to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. LINCOLN (for herself and Mr. TALENT):

S. 1076. A bill to amend the Internal Revenue Code of 1986 to extend the excise tax and income tax credits for the production of biodiesel; to the Committee on Finance.

Mr. TALENT. Mr. President, today Senator LINCOLN and I introduce legislation to extend the current excise tax credit for biodiesel through 2010. This tax credit brings great benefits to our nation's economy and environment while at the same time reducing our dependence on foreign oil.

Biodiesel is a cleaner burning alternative to petroleum-based diesel, and it is made from renewable resources like soybeans and other natural fats and oils, grown here in the United States. It works in any diesel engine with few or no modifications. It can be used in its pure form (B100), or blended with petroleum diesel at a level—most commonly 20 percent (B20). Soybean farmers in Missouri and across the Nation have invested millions of dollars to build a strong and viable biodiesel industry.

In last years JOBS bill, we created an excise tax credit for biodiesel; a $1/gallon credit for biodiesel produced from virgin oils, and a $0.50/gallon credit for biodiesel produced from yellow grease or recycled cooking oil. This important tax credit is set to expire in less than 2 years. It is imperative that we extend this incentive that is expected to increase domestic energy security, reduce pollution and stimulate the economy.

I certainly would prefer to fill up my tank with a clean burning fuel grown by farmers in our Nation's heartland instead of petroleum imported from the Saudis. Our farmers pose no security risks. I'm not alone in this preference. More than 400 major fleets use biodiesel commercially nationwide. About 300 retail filling stations make biodiesel available to the public, and more than 1,000 petroleum distributors carry it nationwide.

I am pleased that we will soon have a biodiesel plant in Missouri. Missouri Soybean Association and Mid-America Biofuels LLC recently announced plans to build a biodiesel plant in Mexico, MO. The plant is expected to produce 30 million gallons of biodiesel annually. There is strong support for this endeavor and they have exhibited exceptional leadership by bringing this plant to Missouri. I look forward to working with them.

As I've said before, biodiesel is a fuel of the future that we can use today. It is nontoxic, biodegradable and essentially free of sulfur and aromatics. Biodiesel offers similar fuel economy, horsepower and torque to petroleum diesel while providing superior lubricity. It significantly reduces emissions of carbon monoxide, particulate matter, unburned hydrocarbons and sulfates. On a lifecycle basis, biodiesel reduces carbon dioxide emissions by 78 percent compared to petroleum diesel. In other words, biodiesel is good for your car and the environment.

Additionally, this new value added market for soybeans brings jobs to our economy and benefits to farmers. Based on the USDA baseline estimates for future soybean production, over a five year time period the biodiesel tax incentive could add almost $1 billion directly to the bottom line of U.S. farm income. In addition, the provisions will significantly benefit the U.S. economy and could increase U.S. gross output by almost $7 billion.

I want to thank Senator LINCOLN and Senator GRASSLEY for their leadership on this important issue. We need to prevent this tax credit from expiring. It is expected to increase biodiesel demand from an estimated 30 million gallons in fiscal year 2004 to at least 124 million gallons per year, based on a U.S. Department of Agriculture study.

By Mr. JEFFORDS (for himself, Mr. LAUTENBERG, Mrs. BOXER, and Mr. LIEBERMAN):

S. 1080. A bill to amend the Safe Drinking Water Act to require the use of nontoxic products in the case of hydraulic fracturing that occurs during oil or natural gas production activities; to the Committee on Environment and Public Works.

Mr. JEFFORDS. Mr. President, I would like to thank Senators LAUTENBERG, BOXER, and LIEBERMAN for working with me to introduce this important legislation, the Hydraulic Fracturing Safety Act of 2005.

Over half of our Nation's fresh drinking water comes from underground sources. The process of hydraulic fracturing threatens our drinking water supplies. Hydraulic fracturing occurs when fluids are injected at high rates of speed into rock beds to fracture them and allow easier harvesting of natural oils and gases. It is these injection fluids that are of high concern.

In a recent report, the EPA acknowledged that these fluids, many of them toxic and harmful to people, are pumped directly into or near underground sources of drinking water. This same report cited earlier studies that indicated that only 61 percent of these fluids are recovered after the process is complete. This leaves 39 percent of these fluids in the ground, risking contamination of our drinking water.

Let me share with you the story of Laura Amos, a resident of Colorado who suffers from ill health effects today. In May of 2001, while an oil and gas well was being hydraulically fractured near her home, the metal top of her drinking well exploded into the air. At the same time, her water became bubbly and developed a horrible odor.

For three months, she was provided alternate drinking water by Ballard, later know as Encana, the company that owned the well near her home. It took this long until her water appeared normal again. Laura and her family drank from this well over the next couple of years. It was then that Laura developed a rare adrenal-gland tumor. During this time, Laura began actively investigating the chemicals used during the hydraulic fracturing of a well near her home. She learned about a chemical called 2–BE, which was later linked to adrenal-gland tumors in rodents.

Litigation over the last several years has resulted in findings that hydraulic fracturing should be regulated as part of the underground injection control program in the Safe Drinking Water Act. Yet, EPA indicates in writing that they have no intention of publishing regulations to that effect or ensuring that state programs adequately regulate hydraulic fracturing.

I ask unanimous consent that a series of letters to EPA and their responses dated October 14, 2004 and December 7, 2004, be inserted in the RECORD.

In June of 2004, an EPA study on hydraulic fracturing identified diesel as a ''constituent of potential concern.'' Prior to this, EPA had entered into a Memorandum of Agreement with three of the major hydraulic fracturing corporations, whom all voluntarily agreed to ban the use of diesel, and if necessary select replacements that will not cause hydraulic fracturing fluids to endanger underground sources of drinking water. However, all parties acknowledged that only technically feasible and cost-effective actions to provide alternatives will be sought.

Hydraulic fracturing needs to be regulated under the Safe Drinking Water Act and it has got to start now. It is unconscionable to allow the oil and gas industry to pump toxic fluids into the ground.

My bill, the Hydraulic Fracturing Safety Act of 2005, clarifies once and for all that hydraulic fracturing is part of the Underground Injection Control Program regulated under the Safe Drinking Water Act.

This legislation also bans the use of diesel and other toxic pollutants for oil and natural gas exploration.

Lastly, this legislation requires EPA to ensure that States adequately regulate hydraulic fracturing activities in all States to ensure that companies area adhering to our Nation's laws and conducting business in a manner safe for all Americans.

We need to do the right thing, and take action now to protect our Nation's drinking water supply. According to the oil and gas industry, 90 percent our oil and gas wells will be accessed through hydraulic fracturing. Congress and the EPA have to work together to provide a consistent and safe supply of drinking water for all Americans.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

U.S. SENATE, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC, October 14, 2004.

