit with a pandemic, with the responsibility being allocated and people knowing who they would be reporting to and how we would get action taken.

There are a lot of things in play here to effectively address the avian flu issue, much of which is being addressed as a Congress, but much of which has to be addressed also by the administration and which we expect to see in the next few weeks from the administration—and dollars are only part of it.

I wanted to put that caveat on the table. If we were to simply vote for the proposal from Senator HARKIN and say we have done our job, we need to pass the Burr language. And we need to make sure the administration is aggressively pursuing a comprehensive and orderly approach to how they will deal with it, should an outbreak occur. I know they are. Every State is. My own State has already set up a very sophisticated approach of how they are going to deal with the necessity of potentially isolating people, and with the potential of having to ration the vaccine. These are going to be very difficult questions of how you deal with bed capacity and things such as that. There is a lot more to do. I wanted to discuss this in the context of the BioShield bill and what we need to do. This is more than a dollars issue.

I yield the floor and 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. REID. 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.

Mr. REID. Mr. President, this is a quote:

A flu pandemic is the most dangerous threat the United States of America faces. It's a bigger threat than terrorism. In fact, it's bigger than anything I dealt with when I was in government.

This is not a quote from me or from the Presiding Officer. These are the words of Richard Falkenrath, who until very recently served as President Bush's Deputy Homeland Security Adviser. He is not alone in this assessment. Administration officials and public health experts have warned the next flu pandemic is not a question of if but a matter of when. If we don't take action now, the consequences of a global flu pandemic could be devastating. And perhaps that is even an understatement.

A respected U.S. health expert has concluded that 1.7 million Americans could die in the first year alone of an outbreak. Remember, in 1918, the last flu pandemic, as many as 60 million people died in the world. The world's population was one-third of what it is now.

In addition to the 1.7 million Americans who could die during the first year, according to health experts, the economic costs would be enormous.

Every week, the possibility of this threat grows closer. It is now in Croatia. Anyone who watches the news knows that the bird flu is sweeping much of the globe.

When we started debating a possible flu pandemic here in the Senate, the bird flu was contained in parts of Asia. Now it has moved into Turkey, and even as far west as Great Britain. Anyone who watches the news knows scientists recently determined that the last flu pandemic outbreak in 1918 started in birds, and it made its way into humans.

It has not been shown without any fault, any degree of being wrong, because it could be wrong—because the birds are dying from avian flu doesn't mean it will get to us, but it did in 1918. Will the virus jump to humans? That is the question. Shouldn't we be prepared if in fact that is the case?

I read one news account of a friend in Congress who said we don't want to spend a lot of money for something that might not happen. We have to be prepared. We have to be prepared. We should do everything we can to make sure Americans are prepared and protected—and we are not prepared.

Despite repeated promises, this administration has yet to release the President's Pandemic Influenza Response and Preparedness Plan. We have written letters; no response. I don't know why.

The World Health Organization deems such a plan essential to proper readiness. A draft of this plan was ready months ago, but no final plan has been released. At least we were told it wasn't.

As a result, preparations for a pandemic have been needlessly delayed and the Federal Government is ill prepared to handle such a pandemic. We don't have the capacity to rapidly manufacture vaccines in mass quantities. We lack an adequate stockpile in antiviral medications, and our health care infrastructure is woefully unprepared.

We are already behind nations such as Canada, Britain, and Australia, and we are falling further behind these nations each day we fail to act. Some nations finalized their avian flu plans months ago. They are implementing the protections, and we are still waiting for this administration to give us something as basic as a plan. America can do better. In fact, America must do better.

Senate Democrats have provided leadership on this issue. We have added much needed resources for pandemic preparedness in the Senate appropriations bill we passed nearly a month ago. We have offered legislation, the Pandemic Preparedness and Response Act. That would build on our commitment to preparing our Nation for the possibility of a pandemic. Unfortunately, the funding remains tied up in a conference with the House and the Senate, and we haven't acted on this comprehensive legislation.

The recent spread of bird flu to Europe proves we can't afford to drag our feet. The Senate must act immediately so we can limit the human and economic costs of a potential avian flu pandemic. That is why I am cosponsoring Senator HARKIN's amendment to provide \$7.9 billion for a comprehensive national effort to prepare for an avian flu pandemic. The amendment will allow us to take the following steps to prepare our Nation for a potential pandemic:

No. 1, quadruple our funding for global surveillance relating to avian flu so we may rapidly detect the emergence of a new strain of flu; dedicate more than \$3 billion to vaccine research and improving our domestic infrastructure.

We are woefully unprepared to do this.

We must increase our hospital surge capacity and funding for State and local health agencies so the American people can be assured there will be an adequate supply of health care providers and institutions to care for them in the event of a pandemic.

The legislation calls for conducting an outreach program to health care providers and to the American public.

With this legislation, we must stockpile effective antivirals adequate to treat at least 50 percent of the population and other medical supplies.

Finally, it calls for improving research and lab capacity related to an avian flu pandemic. This, to me, is the most important.

I congratulate the ranking member of this subcommittee, Senator HARKIN of Iowa, for this legislation. It is badly needed. I hope there will be a bipartisan vote to support this amendment.

I understand there are efforts being made to weaken this so-called second-degree amendment to give the President the authority to do all of this, and he would be obligated to do it only if he saw it was necessary. We are looking at that second-degree amendment now to see if there is any way we can work with the majority, who are offering this amendment.

The avian flu pandemic may be inevitable, but the devastating consequences are not. We need to heed warnings and take action now. I hope my colleagues will join in supporting us by making the investments necessary to make sure this Nation does everything possible to protect Americans from the threat of the global flu pandemic.

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

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

HARRIET MIERS

Mr. SPECTER. Mr. President, I respect Ms. Harriet Miers' decision to withdraw from consideration for the Supreme Court. At the same time, I do regret our constitutional process was not complete. Instead of a hearing before the Judiciary Committee and a debate on the Senate floor, Ms. Miers' qualifications were subject to a one-sided debate in news releases, press conferences, radio and TV talk shows, and the editorial pages.

I acknowledge the rights of everyone to express themselves as they see fit, but that should not have precluded Ms. Miers from getting basic due process. There was a decisive imbalance in the public forum, with the case for Ms. Miers not heard because of the heavy decibel level against her.

I have repeatedly noted her excellent work in handling complex civil cases. Had the constitutional process been followed with a hearing, she would have had an opportunity to establish that her intellect and capabilities demonstrated in her 35-year professional career could be carried over in the field of constitutional law and the work of the Court. Whether she would have been confirmed remains an open question, but at least she would have had the major voice in determining her own fate.

Ms. Miers did deliver late yesterday evening, on time, her responses to the committee request for supplemental information on her questionnaire. Eight large boxes are in the committee's possession, but now there is no reason to read or analyze those responses.

