

Ms. OURSLER. Mr. Coleman.
 Senator COLEMAN. Aye.
 Ms. OURSLER. Mr. Voinovich.
 Senator VOINOVICH. Aye.
 Ms. OURSLER. Mr. Alexander.
 Senator ALEXANDER. Aye.
 Ms. OURSLER. Mr. Sununu.
 Senator SUNUNU. Aye.
 Ms. OURSLER. Ms. Murkowski.
 Senator MURKOWSKI. Aye.
 Ms. OURSLER. Mr. Martinez.
 The CHAIRMAN. Votes aye by proxy.
 Ms. OURSLER. Mr. Biden.
 Senator SARBANES. No by proxy.
 Ms. OURSLER. Mr. Sarbanes.
 Senator SARBANES. No.
 Ms. OURSLER. Mr. Dodd.
 Senator SARBANES. No by proxy.
 Ms. OURSLER. Mr. Kerry.
 Senator SARBANES. No by proxy.
 Ms. OURSLER. Mr. Feingold.
 Senator SARBANES. No by proxy.
 Ms. OURSLER. Mrs. Boxer.
 Senator SARBANES. No by—I'll pass for the moment.

Ms. OURSLER. Mr. Nelson.
 Senator SARBANES. No by proxy.
 Ms. OURSLER. Mr. Obama.
 Senator SARBANES. No by proxy.
 Ms. OURSLER. Mr. Chairman.
 The CHAIRMAN. Aye.
 Senator SARBANES. Boxer, no by proxy.
 The CHAIRMAN. The Clerk will please report the vote.

Ms. OURSLER. The vote is nine to nine.
 The CHAIRMAN. Now let me make certain that the committee knows what the reporting requirement is, because I'll ask the Clerk then to give the report on members physically present. Our rule says "No nomination can be reported unless a majority of the committee members are physically present. The vote of the committee to report a measure or matter shall require the concurrence of a majority of those members who are physically present at the time the vote is taken."

Now, what is the vote among those who are physically present?

Ms. OURSLER. Of those physically present, eight voted in favor of the nomination and two voted against.

The CHAIRMAN. Now, the chair believes that Rule 4(c) on reporting would indicate that in this particular instance the nomination be forwarded to the full Senate. But that is—I ask those who may have question about that to refer to Rule 4 on quorums and (c) on reporting.

Senator SARBANES. Mr. Chairman, as I read this rule, in order to report it out you will need a majority physically present, but that doesn't vitiate the proxies voted against. The rule makes no reference to that and those proxies are valid, and therefore we wouldn't—the vote is not carried. This applies of you to try to use proxies to constitute the majority for reporting it out, but it doesn't apply to the use of proxies to negate reporting it out, I respectfully submit to you, and I think that's a fair reading of the rule. And that's the way we've done it here in the past.

The CHAIRMAN. Well, that is an important reading, but the chair believes that the reading at least gives credence at least to my interpretation, which is that a majority of those voting and physically present, given the fact a majority was here to create the quorum, would lead to a favorable decision.

Senator SARBANES. Well, I think we need to sort this out. I make the point of order a quorum is not present.

The CHAIRMAN. Well, a quorum is not present, but the quorum was present at the time of the vote and that is what is required, and the chair declared that the vote was in favor of reporting this nomination to the Senate floor.

Senator SARBANES. On what basis is the chairman reaching that conclusion?

The CHAIRMAN. On the basis that we had a quorum and that a majority of those physically present voted in favor of the nominee.

Senator SARBANES. But the majority of the committee didn't do that. In fact the vote here was a tie vote.

The CHAIRMAN. Counting in the proxies.
 Senator SARBANES. It was a tie vote. Yes, it was a tie vote.

You can't bring it out with proxies. The chairman—what this rule is designed to do is the chairman can't come in with a bunch of proxies in his hands and then on the basis of that bring a measure out of the committee. You can be called on that in terms of having a majority.

The CHAIRMAN. I appreciate the point the chair is making—rather, the Senator is making. I believe that my interpretation is correct and I would just indicate that that at least is what is going to occur. Now, the member may think of a means for appealing that in some fashion.

Senator SARBANES. Think what?
 The CHAIRMAN. Of a means of appealing my decision. But for the time being, my decision is that we had a vote and we have reported the nominee.

Senator SARBANES. Well, I think it's an abuse of the rules and I want to state that to the chairman.

The CHAIRMAN. I understand.
 Senator SARBANES. Absolutely.

The CHAIRMAN. I thank the members of the committee.

[Whereupon, at 3:07 p.m., the committee was adjourned.]