Administrator MICHAEL O. LEAVITT,
Environmental Protection Agency, Ariel Rios Building, Washington, DC.

DEAR ADMINISTRATOR LEAVITT: We are writing to you regarding the Environmental Protection Agency's (EPA's) administration of the Safe Drinking Water Act (SDWA) as it pertains to hydraulic fracturing. In recent months, the Agency has taken several key actions on this issue:

On December 12, 2003, the EPA signed a Memorandum of Understanding with three of the largest service companies representing 95 percent of all hydraulic fracturing performed in the U.S. These three companies, Halliburton Energy Services, Inc., Schlumberger Technology Corporation, and BJ Services Company, voluntarily agreed not to use diesel fuel in their hydraulic fracturing fluids while injecting into underground sources of water for coalbed methane production.

In June of 2004, EPA completed its study on hydraulic fracturing impacts and released its findings in a report entitled, ''Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs. The report concluded that hydraulic fracturing poses little chance of contaminating underground sources of drinking water and that no further study was needed.

On July 15, 2004, the EPA published in the Federal Register its final response to the court remand *(Legal Environmental Assistance Foundation (LEAF), Inc.*, v. *United States Environmental Protection Agency*, 276 F. 3d 1253). The Agency determined that the Alabama underground injection control (UIC) program for hydraulic fracturing, approved by EPA under section 1425 of the SDWA, complies with Class II well requirements.

We are concerned that the Agency's execution of the SDWA, as it applies to hydraulic fracturing, may not be providing adequate public health protection, consistent with the goals of the statute.

First, we have questions regarding the information presented in the June 2004 EPA Study and the conclusion to forego national regulations on hydraulic fracturing in favor of an MOU limited to diesel fuel. In the June 2004 EPA Study, EPA identifies the characteristics of the chemicals found in hydraulic fracturing fluids, according to their Material Safety Data Sheets (MSDSs), identifies harmful effects ranging from eye, skin, and respiratory irritation to carcinogenic effects. EPA determines that the presence of these chemicals does not warrant EPA regulation for several reasons. First, EPA states that none of these chemicals, other than BTEX compounds, are already regulated under the SDWA or are on the Agency's draft Contaminant Candidate List (CCL). Second, the Agency states that it does not believe that these chemicals are present in hydraulic fracturing fluids used for coalbed methane, and third, that if they are used, they are not introduced in sufficient concentrations to cause harm. These conclusions raise several questions:

1. The data presented in the June 2004 EPA study identifies potential harmful effects from the chemicals listed by the Agency in this report. Has the Agency or does the Agency plan to incorporate the results of this study and the fact that these chemicals are present in hydraulic fracturing agents into the CCL development process, and if not, why not?

2. In the June 2004 EPA study, the Agency concludes that hydraulic fracturing fluids do not contain most of the chemicals identified. This conclusion is based on two items—''conversations with field engineers'' and ''witnessing three separate fracturing events'' (June 2004 EPA Study, p. 4–17.)

a. How did the Agency select particular field engineers with whom to converse on this subject?

b. Please provide a transcript of the conversations with field engineers, including the companies or consulting firms with which they were affiliated.

c. How did the Agency select the three separate fracturing events to witness?

d. Were those events representative of the different site-specific characteristics referenced in the June 2004 study (June 2004 EPA Study, p. 4–19) as determining factors in the types of hydraulic fracturing fluids that will be used?

e. Which companies were observed?

f. Was prior notice given of the planned witnessing of these events?

g. What percentage of the annual number of hydraulic fracturing events that occur in the United States does ''3'' represent?

h. Finally, please explain why the Material Safety Data Sheets for the fluids identified as potentially being used in hydraulic fracturing list component chemicals that the EPA does not believe are present.

The Agency concludes in the June 2004 study that even if these chemicals are present, they are not present in sufficient concentrations to cause harm. The Agency bases this conclusion on assumed flowback, dilution and dispersion, adsorption and entrapment, and biodegradation. The June 2004 study repeatedly cites the 1991 Palmer study, ''Comparison between gel-fracture and water-fracture stimulations in the Black Warrior basin; Proceedings 1991 Coalbed Methane Symposium,'' which found that only 61 percent of the fluid injected during hydraulic fracturing is recovered. Please explain what data EPA collected and what observations the Agency made in the field that would support the conclusion that the 39 percent of fluids remaining in the ground are not present in sufficient concentrations to adversely affect underground sources of drinking water.

After identifying BTEX compounds as the major constituent of concern (June 2004 EPA study, page 4–15), the Agency entered into the MOU described above as its mechanism to eliminate diesel fuel from hydraulic fracturing fluids.

3. a. How does the Agency plan to enforce the provisions in the MOU and ensure that its terms are met?

b. For example, will the Agency conduct independent monitoring of hydraulic fracturing processes in the field to ensure that diesel fuel is not used?

c. Will the Agency require states to monitor for diesel use as part of their Class II UIC Programs?

4. a. Should the Agency become aware of an unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOU, what recourse is available to EPA under the terms of the MOU?

b. What action does the Agency plan to take should such a situation occur?

c. Why did EPA choose to use an MOU as opposed to a regulatory approach to achieve the goal of eliminating diesel fuel in hydraulic fracturing?

d. What revisions were made to the June 2004 EPA study between the December 2003 adoption of the MOU and the 2004 release of the study? Which of those changes dealt specifically with the use and effects of diesel fuel in hydraulic fracturing?

e. The Agency also states that it expects that even if diesel were used, a number of factors would decrease the concentration and availability of BTEX. Please elaborate on the data EPA collected and the observations the Agency made in the field that would support the conclusion that the 39 percent of fluids remaining in the ground (1991 Palmer), should they contain BTEX compounds, would not be present in sufficient concentrations to adversely affect underground sources of drinking water.

We are also concerned that the EPA response to the court remand leaves several unanswered questions. The Court decision found that hydraulic fracturing wells ''fit squarely within the definition of Class II wells.'' (LEAF II, 276 F.3d at 1263), and remanded back to EPA to determine if the Alabama underground injection control program under section 1425 complies with Class II well requirements. On July 15, 2004, EPA published its finding in the Federal Register that the Alabama program complies with the requirements of the 1425 Class II well requirements. (69 FR No. 135, pp 42341.) According to EPA, Alabama is the only state that has a program specifically for hydraulic fracturing approved under section 1425. Based on this analysis, it seems that in order to comply with the Court's finding that hydraulic fracturing is a part of the Class II well definition, the remaining states should be using their existing Class II, EPA-approved programs, under 1422 or 1425, to regulate hydraulic fracturing.

To date, EPA has approved Underground Injection Control programs in 34 states. Approval dates range from 1981–1996.

5. Do you plan to conduct a national survey or review to determine whether state Class II programs adequately regulate hydraulic fracturing?