The Judiciary Committee carefully did not intrude on the President's executive privilege. The committee studiously avoided asking what advice Ms. Miers gave to the President, and that limitation would have been continued in any hearing, with an adequate range of questions available to enable the committee to decide on her qualifications for the Court.

We must guard against having the Miers proceedings become a precedent for the future.

I ask unanimous consent that the text of an op-ed piece which I had submitted to the Washington Post yesterday and the Washington Post agreed to publish be printed in the RECORD at the conclusion of these remarks.

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

(See exhibit 1.)

Mr. SPECTER. I thank the Chair. I note Senator BYRD is here.

EXHIBIT 1

WASHINGTON POST-ACCEPTED OP-ED REFERRED ON THE FLOOR

Just over three weeks ago, President Bush nominated White House Counsel Harriet Miers to fill retiring Justice Sandra Day O'Connor's seat on the Supreme Court. Since then, political pundits and outside groups have loudly expressed their opinions, one way or the other, on the nomination. There has been a great eagerness in some quarters, outside the Senate, to prejudge the nomination.

Fortunately, the Constitution does not leave the disposition of Presidential nominations to pundits or outside groups. The question whether to confirm a President's nominee is left to the careful consideration of the Senate, where we have an established process for examining a nominee's fitness for the bench. That process will begin on November 7, when the Judiciary Committee begins its hearings on Ms. Miers.

Confirmation hearings offer a nominee the opportunity to introduce herself to the Senate and the American people. The hearings allow Committee members to ask questions of the nominee, to develop a record, and to present an informed recommendation to the full Senate. In order to receive a favorable vote in the Committee, Ms. Miers will have to demonstrate her qualifications to serve on the bench. A crucial qualification to serve on the Supreme Court is the aptitude to decide difficult legal issues, including important Constitutional questions, and to explain those decisions in opinions.

It is true that Ms. Miers has not had deep experience in Constitutional law, but that is far from a disqualification for the bench. Few lawyers, aside from sitting federal judges or a few Constitutional law practitioners, have such experience.

Thus, while Ms. Miers needs a crash course in constitutional law to prepare for the hearings, the same could be said for virtually any nominee to come before the Senate Judiciary as a Supreme Court nominee. In the past century, we have had many justices without constitutional law experience, who never the less brought the legal acumen and intellectual abilities to tackle the vital and challenging work of the Supreme Court. These include, for example, Sandra Day O'Connor, who had never served on a federal court or practiced Constitutional law. Similarly, Justice Hugo Black, before his election to the Senate, specialized in labor and personal injury law. Yet, he is regarded as one of the greatest justices of the 20th century.

Moreover, the Supreme Court's docket is not limited exclusively to Constitutional law issues. Roughly 40% of the Court's docket tends to involve constitutional issues. Business and commercial law issues, with which Ms. Miers is well acquainted, make up another 20% of the Court's docket.

As Chairman of the Judiciary Committee, I have known and worked with Ms. Miers closely. As White House Counsel, she plays an important role in advising the President on complicated legal and policy issues.

Consequently, I work with Ms. Miers on nearly all the matters that come through our committee, from nominations to legislation, from the USA PATRIOT Act to asbestos liability reform.

Based on my personal experience, there is much to recommend her.

She is, as all acknowledge, a good and decent woman with whom it is a pleasure to work. She has a logical, disciplined, and sharp mind. She will bring to the bench, if confirmed, the knowledge of a practicing trial attorney—a perspective sorely lacking among the current Justices. As the President has observed, Ms. Miers had a wealth of practical experience as a lawyer in private practice. I have reviewed her record and found that she has handled a wide range of complex cases.

She is also a woman who fought up through the ranks. She went to law school at a time when women were discouraged from joining the field, yet she rose to manage a 450-person firm and became head of the Texas Bar Association. Ms. Miers comes to the Committee with many strengths and an accomplished record.

This is not to say that it is all easy sailing for Ms. Miers. I have not made up my mind. Nor have most of my colleagues. Like every Supreme Court nominee in recent times, Ms. Miers still has the burden of demonstrating the depth of her substantive knowledge on constitutional issues, issues such as the intersection of the First Amendment's guarantees of free speech and freedom of religion, the scope of Congress's powers to legislate under the Commerce Clause and Section 5 of the Fourteenth Amendment, the scope of executive power, and the criminal defendant's protections found in the Bill of Rights.

Like every Supreme Court nominee in recent times, Ms. Miers bears burden of proving she has the aptitude to address the complex issues that will come before the Court. She deserves, and she will receive, a full and fair hearing at which she will have the opportunity to demonstrate her fitness for the bench.

Until then, I hope that the American people and my colleagues will keep an open mind.

The PRESIDING OFFICER. The Senator from West Virginia.

SENSE OF FOREBODING

Mr. BYRD. Mr. President, the American people enter this fall season with apprehension, trepidation, and a somber sense of foreboding. Gasoline prices, which peaked above \$3 per gallon in September, now seem stuck at levels once thought absurd. Gas prices in West Virginia hover around \$2.57 per gallon and can vary significantly in some areas, rising precipitously at times.

Heating costs are projected to soar this winter, with many households expected to pay an additional \$350 to heat their homes with natural gas and heating oil. It makes one shiver, thinking of winter in those mountains of Appalachia.

People are already struggling with inadequate wages, are being forced to curtail everyday expenses simply to buy gasoline, to fill up their tanks. Senior citizens on fixed incomes are already forced to choose between prescription drugs and food. That is a tough choice. They must now confront life-threatening heating costs. This winter is coming. I can feel it in the air.

This winter, with energy costs rising, the Federal safety net will be needed to provide essential support for countless Americans. Many are watching with incredulity the fraying of that safety net.

On the farms and in the cities, in rural and urban neighborhoods, Americans have been shaken by the Government's inability to respond effectively to Hurricane Katrina while the Government focused on tax cuts for the wealthy and massive spending requests to rebuild Iraq—what a shame; we should never have gone there, no; it was no threat to our national security, and I said so at the time—massive spending requests to rebuild Iraq. Our Nation's infrastructure was weakening from neglect at home while all this was happening. Katrina highlighted that erosion, focused our attention on that erosion and the high cost of forgoing critical infrastructure repairs.

Just a few days ago, that erosion was further highlighted as Americans watched the wooden 173-year-old Whittenton Dam threaten to give way in Taunton, MA, forcing the evacuation of yet another American city.

This winter, the country must confront the threat of an avian flu pandemic as public health officials warn that our Nation's health infrastructure remains woefully inadequate. Remember the influenza? Remember the flu of 1917 and 1918? I don't remember it exactly, but I had it. My mother died in that pandemic. I was less than a year old. She said to my father: Give "the baby" to the Byrds. One of my father's sisters had married a Byrd, Titus Dalton Byrd. They did not have any children. They had a child prior to my birth, but their child had died—his name was Robert Madison—so they had no children left. My mother's wish that my father give me, the "baby," to Mr. and Mrs. Titus Dalton Byrd, the "Mrs." being my father's sister. Yes, that is why I am here today. It was their wish that my father give me, the baby—there were three older brothers and a sister—give them all to somebody, but give the baby to the Byrds. They took me in, changed my name, and brought me to West Virginia, away from North Carolina. And here I am.