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On January, 2, 2004, in Madison, WI, Matt Collins and Shawn Wiese went to the Dry Bean Restaurant to meet a friend. After the restaurant closed, an altercation between two men and Collins and Wiese occurred. A woman later testified that one of the men told her that night that he should beat up Collins and Wiese for being gay.

Mr. Collins, who had no health insurance, was hospitalized for 2 days with multiple broken bones in his right wrist that required a plate and seven screws.

I believe that our Government's first duty is to defend its citizens, in all circumstances, from threats to them at home. The Local Law Enforcement Enhancement Act is a major step forward in achieving that goal. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

THE INTELLIGENCE AUTHORIZATION BILL

Mr. WYDEN. Mr. President, This year's intelligence authorization bill is

a key piece of legislation for all Americans and one that I hope to be able to support. But, as written, the bill is marred by the presence of provisions that pose serious concerns for Americans' privacy rights. Among them is one provision that would permit military intelligence officials to conduct covert interviews of U.S. persons on U.S. soil to assess them as potential intelligence sources without disclosing their government affiliation. With this provision in the legislation, I am compelled to announce my intention to object to any unanimous consent request to bring S. 1803, the intelligence reauthorization bill, to the Senate floor for approval without the opportunity for debate and consideration of amendments.

This legislation has been considered by three different Committees: The Senate Intelligence committee, the Senate Committee on Armed Services, and the Senate Committee on Homeland Security and Governmental Affairs. Three different committees have reviewed the legislation, but there has not been a single hearing on the expanded power the administration is seeking to enable DOD personnel to demand information of law-abiding U.S. citizens without having to disclose to them who they are, on whose behalf they are seeking personal and other information or what they intend to do with this information.

The CIA already possesses the statutory authority to engage in such surreptitious interrogations of U.S. citizens, and the Department of Defense has not in my mind made the case for gaining this new authority as well. In fact, the DOD has not provided any evidence that the failure to have this authority has resulted in damage to U.S. national security.

According to recent press reports, the FBI has gained access to tens of thousands of pieces of information about U.S. citizens through national security letters. This information reportedly ranges from where a person makes and spends money and who they live with to where they travel and who they email. All of this information has been deposited in government data banks, and according to press reports, this personal information is shared widely, without restriction. The same press reports say that tomorrow not only will such information be shared within the Federal bureaucracy but it will be made available to State, local and tribal entities, and "appropriate private sector entities."

I remain steadfast in my belief that you can protect national security without gutting civil liberties; and this legislation, as it currently is written, is out of balance. A debate on something as important as protecting the rights of our constituents to their privacy and shielding against the surreptitious shakedown of law-abiding citizens is one instance when Americans can and must be invited into the process.

Shining sunlight on intelligence information for the benefit of Americans

and policymakers alike is critical to our security. Congress must work to improve information sharing, and we owe it to the American people to make sure that safeguards remain in place to ensure that sensitive personal information is not tossed around inappropriately.

MAYORS SUPPORT THE TERRORIST APPREHENSION AND RECORD RETENTION ACT

Mr. LEVIN. Mr. President, our Nation's gun safety laws do not go far enough to protect our families and communities and may leave us vulnerable to an attack by terrorists using military style firearms legally purchased within our own borders. Current law not only allows a known or suspected terrorist to buy firearms in the U.S., it also requires that records pertaining to the sale be destroyed within a day of the purchase. Congress should take proactive steps to address these shortfalls in our gun safety laws.

Federal law requires that anyone seeking to purchase or obtain a permit to possess, acquire, or carry firearms undergo a background check through the National Instant Criminal Background Check System, or NICS. This process requires the applicant to provide a variety of personal information including name, date of birth, current residence, and country of citizenship which is then compared with data in the NICS system to determine whether or not the person is prohibited by law from receiving or possessing firearms. Disqualifying criteria includes such things as felony convictions and fugitive or illegal alien status.

As part of the background check, applicants are also checked against known terrorist watch lists. However, under current law, membership in a known terrorist organization does not automatically disqualify an applicant from receiving or possessing a firearm. In cases where a positive match is made, federal authorities search for other disqualifying information. If no disqualifying information can be found within three business days, the transaction is permitted to continue. In addition, all records pertaining to a positive match of an applicant to a terrorist watch list must, under current law, be destroyed within 24 hours if no disqualifying information is found.

I have cosponsored the Terrorist Apprehension Record Retention Act introduced by Senator LAUTENBERG. This bill would require that in cases where an NICS background check turns up a valid match to a terrorist watch list, all records pertaining to the transaction be retained for ten years. In addition, the bill requires that all NICS information be shared with appropriate federal and state counterterrorism officials anytime an individual on a terrorist watch list attempts to buy a firearm. This is only common sense.