At the time that these programs were approved, the standards against which state Class II programs were evaluated did not include any minimum requirements for hydraulic fracturing. In its January 19, 2000 notice of EPA's approval of Alabama's 1425 program, the Agency stated, ''When the regulations in 40 CFR parts 144 and 146, including the well classifications, were promulgated, it was not EPA's intent to regulate hydraulic fracturing of coal beds. Accordingly, the well classification systems found in 40 CFR 144.6 and 146.5 do not expressly include hydraulic fracturing injection activities. Also, the various permitting, construction and other requirements found in Parts 144 and 146 do not specifically address hydraulic fracturing.'' (65 FR No. 12, p. 2892.)

Further, EPA acknowledges that there can be significant differences between hydraulic fracturing and standard activities addressed by state Class II programs. In the January 19, 2000 Federal Register notice, the Agency states: . . . since the injection of fracture fluids through these wells is often a one-time exercise of extremely limited duration (fracture injections generally last no more than two hours) ancillary to the well's principal function of producing methane, it did not seem entirely appropriate to ascribe Class II status to such wells, for all regulatory purposes, merely due to the fact that, prior to commencing production, they had been fractured.'' (65 FR No. 12, p. 2892.)

Although hydraulic fracturing falls under the Class II definition, the Agency has acknowledged that hydraulic fracturing is different than most of the activities that occur under Class II and that there are no national regulations or standards on how to regulate hydraulic fracturing.

6. In light of the Court decision and the Agency's July 2004 response to the Court remand, did the Agency consider establishing national regulations or standards for hydraulic fracturing or minimum requirements for hydraulic fracturing regulations under state Class II programs?

7. a. If so, please provide a detailed description of your consideration of establishing these regulations or standards and the rationale for not pursuing them.

b. Do you plan to establish such regulations or standards in the future?

c. If not, what standards will be used as the standard of measurement for compliance for hydraulic fracturing under state Class II programs?

We appreciate your timely response to these questions in reaction to the three recent actions taken by the EPA in relation to hydraulic fracturing—the adoption of the MOU, the release of the final study, and the response to the Court remand. Clean and safe drinking water is one of our nation's greatest assets, and we believe we must do all we can to continue to protect public health. Thank you again for your response.

Sincerely,

JIM JEFFORDS.
BARBARA BOXER.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, December 7, 2004.

Hon. JIM JEFFORDS,
U.S. Senate,
Washington, DC.

DEAR SENATOR JEFFORDS: Thank you for your letter to Administrator Michael Leavitt, dated October 14, 2004, concerning the recent actions that the Environmental Protection Agency (EPA) has taken in implementing the Underground Injection Control (UIC) program with respect to hydraulic fracturing associated with coalbed methane wells.

The Office of Ground Water and Drinking Water (OGWDW) has prepared specific responses to your technical and policy questions regarding how we conducted the hydraulic fracturing study, the reasons behind our decisions pertaining to the recommendations contained in the study, and any plans or thoughts we may have on the likelihood for future investigation, regulation, or guidance concerning such hydraulic fracturing.

Since the inception of the UIC program, EPA has implemented the program to ensure that public health is protected by preventing endangerment of underground sources of drinking water (USDWs). The Agency has placed a priority on understanding the risks posed by different types of UIC wells, and worked to ensure that appropriate regulatory actions are taken where specific types of wells may pose a significant risk to drinking water sources. In 1999, in response to concerns raised by Congress and other stakeholders about issues associated with the practice of hydraulic fracturing of coalbed methane wells in the State of Alabama, EPA initiated a study to better understand the impacts of the practice.

EPA worked to ensure that its study, which was focused on evaluating the potential threat posed to USDWs by fluids used to hydraulically fracture coalbed methane wells, was carried out in a transparent fashion. The Agency provided many opportunities to all stakeholders and the general public to review and comment on the Agency study design and the draft study. The study design was made available for public comment in July 2000, a public meeting was held in August 2000, public notice of the final study design was provided in the Federal Register in September 2000, and the draft study was noticed in the Federal Register in August 2002. The draft report was also distributed to all interested parties and posted on the internet. The Agency received more than 100 comments from individuals and other entities.

EPA's final June 2004 study, Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs, is the most comprehensive review of the subject matter to date. The Agency did not recommend additional study at this time due to the study's conclusion that the potential threat to USDWs posed by hydraulic fracturing of coalbed methane wells is low. However, the Administrator retains the authority under the Safe Drinking Water Act (SDWA) section 1431 to take appropriate action to address any imminent and substantial endangerment to public health caused by hydraulic fracturing.

During the course of the study, EPA could not identify any confirmed cases where drinking water was contaminated by hydraulic fracturing fluids associated with coalbed methane production. We did uncover a potential threat to USDWs through the use of diesel fuel as a constituent of fracturing fluids where coalbeds are co-located with a USDW. We reduced that risk by signing and implementing the December 2003 Memorandum of Agreement (MOA) with three major service companies that carry out the bulk of coalbed methane hydraulic fracturing activities throughout the country. This past summer we confirmed that the companies are carrying out the MOA and view the completion of this agreement as a success story in protecting USDWs.

In your letter, you asked about the Agency's actions with respect to hydraulic fracturing in light of LEAF v. EPA. In this case, the Eleventh Circuit held that the hydraulic fracturing of coalbed seams in Alabama to produce methane gas was ''underground injection'' for purposes of the SDWA and EPA's UIC program. Following that decision, Alabama developed—and EPA approved—a revised UIC program to protect USDWs during the hydraulic fracturing of coalbeds. The Eleventh Circuit ultimately affirmed EPA's approval of Alabama's revised UIC program.

In administering the UIC program, the Agency believes it is sound policy to focus its attention on addressing those wells that pose the greatest risk to USDWs. Since 1999, our focus has been on reducing risk from shallow Class V injection wells. EPA estimates that there are more than 500,000 of these wells throughout the country. The wastes injected into them include, in part, storm water runoff, agricultural effluent, and untreated sanitary wastes. The Agency and States are increasing actions to address these wells in order to make the best use of existing resources.

EPA remains committed to ensuring that drinking water is protected. I look forward to working with Congress to respond to any additional questions, or the concerns that Members of Congress or their constituents may have. If you have further comments or questions, please contact me, or your staff may contact Steven Kinberg of the Office of Congressional and Intergovernmental Relations at (202) 564–5037.

Sincerely,

BENJAMIN H. GRUMBLES,
Acting Assistant Administrator.

EPA RESPONSE TO SPECIFIC QUESTIONS REGARDING HYDRAULIC FRACTURING

1. The data presented in the June 2004 EPA study identifies potential harmful effects from the chemicals listed by the Agency in this report. Has the Agency or does the Agency plan to incorporate the results of this study and the fact that these chemicals are present in hydraulic fracturing agents into the Contaminant Candidate List (CCL) development process, and if not, why not?