Earlier this week, Hurricane Wilma pummeled southern Florida, causing heavy flooding and power outages. The cleanup costs could be enormous.

Rather than addressing these weaknesses and providing the American people with some reassurance, the Congress incredibly and inconceivably is looking for ways to further siphon funds away from our safety net and domestic investments. It is as if we have learned nothing—absolutely nothing—from Hurricane Katrina.

A hope and belief seem to exist, and fingers are crossed all across this town, that no one will connect how the budget cuts being considered will affect those hurting from high energy prices.

Eight Senate committees—eight Senate committees—have drafted rec-

onciliation legislation to cut domestic investments in order to prefund \$70 billion in additional tax cuts, many of which will not take effect for several years. They are backloaded. Now, get that: tax cuts. Oh, it is so easy. Ah, how I love to vote for tax cuts. That is easy. It does not take any courage to do that. Tax cuts. I have been in politics now 60 years next year, in various and sundry legislative branches, and the easiest vote I ever cast was for tax cuts.

Some of these spending cuts are coming from the very same programs that are providing essential disaster relief to the victims of Hurricanes Katrina and Rita, such as those used to provide temporary health services. They comprise much of the safety net for our Nation's most vulnerable, as well as for Americans afflicted by disaster.

The reconciliation process has been touted as a means to contain the budgetary costs of Katrina, but that is a specious, spurious argument. The reconciliation process would worsen—worsen now; not improve—our fiscal position. With \$70 billion in new tax cuts and an estimated \$39 billion in spending cuts, the result is a deficit that increases by \$31 billion—\$31 for every minute since Jesus Christ was born; \$31 for every minute—oh, the clock is ticking; that clock is ticking—\$31 for every minute since Our Lord Jesus Christ was born. Under the process being considered, Katrina costs would continue to mount, without offsets, while the safety net is further worn away.

The argument for reconciliation makes even less sense when you consider that Katrina costs are one-time, unforeseen emergency expenditures. Meanwhile, no action, none, no action has been taken to pay for trillions of dollars—trillions. How long would it take to count a trillion dollars at the rate of \$1 per second? How long would it take to count a trillion dollars at the rate of \$1 per second? Man, can you imagine that? How long would it take? Thirty-two thousand years? These young pages who have quick minds can figure that out. Thirty-two thousand, I am not sure about that figure. If it is not 32,000, it is 34,000 or 36,000. Thirty-two thousand years—I will stick with that figure for now—at a minimum, at the rate of a dollar per second. Can you believe it?

There are trillions of dollars of tax cuts. No action has been taken to pay for those trillions of dollars of tax cuts or the hundreds of billions of dollars of costs for Iraq—a war that we should have never been in. We should never have gone. And they are still struggling to find a reason why we went. Too late now. I said then I don't believe there are weapons of mass destruction. I think there have been in some years gone by but not now. And have they been found? No. And I and 22 others—yes, 22 others; one Republican among the 23; one Senator who is now dead and gone; he died in a plane

crash—23 souls, including my own, said: No. No, we won't go. We are not going to vote to give this power to declare war to this President or any President. We are not going to do it. Twenty-three of us. But there we are. We are there.

So with the hundreds of billions of dollars of costs for Iraq, no action has been taken to pay for that, even though these costs are as plain and obvious as any in the Federal budget. I simply cannot fathom why the administration believes that reconstructing Baghdad does not have to be paid for, while reconstructing Mississippi and Louisiana and Alabama requires offsets.

Can you imagine that? Reconstructing Baghdad does not have to be paid for, while reconstructing Mississippi and Louisiana and Alabama requires offsets. It does not make sense. It does not make good sense. It does not make common sense.

Nor has any action been taken to find savings elsewhere in the bloated—bloated—Federal budget. The Defense Department's budget comprises one-sixth of the Federal budget and surpasses the total discretionary budgets of every other agency and office of the Federal Government combined. The Pentagon is not even able to pass a standard audit. How about that. The Pentagon is not even able to pass a standard audit, and it has not been able to for some years. I will say that again. The Pentagon is not even able to pass a standard audit or to conduct effective oversight of military expenditures in Iraq. May God help us.

Government auditors have found substantial sums of defense contractor waste and fraud. Astonishingly, the Department of Defense pulled its inspector general out of Iraq last fall. Yet the Defense Department has not been asked to examine its \$450 billion annual budget.

All of the savings, all of the deficit reduction is supposed to come from the safety net for working families—people who work with their hands or at their desks—and from essential domestic investments that have been dangerously—dangerously, dangerously—foolishly neglected for too long. The sacrifice, too often, is being asked of working families, while others remain blissfully exempt.

The budget reconciliation process at this point in the year and under these circumstances is ill-conceived. We are missing an opportunity to ferret out real waste in the Federal budget and to reform programs that could yield real budgetary savings. And worse, we are opening the door to a dangerous process.

Yesterday, the House Ways and Means Committee—I believe it was yesterday—included in its reconciliation package language that would repeal the Continued Dumping and Subsidy Offset Act. This is a critically important law. It allows Customs to distribute to American companies and

their workers the duties that it collects on unfairly traded, meaning “dumped,” imports. Yes. I am the daddy of that. Yes. I am the daddy of that child. It is called the Byrd Rule. There are several things that are called the Byrd Rule, but that is the one we are talking about.

It allows Customs to distribute to American companies and their workers the duties that it collects on unfairly traded, meaning “dumped,” imports. The funds go only to those—now listen; the funds—I say the fines for these violations go only to those who have been injured by foreign producers who violate our trade laws.

The funds go to crawfish producers in Louisiana. Hear me now. They go to shrimp producers throughout the Gulf States. Hear me. They go to our lumber industry. That is a big industry. They go to raspberry growers. They go to honey producers and beekeepers. They go to garlic growers in California, to makers of pasta, to makers of steel, to makers of steel bearings and other products manufactured all across our Nation.

Companies in nearly every State of the Union receive funds under this law, and the funds are essential. They enable our industries to invest in their facilities and in their workers, to upgrade their equipment and technology. What could be wrong with that? That is a good law. The World Trade Organization doesn’t like this law, but the WTO is wrong. The WTO doesn’t like this law, but the WTO is wrong, wrong, wrong, I say to the four corners, the four winds of the Earth—wrong. The WTO ruling in this case was created out of whole cloth. Nothing in the WTO agreements prohibits us from reimbursing U.S. industry with duties collected—how and from what—on unfairly traded imports. If the trading partners didn’t violate the law, they wouldn’t have to pay these fines. They violate the law, yes.