The U.S. Conference of Mayors, which represents some 1,183 cities

around the country, adopted a resolution strongly supporting the Terrorist Apprehension and Record Retention Act at their 2005 annual meeting. The resolution cites a report by the General Accountability Office which found that from February 3, 2004 through June 30, 2004, a total of 44 firearm purchase attempts were made by individuals designated as known or suspected terrorists by the federal government. This is an alarming statistic. I ask unanimous consent that a copy of the resolution adopted by the U.S. Conference of Mayors be printed in the RECORD.

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

THE TERRORIST APPREHENSION AND RECORD RETENTION (TARR) ACT

Whereas, neither suspected nor actual membership in a terrorist organization by itself prohibits a person from owning a gun under current law; and

Whereas, beginning in November of 2003, the U.S. Department of Justice directed the FBI to revise its procedures to better ensure that suspected members of terrorist organizations who have disqualifying factors do not receive firearms in violation of the law by automatically delaying responses to provide more time to check data; and

Whereas, in January of 2005, the U.S. Government Accounting Office (GAO) released a report entitled, "Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records"; and

Whereas, that report found that from February 3 through June 30, 2004, a total of 44 firearm related background checks handled by the FBI and state agencies resulted in valid matches with terrorist watch records, and of this total 35 transactions were allowed to proceed because the checks found no prohibiting information, such as felony convictions, illegal immigrant status, or other disqualifying factors; and

Whereas, the report states, "GAO recommends that the Attorney General (1) clarify procedures to ensure that the maximum amount of allowable information from these background checks is consistently shared with counterterrorism officials and (2) either strengthen the FBI's oversight of state agencies or have the FBI centrally manage all valid match background checks. The Department of Justice agreed."; and

Whereas, legislation has been introduced in the U.S. Senate and House of Representatives entitled the "Terrorist Apprehension and Record Retention (TARR) Act"; and

Whereas, the TARR Act amends the Federal criminal code to provide that if the national criminal background check system indicates that a person attempting to purchase a firearm or applying for a State permit to possess, acquire, or carry a firearm is identified as a known or suspected member of a terrorist organization in records maintained by the Department of Justice or the Department of Homeland Security, including the violent Gang and Terrorist Organization File or records maintained by the Intelligence Community: (1) all information related to the prospective transaction shall be automatically and immediately transmitted to the appropriate Federal and State counterterrorism officials, including the Federal Bureau of Investigation (FBI); (2) the FBI shall coordinate the response; and (3) all records generated in the course of the check that are obtained by Federal and State officials shall be retained for at least ten years. Now, therefore, be it

Resolved, That the U.S. Conference of Mayors strongly supports the Terrorist Apprehension and Record Retention Act (TARR), and urges that it be passed by Congress and signed into law by the President.

Mr. LEVIN. Mr. President, the U.S. Conference of Mayors recognizes the importance of preserving records of gun purchases by known terrorists and the important role they could potentially play in uncovering a terrorist attack before it is carried out. We owe it to all Americans in this era of heightened risk of terrorist attack to do all we can to protect their safety.

INTEGRITY IN PROFESSIONAL SPORTS ACT

Mr. DOMENICI. Mr. President, I rise to express my support for the Integrity in Professional Sports Act, S. 1960. I am deeply troubled by the accounts of children and professional athletes who use anabolic steroids and other performance-enhancement drugs. The effects of taking steroids are not only physiological, but psychological. Experts have testified before Congress that steroid use creates an increased propensity for aggressive and sometimes criminal behavior. It is clear to me that the use of performance enhancing drugs reveals a number of problems, one of which is a problem of character.

As many of my colleagues may know, for the past 12 years, I have been involved in a grassroots program to promote character education for our country's children. The Character Counts program is an important grassroots effort that I am proud to have supported. Most recently, on October 7, 2005, 28 Senators joined Senator Christopher Dodd and I in sponsoring a resolution to designate "National Character Counts Week." The program promotes six fundamental and universal pillars of good character. Those are trustworthiness, respect, responsibility, fairness, caring, and citizenship. A central premise of the Character Counts program has held that children across the country depend on social institutions and leaders for the development of good character. For children, these leaders and role models are often found on the rosters of professional sports teams. When our children see professional athletes engaging in the use of steroids, they begin to question the importance of pillars such as trustworthiness, responsibility, and fairness.

Speaking as a former baseball pitcher for the University of New Mexico and the Albuquerque Dukes, I cannot emphasize enough the importance of trustworthiness and fairness in sportsmanship. As athletes, my teammates and I understood that the integrity of the game depended on knowledge that your competitors brought no advantage other than talent and hard work to the playing field. To think that your competitors used steroids to enhance their athletic performance would mean that the game itself was compromised.