Although the EPA CBM study found that certain chemical constituents could be found in some hydraulic fracturing fluids, EPA cannot state categorically that they are contained in all such fluids. Each fracturing procedure may be site specific or basin specific and fluids used may depend on the site geology, the stratigraphy, (i.e., type of coal formation), depth of the formation, and the number of coal beds for each fracture operation. The Agency's study did not develop new information related to potential health effects from these chemicals; it merely reported those potential health effects indicated on the Material Safety Data Sheet (MSDS) or other information we obtained from the service companies.

As noted in the final report, ''Contaminants on the CCL are known or anticipated to occur in public water systems . . .'' The extent to which the contaminants identified in fracturing fluids are part of the next CCL process will depend upon whether they meet this test.

2. In the June 2004 EPA study, the Agency concludes that hydraulic fracturing fluids do not contain most of the chemicals identified. This conclusion is based on two items—''conversations with field engineers'' and ''witnessing three separate fracturing events''.

a. How did the agency select particular field engineers with whom to converse on this subject?

The Agency did not ''select'' any of the engineers; we talked with the engineers who happened to be present at the field operations. In general those were engineers from the coalbed methane companies and the service companies who conducted the actual hydraulic fracturing. When we scheduled to witness the events, we usually conversed with the production company engineer to arrange the logistics and only spoke with the field engineers from the service companies at the well site.

b. Please provide a transcript of the conversations with field engineers, including the companies or consulting firms with which they were affiliated.

EPA did not prepare a word-for-word transcript of conversations with engineers.

c. How did the Agency select the three separate fracturing events to witness?

The events selected were dependent on the location of the fracturing events, the schedules of both EPA OGWDW staff and EPA Regional staff to witness the event, and the preparation time to procure funding and authorization for travel EPA witnessed the 3 events because the planning and scheduling of these happened to work for all parties. In one event, only EPA HQ staff witnessed the procedure, in another event only EPA Regional staff witnessed it, and in one event, both EPA HQ and Regional staff attended with DOE staff.

d. Were those events representative of the different site-specific characteristics referenced in the June 2004 study (p. 4–19)'' as determining factors in the types of hydraulic fracturing fluids that will be used?

Budget limitations precluded visits to each of the 11 different major coal basins in the U.S. It would have proven to be an expensive and time-consuming process to witness operations in each of these regions. Additionally, even within the same coal basin there are potentially many different types of well configurations, each of which could affect the fracturing plan. EPA believed that witnessing events in 3 very different coal basin settings—Colorado, Kansas, and south western Virginia—would give us an understanding of the practice as conducted in different regions of the country.

e. Which companies were observed?

EPA observed a Schlumberger hydraulic fracturing operation in the San Juan basin of Colorado, and Halliburton hydraulic fracturing operations in southwest Virginia and Kansas.

f. Was prior notice given of the planned witnessing of these events?

Yes, because it would have been very difficult to witness the events had they not been planned. To plan the visit, EPA needed to have prior knowledge of the drilling operation, the schedule of the drilling, and the scheduling of the services provided by the hydraulic fracturing service company. Wells, in general, take days to drill (in some cases weeks and months depending on depth of the well) and the fracturing may take place at a later date depending on the availability of the service company and other factors beyond anyone's control.

g. What percentage of the annual number of hydraulic fracturing events that occur in the United States does ''3'' represent?

Because of a limited project budget, EPA did not attempt to attend a representative number of hydraulic fracturing events; that would have been beyond the scope of this Phase I investigation. The primary purpose of the site visits was to provide EPA personnel familiarity with the hydraulic fracturing process as applied to coalbed methane wells. The visits served to give EPA staff a working-level, field experience on exactly how well-site operations are conducted, how the process takes place, the logistics in setting up the operation, and the monitoring and verification conducted by the service companies to assure that the fracturing job was accomplished effectively and safely. EPA understands that thousands of fracturing events take place annually, for both conventional oil and gas operations and coalbed methane production, and that three events represent an extremely small fraction of that total.

h. Finally, please explain why the Material Safety Data Sheets for the fluids identified as potentially being used in hydraulic fracturing list component chemicals that the EPA does not believe are present.

In Table 4–1 of the final study, EPA identified the range of fluids and fluid additives commonly used in hydraulic fracturing. Some of the fluids and fluid additives may contain constituents of potential concern, however, it is important to note that the information presented in the MSDS is for the pure product. Each of the products listed in Table 4–1 is significantly diluted prior to injection. The MSDS information we obtained is not site specific. We reviewed a number of data sheets and we noted that many of them are different, contain different lists of fluids and additives, and thus we concluded in the final report that we cannot say whether one specific chemical, or chemicals, is/are present at every hydraulic fracturing operation.

3. a. How does the Agency plan to enforce the provisions in the MOU and ensure that its terms are met?

There is no mechanism to ''enforce'' a voluntary agreement such as the MOA signed by EPA and the three major service companies. The MOA was signed in good faith by senior managers from the three service companies and the Assistant Administrator for Water, and EPA expects it will be carried out. EPA has written all signers of the MOA and asked if they have implemented the agreement and how will they ensure that diesel fuel is not being used in USDWs. All three have written back to EPA, stating that they have removed diesel from their CBM fracturing fluids when a USDW is involved and intend to implement a plan to ensure that such procedures are met. EPA intends to follow up with the service companies on progress in implementing such plans.

b. For example, will the Agency conduct independent monitoring of hydraulic fracturing processes in the field to ensure that diesel fuel is not used?

It is unlikely that EPA will conduct such field monitoring. First, in most oil and gas producing states, and coalbed methane producing states, the State Oil and Gas Agency generally has UIC primary enforcement responsibility, and the state inspectors are the primary field presence for such operations. Second, EPA has a very limited field staff and in most cases they are engaged in carrying out responsibilities related to Class I, III and V wells in states in which they directly implement the UIC program. EPA plans to work with several organizations, including the Ground Water Protection Council and the Independent Petroleum Association of America to determine if there are other smaller companies conducting CBM hydraulic fracturing with diesel fuel as a constituent and will explore the possibility of including them in the MOA.

c. Will the Agency require states to monitor for diesel use as part of their Class II programs?

Given limited funds for basic national and state UIC program requirements, EPA does not have plans to include the states as parties to the MOA or require them to monitor for diesel fuel in hydraulic fracturing fields. The State of Alabama's EPA-approved UIC program prohibits the hydraulic fracturing of coalbeds in a manner that allows the movement of contaminants into USDWs at levels exceeding the drinking water MCLs or that may adversely affect the health of persons. Current federal regulations do not expressly address or prohibit the use of diesel fuel in fracturing fluids, but the SDWA and UIC regulations allow States to be more stringent than the federal UIC program.

4. a. Should the Agency become aware of an unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOD, what recourse is available to EPA under the terms of the MOD?