The administration was directed by Congress in both the fiscal year 2004 and 2005 Omnibus Appropriations Acts to negotiate a solution to this WTO dispute in ongoing trade talks. The Appropriations Acts explicitly—plainly, clearly—state that U.S. negotiations shall be conducted within the World Trade Organization to recognize the right of WTO members to distribute moneys collected from antidumping and countervailing duties as they deem appropriate. The WTO cannot infringe on the sovereign right of the Congress to legislate. They can’t do that. The United States needs to keep this important trade law on the books. Keep it on the books.

I have talked to the President. I have talked with the administration about that. I have talked with our Trade Representative. Keep it on the books. They first said they would fight for it. After Katrina, we send a terrible message by continuing with this flawed reconciliation process. You watch how it works. I helped to write that law. The rec-

onciliation process was never intended by those of us on both sides of the aisle—we are about all gone now, who created that process—to be used as it is being used. We send a terrible message when the American people call for deficit reduction and instead we lead them erroneously into more debt.

I hope the Congress will take the time to reconsider the flawed assumptions underlying this reconciliation process. It needs to do so before the process gets even further out of hand.

I thank all Senators. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MARTINEZ). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

HARRIET MIERS

Mr. BYRD. Mr. President, as the administration searches for a new nominee for the Supreme Court, I hope the White House will not retreat to a political corner and choose a nominee who will only serve to divide the Nation and divide this Senate. I urge the President—hear me now—to select a nominee cut from the same cloth as the new Chief Justice of the United States—moderate in approach, steeped in thought and experience, and committed to the protection of the U.S. Constitution, which I hold in my hand. In partnership, the President and the Senate must do all that they can to avoid rancor and extreme partisanship. That begins with real consultation and a nominee who can bridge the gap between political philosophies.

I found it noteworthy—I did—that questions about Harriet Miers’ nomination came from Senators, organizations, and individuals from diverse political philosophies. It does not matter who is asking the questions about a nomination; these questions serve the long-term interest of the Nation, those people out there, the American people who are watching us through those lenses.

Unfortunately, in this age of partisan politics dominating all else, questions too often are labeled as obstructionism. You remember that? Obstructionism. If you ask questions, you are an obstructionist. Get that, I say to these fine young pages. Nothing could be further from the truth. No.

Republican Senators—yes, the Senators who sit over on that side of the aisle—and Democratic Senators, who sit over here, had serious questions concerning the judicial philosophy of this nominee. Asking questions and insisting upon answers from judicial nominees helps to make certain that the American people have faith in their courts. Asking questions is not something to be labeled as obstructionist. How many times have I said that? Rather, it is patriotic to ask questions. Asking questions is part of my duty,

part of your duty, Mr. President, part of each Senator’s duty as citizens.

I think now would be a good time for the Senate to consider a proposal first put forward by Senator SPECTER in which I joined in the 105th Congress. We introduced legislation to establish a formal advisory mechanism for the Senate in the selection of Supreme Court Justices. Under that proposal, the Senate Judiciary Committee would establish a pool of possible Supreme Court nominees for the President to consider based on suggestions from Federal and State judges, distinguished lawyers, law professors, and others with a similar level of insight into the suitability of individuals for appointment to the Supreme Court. The President would, of course, be free to ignore the pool if he chose to do so, but the advice required by the Constitution would be formally available and the President would know that the individuals in the pool had received a bipartisan nod from the Senate committee required to do the vetting.

Senator SPECTER and I have talked about reintroducing this legislation in the coming days in an effort to guarantee that a broad spectrum of individuals are nominated for the Supreme Court and that the Senate is able, more fully, to fulfill its constitutional role. I am glad there are 14 Senators, ladies and gentlemen, Republican and Democrat, evenly divided, who joined together and who saved the Senate from a terrible blunder called the nuclear option. Some call it the constitutional option. There is nothing constitutional about it. It is unconstitutional on its face, the so-called nuclear option. What a shame that would have been. But the 14 Senators, Republican and Democrat, saved the Senate. That was a historic moment.

I say the President was right when he called Senators, when he sought the advice of Senators, when he sent Judge Roberts’ name up here. Yes, for once he called me and asked what I thought. I complimented him on calling Senators, seeking their advice. The phrase is advice and consent, not just the word “consent.” It also has the word “advice.” So I said, and the 14 said, we want to be in on the takeoff as well as on the landing. So seek our advice. Yes.

Mr. President, seek our advice. Say to us, Lend me your ears, and I will lend you mine. He did that. The President did that. I complimented him on it. I hope he will do that now. I hope he will not send up a lightning rod, somebody who will just polarize the country and attract bows and arrows.

Mr. President, listen to the advice and consent clause in this hallowed document, the Constitution of the United States. Read it. It says “advice.” Hear me, Mr. President. Call Senators again. Don’t send up someone who will divide the Senate, who will cause a filibuster, and then some would seek to cut off the freedom of Senators to speak. Be careful. Mr. President,

please call. Please call me. If you don't call me, call somebody else. Call Senators. Ask them what they think. You can discard our viewpoint if you wish. You don't have to accept our advice. I don't have anybody particularly in mind, but call me. Will you do it, Mr. President? I hope you will.

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

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

DEFENSE AUTHORIZATION

Mr. FEINGOLD. Mr. President, I certainly appreciate the words of the Senator from West Virginia. In that light, let me point out that last night the Senate adopted a unanimous consent agreement to resume consideration of the Department of Defense authorization bill. Under the agreement, each side would be allowed to offer 12 amendments to the bill, all of which must relate to the bill or the jurisdiction of the Armed Services Committee.

Let me start by congratulating the Democratic leader for working tirelessly to bring this bill back before the Senate. Senator REID recognizes that Congress has a responsibility to the American people and to our brave men and women in uniform to debate and pass a responsible Department of Defense authorization bill. I thank him for his efforts.

Congress has an additional responsibility, and that is to put our Iraq policy right and return the focus of our country to our top national security goals. That policy, and particularly the failure of the administration to offer a reasonable, flexible timetable for bringing home our troops, is making us weaker. It is making us less safe, and it is making our enemies stronger. The perception of a massive, indefinite American troop presence in Iraq is feeding the very insurgency that we are trying to defeat. That is why I now call upon the majority and minority leaders to agree that they will allow the Senate to debate and vote upon an amendment calling for a flexible timetable for returning our troops home. This doesn't have to be exactly the resolution I introduced in June, or it doesn't have to include the December 31, 2006, target date for completion of the primary military mission that I proposed back in August.

There are plenty of Members deeply concerned about Iraq whose leadership has been and will continue to be crucial, people such as Senators LEVIN, KERRY, and DODD. Senators BYRD and KENNEDY have also been vocal about their concerns. There are plenty of Members on the other side, also, with whom I have spoken and shared some of my concerns about our Iraq policy. I welcome the opportunity to work with

my colleagues on both sides of the aisle to come up with a reasonable amendment that will finally start the process of getting our Iraq policy and our broader national security strategy on track.

Obviously, I do not have to remind anyone here that the United States suffered its 2,000th casualty in Iraq this week, and there have been more since then. Every one of our servicemembers in Iraq and their families deserve clarity about the mission they are serving and the timeframe for that mission. And the American people and the Iraqi people, too, need to know that we have a plan to complete our military mission and draw down our troops in Iraq.

Mr. President, the Senate needs to do its job. When the Senate finally resumes consideration of the Defense authorization bill, and I hope that will be very soon, we need to finally address and put our Iraq policy right. The Senate will consider up to 24 amendments at that time. Clearly, this should be one of them. I hope my colleagues agree with me and that we can work together to ensure that we live up to our responsibilities.

Mr. President, I yield the floor. 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. FEINGOLD. 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 2279, AS MODIFIED

Mr. FEINGOLD. Mr. President, I rise today with my colleague from Maine, Senator COLLINS, to offer an amendment to fund the Automatic Defibrillation in Adam's Memory, the ADAM Act. But first I would like to thank the Senator from Pennsylvania and the Senator from Iowa and their staffs for the hard work that obviously went into drafting this bill in the face of tight budget restraints.

Mr. President, in 2001, I learned about Adam Lemel, a 17-year-old high school student and a star athlete in southeastern Wisconsin. Tragically, during a timeout while playing basketball at a neighboring Milwaukee high school, Adam suffered sudden cardiac arrest and died before the paramedics were able to arrive.

After his death, his friend, David Ellis, joined forces with the Children's Hospital of Wisconsin to initiate Project ADAM to bring CPR training and public access defibrillation into schools, to educate communities about preventing sudden cardiac deaths, and to save lives. The ADAM Act called for the establishment of a national Project ADAM clearinghouse. Such a clearinghouse would provide schools with the "how to" and technical advice to set up public access defibrillation programs. This clearinghouse responds to a growing number of schools that have the desire to set up such a

defibrillation program but often do not know where to start.

The ADAM Act was signed into law in 2003—and we are very pleased with that—but it has yet to be funded. The amendment Senator COLLINS and I offered would simply fund the ADAM Act clearinghouse with \$800,000 for fiscal year 2006.

Mr. President, at this time, I would like to call up my amendment and ask that it be modified.

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

The amendment (No. 2279), as modified, is as follows:

At the appropriate place in title II, insert the following:

SEC. _____. In addition to amounts appropriated under this Act, out of any money in the Treasury not otherwise appropriated an additional \$800,000 to carry out section 312 of the Public Health Service Act (42 U.S.C. 244). The amounts on page 137, line 9 shall be further reduced by \$800,000.

Mr. FEINGOLD. I understand that the amendment will be accepted, and I want to thank the managers in advance for that as well.

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

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

AMENDMENT NO. 2283

Mr. OBAMA. Mr. President, I rise first to commend Senators SPECTER and HARKIN for their diligence and hard work on what is an enormous bill, particularly given the tight budget they had to work with. I also personally thank Senators SPECTER and HARKIN for adopting an amendment into the managers' bill relating to scholarships for low-income and minority students and for expansion of positive behavioral interventions and support within schools to encourage better discipline. I thank them and their staffs for working with us on this amendment.

In addition, it is my understanding that there has been a meeting of the minds between the two sides of the aisle around what may end up being the most significant aspect of the Labor H appropriations bill.

Yesterday, I joined Senators HARKIN, KENNEDY, and a number of my colleagues in introducing an avian flu amendment. I know we had been able to attach an amendment to the DOD appropriations bill that made significant headway in funding the work that needs to be done to prepare this nation for pandemic flu. Obviously, this Labor H bill was the more appropriate vehicle to fund preparedness activities. The fact that Senator SPECTER and Senator HARKIN have agreed to work something out on this issue is extremely important.

I will mention a couple of things that I believe make this avian flu amendment so significant. A number of Senators have talked on the Senate floor very eloquently about the threat of avian flu and the lack of preparedness and relative inactivity in the United States compared to our European and Asian allies. In the United States, we do not have a national preparedness plan for a pandemic. We do not have a stockpile of antivirals. Our public health system is weak, and the vaccine infrastructure is fragile. All of these areas desperately need attention, and the amendment that I hope will be adopted unanimously will provide the funding to do just that.

I am not going to rehash what was discussed earlier, but instead I wanted to spend a few minutes on the non-health aspects of avian flu, because it is important to fully understand the scope of the potential problems that a pandemic might cause. Obviously, the health concerns should be our immediate focus, and the Harkin amendment and the avian flu bill I introduced back in April do just that. However, we cannot ignore the economic and social implications of the pandemic flu. They deserve our urgent attention.

As Dr. Michael Osterholm has warned us, the arrival of a pandemic flu would trigger a reaction that would change the world overnight. We know that a vaccine would not be available for at least 6 months after the pandemic started. We also know that we only have enough antivirals in our stockpile to treat 1 percent of the Nation's population. As such, if an avian flu pandemic hits, foreign trade and travel would be reduced or even suspended in a desperate but fruitless attempt to stop the virus from entering new countries. This is not speculation. Some will recall that Hong Kong's Secretary for Health, Welfare and Food has already threatened to close the border with the Chinese mainland if the H5N1 strain of avian influenza moves into the human population.

Domestically, transportation would also be significantly curtailed as States or communities seek to keep the disease contained, and unaffected areas try to keep infection out. Such efforts at self-protection would have a devastating effect on the world economy, which relies on the speedy distribution of products. There would be major shortages of food, medicines, light bulbs, gasoline, and spare parts for military equipment. Potentially, we would have shutdowns in the production of microchips that fuel so much of our technology.

To use just one example, currently, two U.S.-based companies supply most of the protective face masks for health care workers around the world. Neither company would be able to meet increased demand during a pandemic, in part because the companies depend on multiple suppliers in multiple countries for the parts to make the masks.

Businesses today rely on the world's real time economy, and have not estab-

lished alternative supply chains nor emergency plans for production and distribution. In a time of pandemic, the labor source could be severely affected as well, compounding the supply chain problem.

Our Government officials also have not yet addressed the social implications of a pandemic. We had a taste of that in what tragically happened with Hurricane Katrina. We witnessed desperation and confusion as people scrambled to survive and to find their loved ones. We are going to have to develop protocols and plans now so we can prepare the public for whatever public health measures may be needed, including possible quarantine or isolation.

The closest the world has come to this scenario in modern times was the SARS epidemic in 2003. Over a period of 5 months, about 8,000 people were infected and about 10 percent of those infected died. Once SARS emerged in China, it spread to 5 countries within 24 hours, and to 30 countries on 6 continents within several months. The economic consequences of SARS were staggering. The 6-month epidemic costs to the Asian-Pacific region alone were estimated at over \$40 billion.

As avian flu is significantly more contagious and more deadly, you can only imagine the potential scope of economic devastation that we might face. Senator HARKIN has mentioned that the warning bell is ringing and we need to heed its urgent call to action. Time is running out and this administration must act now if it is to prevent the severe economic, security, and health consequences from pandemic flu.