There are no terms in the MOA that would provide EPA a mechanism to take any enforcement action should the Agency become aware of an unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOA. However, EPA would work closely with the companies to determine why such action occurred and discuss possible termination procedures. The agreement defines how either party can terminate the agreement. EPA would make every effort to work with such a company to maintain their participation in the agreement. EPA entered the agreement with an assumption that the companies would honor the commitments they have made about diesel use in hydraulic fracturing fluids.

b. What action does the Agency plan to take should such a situation occur?

If such a situation does happen, and EPA learns that diesel fuel used in hydraulic fracturing fluid may enter a USDW and may present an imminent and substantial threat to public health, EPA may issue orders or initiate litigation as necessary pursuant to SDWA section 1431 to protect public health. Otherwise, EPA would take the actions described under the previous question.

c. Why did EPA choose to use an MOU as opposed to a regulatory approach to achieve the goal of eliminating diesel fuel in hydraulic fracturing?

While the report's findings did not point to a significant threat from diesel fuel in hydraulic fracturing fluids, the Agency believed that a precautionary approach was appropriate. EPA chose to work collaboratively with the oil service companies because we thought that such an approach would work quicker, and be more effective than other approaches the Agency might employ (i.e. rulemaking, enforcement orders, etc.). We believed that once the service companies became familiar with the issue, they would willingly address EPA's concerns. After several months of meetings and negotiations between representatives of the service companies and high level management in EPA's Office of Water, a Memorandum of Agreement (MOA) was drafted and signed by all parties effective December 24, 2003.

We believe that the MOA mechanism accomplished the intended goal of removing diesel from hydraulic fracturing fluids in a matter of months, whereas proposing a rule to require removal would have taken at least a year or more.

d. What revisions were made to the June 2004 EPA study between the December 2003 adoption of the MOD and the 2004 release of the study? Which of those changes dealt specifically with the use and effects of diesel fuel in hydraulic fracturing?

During the specified time-frame, EPA focused on making editorial changes to the report and clarifying information relative to its qualitative discussion of the mitigating effects of dilution, dispersion, adsorption, and biodegradation of residual fluids. With respect to the use and effects of diesel fuel, changes in the study primarily focused on including language in the text of the report which acknowledged that we had successfully negotiated an MOA with the service companies. Specifically. EPA referenced this agreement in the text of the report in the Executive Summary at page ES–2 and on page BS–17 and further discussed the MOA in Chapter 7 in the Conclusions Section of the study.

e. The Agency also states that it expects that even if diesel were used a number of factors would decrease the concentration and availability of BTEX. Please elaborate on the data EPA collected and the observations the Agency made in the field that would support the conclusion that 39% of fluids remaining in the ground (1991 Palmer), should they contain BTEX compounds would not be present in sufficient concentrations to adversely affect underground sources of drinking water.

EPA reiterates that the 39% figure from the 1991 Palmer paper is only one instance where it has been documented what quantity of the hydraulic fracturing fluids injected into wells will remain behind. Dr. Palmer, who conducted the original research, estimated that coalbed methane production wells flow back a greater percentage of fracturing fluids injected during the process. Where formations are dewatered or produced for a substantial period of time, greater quantities of formation and fracturing fluids would presumably be removed. We used 39% remaining fluids as a ''worst case'' scenario while doing our qualitative assessment, since it was the only figure we had from research conducted on coalbed methane wells.

With respect to the BTEX compounds, we no longer believe that they are a concern owing to the MOA negotiated between EPA and the three major service companies.

5. Do you plan to conduct a national surveyor survey or review to determine whether state Class II programs adequately regulate hydraulic fracturing?

At this time, EPA has no plans to conduct such a survey or review regarding the adequacy of Class II programs in regulating hydraulic fracturing. In its final study design, EPA indicated that it would not begin to evaluate existing state regulations concerning hydraulic fracturing until it decided to do a Phase III investigation. The Agency, however, reserves the right to change its position on this if news information warrants such a change.

6. In light of the Court decision and the Agency's July 2004 response to the Court remand, did the Agency consider establishing national regulations or standards for hydraulic fracturing or minimum requirements for hydraulic fracturing regulations under Class II programs?

When State UIC programs were approved by the Agency—primarily during the early 1980s—there was no Eleventh Circuit Court decision indicating that hydraulic fracturing was within the definition of ''underground injection.'' Prior to LEAF v. EPA, EPA had never interpreted the SDWA to cover production practices, such as hydraulic fracturing. After the Court decision in 1997, the Agency began discussions with the State of Alabama on revising their UIC program to include hydraulic fracturing. The net result of that process was the EPA approval of Alabama's revised section 1425 SDWA UIC program to include specific regulations addressing CBM hydraulic fracturing. This approval was signed by the Administrator in December 1999, and published in the Federal Register in January 2000.

In light of the Phase I HF study and our conclusion that hydraulic fracturing did not present a significant public health risk, we see no reason at this time to pursue a national hydraulic fracturing regulation to protect USDWs or the public health. It is also relevant that the three major service companies have entered into an agreement with EPA to voluntarily remove diesel fuel from their fracturing fluids.

7. a. If so, please provide a detailed description of your consideration of establishing these regulations or standards and the rationale for not pursuing them. b. Do you plan to establish such regulations or standards in the future? c. If not, what standards will be used as the standard of measurement for compliance for hydraulic fracturing under state Class II programs?

EPA has not explored in any detailed fashion minimum national or state requirements for hydraulic fracturing of CBM wells, except when it evaluated the revised UIC program in Alabama.

Considering and developing national regulations for hydraulic fracturing would involve discussions with numerous stakeholders, the states, and the public and it would require an intensive effort to arrive at regulatory language that could be applied nationwide. As EPA's study indicates, coalbeds are located in very distinct geologic settings and the manner in which they are produced for methane gas may be very different in each locale. The proximity of USDWs to the coal formations, and the regional geology and hydrology all play roles in how hydraulic fracturing operations are conducted.

If EPA receives information of drinking water contamination incidents and follow-up investigations point to a problem, EPA would then re-evaluate its decision to not continue with additional study relating to CBM hydraulic fracturing.

Should additional states submit revised UIA programs for EPA's review and approval which include hydraulic fracturing regulations, we would evaluate these programs under the effectiveness standards of the SDWA section 1425 as we did for the State of Alabama.

S. 1080

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hydraulic Fracturing Safety Act of 2005''.

SEC. 2. HYDRAULIC FRACTURING.