Let me close with one last comment. I heard some colleagues in discussions, both in the media and on the floor of the Senate, suggest that we should not succumb to panic. I know at one point an analogy was drawn between what we are calling for with respect to investments in pandemic flu preparedness and Y2K.

Let me just make two points. No. 1, we are absolutely certain that some form of pandemic will occur in our lifetime. We do not know if it will be caused by a H5N1 virus that mutates and spreads by human-to-human contact, similar to the 1918 pandemic. But unless history has completely taught us the wrong lessons, we can expect some form of pandemic that has severe consequences, and right now, we do not have the infrastructure to deal with it.

What that means is whatever investment we make now—for example, in developing a cell-based technology rather than an egg-based technology to develop vaccines—that is a sound investment even if we are lucky and this H5N1 virus does not end up mutating in such a way that it can cause a pandemic, because we will now be prepared for whatever pandemic occurs. We will have the infrastructure to rapidly produce the sort of vaccines that are necessary. This is a smart investment

for us to make on the front end. The second point is one that, again, I think has been highlighted by what happened in New Orleans and the gulf coast. Sometimes the costs of doing nothing are so high that in the same way that you or I buy catastrophic health insurance hoping that we never have to use it, this is one of those situations where we have to devote the dollars to prepare and develop a plan, hoping that we never have to use it.

I am extraordinarily grateful that Senator HARKIN, Senator SPECTER, and other leaders on this committee have been able to come to an agreement that should allow us to finally fund the preparedness and readiness activities that are going to be necessary for us to meet the challenge of avian flu.

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. BINGAMAN. 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.

AMENDMENT NO. 2218, AS MODIFIED

Mr. BINGAMAN. Mr. President, I send to the desk a modification of amendment 2218, and ask unanimous consent that it be so modified.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 2218), as modified, is as follows:

AMENDMENT NO. 2218, AS MODIFIED

(Purpose: To increase funding for advanced placement programs)

At the end of title III (before the short title), insert the following:

SEC. _____. (a) In addition to amounts otherwise appropriated under this Act, there is appropriated, out of any money in the Treasury not otherwise appropriated, an additional \$7,000,000 to carry out part G of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6531 et seq.).

(b) On page 183, line 15, strike "\$1,057,385,000" and insert "\$1,050,385,000" and on line 21 strike "\$417,924,000" and insert "\$410,924,000".

Mr. BINGAMAN. Mr. President, this is an amendment that the Senator from Texas, Mrs. HUTCHISON, and myself are offering to add an additional \$7 million to the funding for advanced placement instruction in our schools. This is an issue she and I have pursued for many years.

It is my strong belief one of the clearest ways we can improve the quality of education in our school system is to encourage more students to take advanced placement courses, to encourage more teachers to get the training necessary to teach those advanced placement courses. Those are courses the college board has identified as specified standards nationwide.

It is clear to anybody who is involved in secondary education in this country that a student is advantaged in their later education and in their career if

they have the opportunity and take advantage of the opportunity to take these advanced placement courses in high school. There are many high schools in my State of New Mexico that do not offer advanced placement courses to their students. I think that is a shame in this day and time. I think it is very unfortunate we do not make this opportunity available nationwide to more students and encourage it.

A recent report which the Presiding Officer and I have requested from the National Academy of Sciences talks very extensively about the importance of developing the scientific and technical building blocks we need for this country to strengthen our economy. They recommend in that National Academy of Sciences report that we can do a variety of things to improve the quality of education from kindergarten through the 12th grade, in addition to doing various things at the university level and, of course, doing a variety of things with research and development as well.

One of their recommendations is directly applicable to this amendment which we sent to the desk. The recommendation is that we set out to quadruple the number of students in advanced placement math and science courses by the year 2010. There are approximately 1.2 million students who take those courses today. The suggestion is that in the next 4 or 5 years we should increase that to 4.5 million students. That is an enormous undertaking. That is an easy thing to say but a very hard thing to do.

The recommendation in the appendix attached to the National Academy of Sciences report indicates that the estimate they have would cost something in the range of an additional \$350 million per year for us to be able to achieve this kind of improvement. We are not asking for that \$350 million in this amendment. We are asking for \$7 million. We are asking to get closer to what the President requested in the budget he sent to the Congress earlier this year. We are asking to go up to \$40 million for advanced placement instruction.

That is a very modest request, but we are informed it is all that is possible, given the budgetary constraints under which this bill is operating.

I think it is an extremely good amendment. It is a very important focus for us to have as we try to begin to focus on an agenda that will make this country more competitive in world markets. I know the Presiding Officer feels this needs to be a very high priority for this country. I certainly do, as well as the Senator from Texas.

I hope our colleagues will support this amendment.

I yield the floor so Senator HUTCHISON can explain her views on the issue.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank my colleague, Senator BINGA-

MAN. We have been working on increasing the amount put in the advanced placement program for years. Together, we actually started the Federal funding for this program. It has been a phenomenal success.

In fact, in a recent study on the lack of emphasis in science in our country in high schools and colleges, one of the recommendations made by the commission, which I think the Presiding Officer of the Senate sitting in the chair today is familiar with, * * *

One of the recommendations is increasing the Advanced Placement Program. That is exactly what we are doing with this amendment.

The Advanced Placement Program allows students to pursue college-level studies while still in high school. It is celebrating its 50th anniversary and it is now in 15,000 schools around the world, including 60 percent of high schools in America. Through these programs, students experience a rigorous college level curriculum and have the chance to earn college credit, advanced placement, or both.

According to a U.S. Department of Education study, participation in advanced placement courses is a stronger predictor of success in college than test scores or grade point averages. A 2002 study by the University of Texas at Austin showed that among students with the same SAT scores and class rank, advanced placement students scoring three or higher on the exams performed better in advanced college courses than students who participated in concurrent enrollment or who did not skip any college courses at all.

Research has also shown that 61 percent of students who take two or more advanced placement exams graduate from college on time. By contrast, only 29 percent of other college students earn a degree within 4 years.

When you consider the average total charges at a 4-year public institution in the 2005 school year were more than \$12,000 per year and \$29,000 per year for private colleges, graduating within 4 years becomes a very important objective.

While much growth has occurred in advanced placement participation, a vast gap still exists between the 57 percent of the class of 2004 who embarked on higher education last fall and the 13 percent of the class of 2004 who were prepared to succeed in college by having mastered an AP course in high school. Currently, 40 percent of students entering 4-year colleges and universities are requiring some remedial education while 63 percent of students at 2-year institutions do. This is a significant concern. One or more remedial courses, particularly in math or reading, negatively influence the likelihood that a student will obtain that bachelor's degree.

Last year, a fellow Texan and current Assistant Secretary of Education, Tom Luce, wrote a book entitled "Do What Works: How Proven Practices Can Improve America's Public Schools."

Among other programs, the book highlighted the importance of advanced placement courses in educating today's students. In his book, Secretary Luce states:

Advanced Placement courses are increasingly viewed as a key to driving higher educational achievement by all students, particularly economically disadvantaged and minority students.

Secretary Luce dedicated his book to Edith and Peter O'Donnell, two great Americans who know and understand the importance of educating our youngsters. Peter O'Donnell recently sat on the Commission of National Academies which published a report entitled "Rising Above The Gathering Storm: Energizing and Employing America for a Brighter Economic Future."

The report outlined a number of recommendations to strengthen America's competitiveness with the ultimate goal of creating new, high-quality jobs. One of the recommendations was to train additional advanced placement instructors to teach advanced courses in mathematics and science. Some ways we can do this are by subsidizing test fees for low-income students who are enrolled in AP classes and plan to take an AP test, and by expanding teacher training and participation in online courses.

President Bush requested \$51 million in his budget for this program. That would be an increase of \$22 million from last year.

This amendment I am cosponsoring with Senator BINGAMAN would accomplish the President's funding goal by adding an additional \$7 million. It is very important we do this. It does have offsets.

I particularly thank Senator SPECTER and Senator HARKIN and their staffs for helping find the offsets, realizing the importance of this program.

My friend Peter O'Donnell was certainly on the mark when he suggested advanced placement would start our students in a higher echelon of academic programs to better prepare them for college. These programs will also help them get through college within a 4-year period, which is becoming more and more of an issue in public and private universities around our country.

I thank Senator BINGAMAN for being a partner with me on this. Since 1998 we have worked on this together. If we can continue to increase the program and, therefore, increase the number of participants, we will see the college students who perform better having more opportunities for science and math careers, which is very important for the future of our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I thank my colleague very much for her strong advocacy for this amendment and this program. I also say a word of commendation about Peter O'Donnell and the work he has done in this area.

He was very generous in giving of his time to brief me and my staff on progress that has been made in the State of Texas in expanding advanced placement through the private foundation he has established there. It is a very impressive model the whole country needs to emulate. This modest amendment will be a step toward helping more to happen around the country.

I ask unanimous consent Senator REID of Nevada, Senator BOXER, and Senator FEINSTEIN be added as original cosponsors.

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

Mr. BINGAMAN. As I understand it, we are ready for a vote on this amendment at this time unless the managers would like to postpone it.

Mrs. HUTCHISON. A voice vote would be fine with us.

The PRESIDING OFFICER. If there is no debate, the question is on agreeing to the amendment.

The amendment (No. 2218) was agreed to.

Mr. HARKIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

UNANIMOUS-CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mrs. HUTCHISON. I ask unanimous consent at 3 o'clock today the Senate proceed to executive session and to consecutive votes on the following nominations: No. 386, John Smoak, to be United States District Judge for the Northern District of Florida; and No. 384, Susan Neilson, to be United States Circuit Judge for the Sixth Circuit.

I further ask unanimous consent there be 2 minutes of debate equally divided prior to each vote; further, that following those votes the President be immediately notified of the Senate's action and the Senate then return to legislative session.

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

The Senator from Iowa.

AMENDMENT NO. 2244 WITHDRAWN

Mr. HARKIN. Mr. President, I ask consent to withdraw amendment numbered 2244.

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

AMENDMENT NO. 2262

Mr. BINGAMAN. Mr. President, last evening I called up for consideration amendment 2262 and then had it laid aside. I call it up again.

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

Mr. BINGAMAN. Mr. President, this is an amendment that is very important. I hope we can get a vote before the afternoon is over. The amendment would invest an additional \$60 million in our Nation's future by strengthening 8 programs: the Migrant Education Program, the English Language Acquisition Program, the High School

Equivalency Program, the College Assistance Migrant Program, the Dropout Prevention Program, the English as a Second Language Program, the local family information centers, and also the Hispanic-serving institutions.

The funding additions this amendment calls for add up to the total \$60 million. This is an amendment that is strongly supported by the Congressional Hispanic Caucus, by the National PTA, and by the Hispanic Education Coalition, which is an ad hoc coalition of national organizations dedicated to improving educational opportunities for the more than 40 million Hispanics who live in this country today.

The Migrant Education Program is the first item. The title I Migrant Education Program was established to provide a compensatory education program designed to deal with the difficulties encountered by children of migrant families. Some of the children attend three or four schools in a single school year.

They have a great need for coordination of educational services among the States and local districts where they live, often for short periods of time. The MEP builds the support structures for migrant students so that they can achieve high levels of success both in and outside of school.

The U.S. Department of Education reports that more than 750,000 students were identified as eligible for the program in Fiscal Year 2001. Additional funds are necessary to ensure that these children are able to meet the challenges mandated by the No Child Left Behind Act. This amendment will provide an additional \$9.6 million in needed funding.

This amendment would also increase funding to States and local school districts in order to ensure that as many of the 5.5 million children with limited English skills as possible learn English, develop high levels of academic attainment, and meet the same challenging State academic standards as all children.

Title III is a formula grant program that distributes funding to all 50 States based on the number of limited English proficient LEP and recent immigrant students. The funds are used for developing effective language acquisition programs; training for bilingual/ESL teachers and regular teachers and educational personnel; parent involvement; and providing services for recently arrived immigrant students. This amendment requests an additional \$10.3 million for Language Acquisition Grants, which restores the program's funding to its Fiscal Year 2003 level.

This amendment would provide modest increases for the High School Equivalency Program HEP and the College Assistance Migrant Program CAMP. The HEP helps migrant students who have dropped out of high school earn a GED. The CAMP assists migrant students in their first year of college with both counseling and sti-

pends. These programs provide farm-worker migrant students with education opportunities and support that will help them to become productive members of society.

Migrant students are among the most disadvantaged youth in this Nation. Current estimates place the dropout rate for migrant youth at between 50 and 60 percent. Before CAMP, there was no record of a child of migrant farm workers ever having attended college. Both programs have been very successful in helping migrant students become productive members of society.

According to the Department of Education, in 2003-2004, almost 10,000 students were served by HEP CAMP, and 63 percent of the HEP participants received a GED, and 84 percent of CAMP students completed their first year of college in good standing. This amendment provides an additional \$5.7 million for these programs.

The Dropout Prevention program help States and school districts to implement research-based, sustainable, and coordinated school dropout prevention and re-entry programs in order to raise student achievement. At a time when schools are focused on narrowing achievement gaps between differing subgroups of students, it seems that Congress would want to retain Dropout Prevention, a program specifically aimed at providing schools with the tools to help students achieve a high school degree.

Support for dropout prevention is even more significant when considering that the primary source of Federal funding for public schools, authorized through the No Child Left Behind Act NCLB, focuses mainly on elementary schools. More than 90 percent of title I funds—the principal NCLB program—are directed to elementary schools. Such an emphasis on elementary education is necessary and appropriate, but equally important is continuing an investment of resources throughout the education continuum in order to meet the needs of middle level and high school students.