Section 1421(d)(1) of the Safe Drinking Water Act (42 U.S.C. 300h(d)(1)) is amended—

(1) by adding at the end the following: ''The term 'underground injection' includes hydraulic fracturing, which means the process of creating a fracture in a reservoir rock, through the injection of fluids and propping agents, for the purpose of reservoir stimulation relating to oil and gas production activities.''; and

(2) by adding at the end the following:

''(3) HYDRAULIC FRACTURING.—

''(A) IN GENERAL.—In the case of hydraulic fracturing that occurs during the exploration for, or the production of, oil or natural gas, a producer of oil or natural gas shall not use diesel fuel or any other material that the Administrator has listed as a priority pollutant under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

''(B) REGULATIONS.—The Administrator shall promulgate such regulations as are necessary—

''(i) to regulate hydraulic fracturing in accordance with this subsection; and

''(ii) to ensure that State programs under section 1422 or 1425 regulate hydraulic fracturing in accordance with this subsection.''.

By Mr. KYL (for himself, Ms. STABENOW, Mr. CORZINE, and Mr. TALENT):

S. 1081. A bill to amend title XVIII of the Social Security Act to provide for a minimum update for physicians' services for 2006 and 2007; to the Committee on Finance.

Mr. KYL. Mr. President, I rise today to introduce the Preserving Patient Access to Physicians Act of 2005. This bill updates Medicare physician reimbursement for 2006 and 2007 according to the recommendations of the Medicare Payment Advisory Committee (MedPAC). There would be a 2.7 percent increase to the physician payment schedule for 2006 and using the Medicare Economic Index update for the price of inputs, a 2.6 percent increase in 2007.

If the schedule is left alone, the consequences for physicians will be a negative. Instead of the 1.5 percent payment increase for 2004 and 2005 which I helped author in the Medicare Modernization Act, there would be a 4.3 percent decrease.

The sustainable growth rate (SGR) formula used to calculate physician payment depends on a number of factors: the number of Medicare fee-for-service beneficiaries, the volume and type of services provided, the price of services rendered, changes in regulations and laws. The formula also incorporates other factors such as prescription-drug prices and the gross domestic product. The SGR was intended to control expenditures by basing a given year's physician payment rate on the previous year's performance. Instead, it creates an arbitrary deficiency that continues to force Congress to intervene.

There is a debate going on, her CMS has the authority to alter the SGR formula by removing drugs. Setting that aside, though, the fact of the matter is that without Congress stepping in to provide for a physician payment update, it probably will not occur. My Senate colleagues and I have talked for many years about ensuring adequate physician payment because current and past administrations have failed to modify the formula. This formula is not doing what it was intended to do. Therefore, I believe we need to scrap it and start again. My bill is a starting point and proposes amounts for an update, but I would really like to see us go all the way back to the drawing board and answer the fundamental question of how to pay physicians appropriately for their services.

I want doctors to be able to continue to assist our nation's seniors, but it is unfair to expect them to practice and to have their reimbursement decrease. Practice expenses, the costs of medical technology, wages for administrative and clinical staff, and medical liability premiums are all increasing while physicians are on track to receive a payment decrease. They cannot afford to continue practicing medicine while receiving reimbursements that do not allow them to even break even. Many are retiring early or threatening to limit the number of Medicare patients they treat.

The service of physicians all across the country is vital to our seniors. Almost half a million doctors provide treatment to the 42 million people under the Medicare program. Physicians are often the gateway for access to other medical services and treatments. Not being able to consult a physician results in delayed referrals, delayed treatment and delayed care. In sum, the quality of health care continues to erode and our system does not operate efficiently.

Should the scheduled physician reimbursement cuts take effect, the result will be a $710 million decrease in payments to doctors in Arizona over 2006 through 2010. I have heard from virtually every physician with whom I have spoken about the constraints that inadequate payments are placing on their practice of medicine. While many work for hospitals and health systems, in the rural areas, a large number are solo practitioners or in small practices. For these physicians, poor payment hits their practice especially hard.

If Medicare rates for doctors are inadequate, many other health care payors will also lack for adequate reimbursement. Other payors such as Medicaid and private insurers often base their payments on Medicare rates. While this bill only addresses Medicare physician payment, the problem of access to services will be compounded if physicians receive reimbursement from other payors that is below the appropriate levels.

The cost of addressing the physician payment update is not cheap. Estimates on the cost of this bill are between $25 billion to $35 billion over five years. I await an official score from the Congressional Budget Office. But I point out, that doing nothing to solve this problem may cost us more: more money, more health and access problems, and more physicians leaving the profession. Although this legislation provides for a two year update, we must develop a long range mechanism to pay physicians appropriately.

I am grateful for the support of this legislation by my colleague, Senator

STABENOW of Michigan, and encourage my other colleagues to support the Preserving Patient Access to Physicians Act of 2005.

I ask unanimous consent that a letter of support be printed in the RECORD.

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

AMERICAN MEDICAL ASSOCIATION,
Chicago, IL, May 19, 2005.

Hon. JOHN KYL,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR KYL: On behalf of the American Medical Association (AMA), we offer our strong support of your legislation, entitled the Preserving Patient Access to Physicians Act of 2005. We thank you for your leadership in introducing this legislation and providing a remedy to the steep Medicare physician payment cuts that are expected, beginning January 1, 2006.

The Medicare Trustees have recently predicted that Medicare payments for physicians' services will be cut by about 26 percent from 2006 through 2011. These cuts will critically impact access to medical services for our Nation's senior and disabled patients. A recent AMA survey concerning physician responses to significant Medicare physician pay cuts beginning January 1, 2006 indicates that if these cuts begin in 2006: 38 percent of physicians plan to decrease the number of new Medicare patients they accept; more than half of physicians plan to defer the purchase of information technology; and a majority of physicians will be less likely to participate in Medicare Advantage.

The expected cuts result from the inherently flawed payment update formula, the sustainable growth rate (SGR) spending target. The SGR is linked to the gross domestic product and penalizes physicians and other practitioners for volume increases that they cannot control and that the government actively promotes through new coverage decisions and other initiatives that, while beneficial to patients, are not reflected in the SGR.

The AMA applauds your leadership in addressing these cuts and introducing legislation that protects access to needed medical care. Your bill would provide a positive physician payment update of not less than 2.7 percent in 2006 and an update in 2007 that reflects physician practice cost inflation, which, at this time, is expected to be about 2.6 percent.

Your bill is critical for ensuring continued and long-term access to health care services for Medicare beneficiaries. We look forward to continuing to work with you to achieve enactment of your legislation, as well as long-term reform of the update formula.

Sincerely,

MICHAEL D. MAVES,
Executive Vice President, CEO.

Ms. STABENOW. Mr. President, I am very pleased to introduce the ''Preserving Patient Access to Physicians Act'' with my friend and colleague from Arizona, Senator KYL. This legislation is critical to ensuring that our Nation's 42 million Medicare beneficiaries continue to have access to high quality physician care.

The Medicare program is one of the most successful Federal programs of all time. It has lifted countless seniors out of poverty, and it has ensured access to necessary, affordable, quality medical care for our most vulnerable citizens for the last 40 years.

However, that success is threatened because the Medicare physician payment formula is fundamentally flawed. At a time when the doctors who treat our seniors are facing increasing practice costs, they are looking at a payment cut of 4.3 percent in 2006 for the Medicare services they provide that simply doesn't make sense.

And the cuts don't stop in 2006: if Congress doesn't act, physicians will be hit with devastating cuts totaling 22 percent over the next 5 years. Those cuts represent over $44 billion dollars nationwide, and a staggering $126 billion over the next 10 years.

Currently, over 20,000 MDs and DOs in Michigan treat over 1.4 million Medicare-eligible Michiganians with very high quality care. But if the doctors in my State receive their scheduled cut of $109 million next year, and over $5 billion over the next ten years, it's not hard to imagine that they may be forced to limit the number of Medicare patients they serve.

Numbers in the billions are indeed staggering—but the critical need for this legislation is even better demonstrated by getting down to the specifics: a Detroit physician currently is reimbursed $56.88 for an office visit. But while we all know medical inflation will continue to increase, under current law, that same physician will receive only $41.86 in 2011 for that same visit. And while an orthopedic surgeon in Detroit is now reimbursed $1,813.10 for performing a knee arthroplasty—a knee repair necessary to ensure full mobility—she is scheduled to receive $478.66 less for performing that same procedure in 2011! The examples go on and on: a cardiologist inserting a stent in a Medicare patient to prevent heart problems receives $873.85 today. The same surgeon inserting a stent in 2011 will be reimbursed only $643.15.

The ''Preserving Patient Access to Physicians Act of 2005'' provides physicians with a minimum update in 2006 and 2007. Specifically, the legislation overrides the Sustainable Growth Rate (SGR) formula in these years: the update to the single conversion factor in 2006 would be 2.7 percent, and a formula based on input prices and a productivity adjustment is used for 2007—the likely update for 2007 will be 2.6 percent.

Kevin Kelly, Executive Director of the Michigan State Medical Society, tells me that the minimum updates provided in this legislation are essential to both physicians and patients in Michigan in terms of assuring access to Medicare services.

And Robert Stomel, D.O., President of the Michigan Osteopathic Association, said that introduction of this legislation ''is an important step in efforts to protect the availability and access to physician services for millions of Medicare beneficiaries.'' Dr. Stomel went on to say, ''This bipartisan legislation represents a continued recognition that physician payment under Medicare must keep pace with the increasing cost of providing care.''

Yet I know that this is just the beginning. We cannot continue to use stop-gap measures but must replace the SGR with a payment system that actually makes sense and reflects the costs of providing physician care to Medicare beneficiaries.

Through the bipartisan partnership Senator KYL and I have begun today, we can—and must—fix the physician payment formula and continue to provide access to high-quality Medicare services for all of our seniors and people with disabilities.

I ask unanimous consent to have printed in the record letters of support from the American Medical Association and the American Osteopathic Association.

I urge my Colleagues to join us in this effort, and I thank the Chair.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AMERICAN MEDICAL ASSOCIATION,
Chicago, IL, May 19, 2005.

Hon. DEBBIE A. STABENOW,
U.S. Senate, Washington, DC.

DEAR SENATOR STABENOW: On behalf of the American Medical Association (AMA), we offer our strong support of your legislation, entitled the Preserving Patient Access to Physicians Act of 2005. We thank you for your leadership in introducing this legislation and providing a remedy to the steep Medicare physician payment cuts that are expected, beginning January 1, 2006.

The Medicare Trustees have recently predicted that Medicare payments for physicians' services will be cut by about 26% from 2006 through 2011. These cuts will critically impact access to medical services for our nation's senior and disabled patients. A recent AMA survey concerning physician responses to significant Medicare physician pay cuts beginning January 1, 2006 indicates that if these cuts begin in 2006: 38% of physicians plan to decrease the number of new Medicare patients they accept; more than half of physicians plan to defer the purchase of information technology; and a majority of physicians will be less likely to participate in Medicare Advantage.

The expected cuts result from the inherently flawed payment update formula, the sustainable growth rate (SGR) spending target. The SGR is linked to the gross domestic product and penalizes physicians and other practitioners for volume increases that they cannot control and that the government actively promotes through new coverage decisions and other initiatives that, while beneficial to patients, are not reflected in the SGR.

The AMA applauds your leadership in addressing these cuts and introducing legislation that protects access to needed medical care. Your bill would provide a positive physician payment update of not less than 2.7% in 2006 and an update in 2007 that reflects physician practice cost inflation, which, at this time, is expected to be about 2.6%.

Your bill is critical for ensuring continued and long-term access to health care services for Medicare beneficiaries. We look forward to continuing to work with you to achieve enactment of your legislation, as well as long-term reform of the update formula.

Sincerely,

MICHAEL D. MAVES.

AMERICAN OSTEOPATHIC ASSOCIATION,
Washington, DC, May 19, 2005.

Hon. DEBBIE STABENOW,
U.S. Senate, Washington, DC.

DEAR SENATOR STABENOW: As President of the American Osteopathic Association (AOA), I am pleased to inform you of our strong support for the ''Preserving Patient Access to Physicians Act of 2005''. The AOA, which represents the nation's 54,000 osteopathic physicians practicing in 23 specialties and subspecialties, extends its sincere gratitude to you for introducing this bill.

The current sustainable growth rate (SGR) formula for physician services under the Medicare program is broken. The continued use of the flawed and unstable methodology will result in a loss of physician services for millions of Medicare beneficiaries. Physicians annually face reductions in payment while their practice costs continue to rise. Congress recognized this with the approval of the ''Medicare Prescription Drug, Improvement, and Modernization Act of 2003'' (MMA) (P.L. 108–173) which replaced scheduled physician payment reductions with modest increases of 1.5 percent per year for 2004 and 2005. Unfortunately, physicians now face a projected reduction of 4.3 percent for 2006, with additional reductions for the foreseeable future that could amount to over 30 percent.

Your legislation takes an important step to address the projected 2006 and 2007 reductions in physician payment under Medicare. Specifically, the bill would establish a minimum physician payment update of 2.7 percent per year for 2006 and 2007. A minimum update of 2.7 percent will help ensure a physician's continued ability to provide quality health care services to Medicare beneficiaries.

On behalf of my fellow osteopathic physicians, I pledge our support for your effort to address the flawed Medicare physician payment formula. We look forward to working with you to advance this important legislation. Please do not hesitate to call upon the AOA or our members for assistance on health care issues. Contact the AOA's Department of Government Relations at (202) 414–0140 for additional information.

Sincerely,

GEORGE THOMAS, D.O.,
President.