The Dropout Prevention Program is the only Federal program actively working to reduce the Nation's dropout rates, and, as recent headlines tell us, it is a problem that is far more severe than previous data indicated.

A report by the Urban Institute finds that only 68 percent of all students in the public high school class of 2001 graduated. Furthermore, it states that only 5 of all black students and 50 percent of all Hispanic students graduate. Nearly half of all black and Hispanic students do not graduate from high school. This is a problem that has reached enormous proportions. The Dropout Prevention Program was eliminated in this legislation. This amendment restores \$5 million to this program.

The Local Family Information Centers Program was authorized under the No Child Left Behind Act to provide parents of title I students, including

English language learners, with information about their children's schools so that they can help their children to meet the high standards we have set under NCLB.

The Local Family Information Centers also help parents to hold their local and State school officials accountable and become more involved in their children's education. This amendment would increase funding for these centers by \$13 million.

The need for increased funding for English as a Second Language ESL is evident by the growing demand for services and the lack of resources to meet that need.

Enrollment in Adult ESL has increased 105 percent over the past 10 years, yet there is a lack of programs and funding to ensure that all who desire to learn English have access to appropriate services.

Currently, community-based organizations must piece programs together with volunteer labor and facilities. The need for more targeted services is overwhelming. Demand for English-language instruction far outweighs supply, waiting lists for classes typically range from several months to years, and many States do not have the capacity to meet the demand.

The current \$70 million in funding is insufficient to meet the enormous demand for ESL services. As the labor market continues to require English-proficient labor, investing in ESL programs will strengthen the labor pool and return a more versatile productive workforce. This amendment provides an additional \$6.5 million for ESL programs.

Currently, 35 percent of Hispanics are under the age of 18. The Educational Testing Service has projected the U.S. higher education system will grow by 3.5 million additional students by 2015 and that nearly 40 percent of these new students will be Hispanic. HSIs serve the largest concentrations of the Nation's youngest and largest ethnic population.

The impending emergence of more than 100 new HSIs mostly in CA, TX, FL, NM, IL, in the next few years and the rapid growth of the Hispanic college-age population underscore urgency for immediate, major, and sustained increases in title V funding.

At a time when the current labor force is reaching retirement age in substantial numbers, Hispanics already represent one of every three new workers joining the U.S. labor force, according to the U.S. Bureau of Labor Statistics. By 2025, the Bureau projects that one of two new workers joining the U.S. labor force will be Hispanic. This amendment would provide an additional \$9.9 million in assistance to these great institutions.

We must do everything possible to provide every child with the best education we can. This amendment would provide small but much-needed increases to programs that can make a difference in the lives of millions of children. I urge my fellow Senators to support these greatly needed programs

by providing them with the proper resources.

This is a very worthwhile amendment. It puts resources to use where they are most needed—not just in my State but throughout this country.

The fastest growing minority population in our country is the Hispanic community. We need to ensure these young people growing up are well educated, are prepared for the challenges for the 21st century. This legislation helps greatly with that effort.

AMENDMENT NO. 2259

MR. BINGAMAN. Mr. President, let me briefly describe one other amendment at this point. I called this amendment up yesterday, as well, amendment 2259, dealing with the Drug Assistance Program, an amendment Senator SMITH and I have worked together on to add additional funding for the AIDS Drug Assistance Program, or ADAP.

We had an amendment voted on last night by Senator COBURN to shift funding to this function by taking funding from the Centers for Disease Control. Our amendment does not do that. Our amendment provides \$74 million in much-needed funding. It would be emergency funding for the AIDS Drug Assistance Program.

This is a very meritorious amendment. It is an amendment I hope all colleagues will support. Some Members of this body voted against the amendment of the Senator from Oklahoma in anticipation of supporting this very important amendment I am talking about now.

The AIDS Drug Assistance Program provide life-saving assistance to over 136,000 uninsured or underinsured HIV-infected individuals each year. As the number of people living with HIV/AIDS has increased, largely due to advances in HIV treatment, the importance of and demand for ADAP has grown so that, as of September 2005, a total of 2,187 individuals were on ADAP waiting lists in nine States.

As the National ADAP Monitoring Project says:

When an individual is on a waiting list, they may not have access to HIV-related medications.

We are talking about life-extending and life-saving medications. In fact, it has been reported that patients on ADAP waiting lists in West Virginia and Kentucky have passed away.

Furthermore, as of March 2005, due to funding shortfalls, 21 States have some sort of cost containment measures in place, including waiting lists, that often impede access to care. This includes increased cost-sharing, reductions in eligibility income limits, and limitations on covered treatments.

We as a Nation, are rightfully committed to providing billions of dollars of support for HIV/AIDS care and treatment services to those living with HIV in nations across the world and we should be. However, here at home, it is unforgivable that there are Americans with HIV dying because they are on waiting lists for life-saving drugs or having life-saving medications rationed to them in various forms.

A story entitled "Dying for AIDS Drugs" documents some of the stories of those who have lost ADAP coverage or are on waiting lists. As the story reads:

Margaret Nicholson, a Springfield, Oregon, homecare attendant who survives with her mother and husband on less than \$20,000 a year, lost her ADAP coverage because she couldn't afford the new co-pays; she has now gone 4 months without seeing a doctor and is scraping by on pill samples. In North Carolina, HIV doctor Aimee Wilkin says some of her waiting list patients, forced to seek medicines through drug company charity programs, have faced multiple treatment interruptions, the result of bureaucratic delays, exposing them to the risk of HIV drug resistance. In Kentucky, caseworkers are so desperate they're asking churches to pass the hat to sponsor someone's pills for a few weeks at a time.

In our great Nation, this is unacceptable and should end. This amendment, sponsored by Senator SMITH and myself, would go a long way to address the ADAP shortfall and I urge its passage.

I hope we can also have a rollcall vote on this amendment.

I ask for the yeas and nays on Senate amendment 2262 at this time.

THE PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

MR. BINGAMAN. Mr. President, I also ask for a rollcall vote on Senate amendment 2259.

THE PRESIDING OFFICER. Without objection, it is in order to request that at this time.

MR. BINGAMAN. I ask for the yeas and nays.

THE PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

MR. BINGAMAN. I yield the floor.

EXECUTIVE SESSION

NOMINATION OF JOHN RICHARD SMOAK TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF FLORIDA

THE PRESIDING OFFICER. Under the previous order, the hour of 3 o'clock having arrived, the Senate will go into executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of John Richard Smoak, of Florida, to be United States District Judge for the Northern District of Florida.

THE PRESIDING OFFICER. Who yields time?

The Senator from Florida.

MR. MARTINEZ. Mr. President, I ask unanimous consent to be recognized for 2 minutes to speak on behalf of the nominee.

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

MR. MARTINEZ. Mr. President, I rise to speak on behalf of Richard Smoak,