By Mr. KENNEDY:

S. 1084. A bill to eliminate child poverty, and for other purposes; read the first time.

Mr. KENNEDY. Mr. President, it is shameful that in the richest and most powerful Nation on earth, nearly a fifth of all children—nearly 13 million—live in poverty. That is why I am introducing the End Child Poverty Act to address this fundamental moral issue. It will set a national goal to reduce child poverty by half within a decade, and to eliminate it entirely as soon as possible after that.

The effect of child poverty is far reaching. Children in poverty are often malnourished. They have weaker immune systems and are more vulnerable to infections and illness. Poor children also suffer in school. They lack vital nutrition necessary for healthy brain development. They have trouble concentrating in class. They often attend schools that have the least resources. Their families move frequently, so their school attendance is low. Overcrowding, utility shutoffs, and poor heating interfere with homework.

The End Child Poverty Act would commit the U.S. to ending these horrors of children growing up in such dire conditions. The bill would establish a Child Poverty Elimination Board to make recommendations to the President on how best to meet this commitment to children. It would offset the cost with a one percent surtax on income over $1 million to be invested in a Child Poverty Elimination Fund.

We must begin with this moral vision, just as we did with America's seniors. The elderly were once the poorest in society. But in 1935, we made a commitment that growing old shouldn't mean growing poor. We enacted Social Security and later Medicare, and now the elderly in America are significantly better off. The End Child Poverty Act is a vital step to give comparable security to America's children.

It's time for America to make a real commitment, and give real hope, real opportunity and real fairness to children and families mired in poverty in communities in all parts of our country.

By Mr. HATCH:

S. 1086. A bill to improve the national program to register and monitor individuals who commit crimes against children or sex offenses; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, we are here today in a battle to save our children, their families, and the victims, of repeat sex offenders.

I am so proud of the real warriors in this battle: the victims and their family members. One of those warriors is Ed Smart, from my home State of Utah, whose daughter Elizabeth was kidnapped from her own bedroom by a sexual predator. Ed is joined by Patti Wetterling, Linda Walker, and other outstanding advocates of our children, including John Walsh of America's Most Wanted, Ernie Allen of the National Center for Missing and Exploited Children, and Robbie Calloway of the Boys & Girls Club of America in support of this bipartisan legislation we are introducing today along with cosponsor Senator BIDEN. We need legislation that will close the gaps in many laws already on the books; integrate and revive the existing laws; and expand covered offenses against children.

The Sex Offender Registration and Notification Act will bring all of the States up to date and enable citizens in every State to inform themselves about predators in their communities. This law will enable States to take public information about sex offenders and make it easy for citizens to access at one, open, web-site.

This legislation will put the responsibility on the sex offenders themselves to register with the local authorities. They will be required to notify those authorities when they move or change jobs. And if they don't want to comply with the rules—then they will go to jail!

This is common sense—those who break such a sacred trust and intend to harm our children, no matter who they are, where they are from, or where they commit their crime, should have some obligations under this law to voluntarily make their whereabouts known or subject themselves to additional jail time. That's what this bill is about. It's that simple.

The victims and victims' families have dealt with the pain and anguish imposed on them by these sexual offenders and predators. But instead of lying down, they are standing up for imposing common-sense rules on those who have taken the life and liberty of the most innocent and defenseless among us. They are standing up for tough sentences against those who won't abide by these very simple rules. They are standing up to say that together we are stronger.

Prior to 1994 just five states required convicted sex offenders to register their address with local law enforcement. Today there are over 549,000 registered sex offenders in the United States. Unfortunately, most of these receive and serve limited sentences and roam unchecked and unknown in our communities. Their crimes are heinous and they have a high risk of repeating their crimes on innocent children.

Under this Act, sex offenders and predators will be required to register in person, versus mailing in a letter. They will be required to wear a tracking device while they are on probation for a first-time offense—and wear it for life if they choose to repeat their crimes.

This Act enables states to offer citizens a searchable, statewide sex offender registry that interacts with all other states to provide seamless registration and notification across the country.

The Sex Offender Notification and Registration Act will strengthen and unite cities, communities and states in the effort to stop the assault on American children. This bill has a companion bill in the House, sponsored by Congressman MARK FOLEY and Congressman BUD CRAMER. I invite you to join Senator BIDEN and me as we close the gaping holes that keep our children at risk.

By Mr. ALEXANDER (for himself and Mr. SCHUMER):

S. 1087. A bill to amend section 337 of the Immigration and Nationality Act to prescribe the oath or affirmation of renunciation and allegiance required to be naturalized as a citizen of the United States; to the Committee on the Judiciary.

Mr. ALEXANDER. Today I am introducing legislation to address an important statement on what it means to be a citizen of the United States: the Oath of Allegiance, to which all new citizens swear in court when they are naturalized.

In the last session of Congress, I introduced legislation to enshrine the Oath of Allegiance in law. I was joined in that effort by 34 colleagues, including the Senator from New York, Mr.

SCHUMER, as the lead cosponsor. That legislation was introduced, in part, in response to reports that the Bureau of Citizenship and Immigration Services, or BCIS, an agency of the Department of Homeland Security, may have been planning to change the Oath of Allegiance that immigrants take to become a citizen of this nation. Other Senators and I felt the proposed language, as reported in the press, would have weakened the Oath.

Today, I introduce a bill that puts forward a compromise that I hope everyone can support. I am again grateful to be joined in this effort by the senior Senator from New York. This bill introduces a modified Oath of Allegiance that is just as strong as the current one, but that uses more modem language.

I was surprise to learn that Congress has never voted on the content of this Oath. We have left it to Federal regulators. That's not how we treat other symbols of our Nation or other statements on what it means to be an American.

For example, the American Flag, with its 50 stars—one for each State—and 13 stripes for the original colonies, cannot be altered by Federal regulation. The only way a star gets added is when Congress acts to admit a new state. And we've never changed the 13 stripes since the flag was first adopted in 1777.

The Pledge of Alliance, which we repeat each morning in the United States Senate, can't be altered by Federal regulation. The Pledge is a statement of some of the values of the American Creed: ''one nation, under God, indivisible, with liberty and justice for all.'' What if a Federal agency decided we should take out justice, just saying ''with liberty for all''? It can't happen: because the Pledge can only be altered by Act of Congress, as it last was in 1954 when the phrase ''under God'' was added.

The National Motto ''In God We Trust,'' which appears on all our coins and dollar bills, can't be altered by Federal regulation. It is a fundamental statement of the religious character of the American people—even though we don't permit and don't want the establishment of state religion. The Treasury Department can't decide to leave the motto off the next dollar bill it prints because the motto was adopted by Congress—at first in 1864 to be printed on the 2-cent piece, an later as the official National Motto in 1956.

Our National Anthem, the Star Spangled Banner, can't be changed by Federal regulation. It, too, is a statement of our values, declaring our country ''the land of the free and the home of the brave.'' If a government agency decided it preferred America the Beautiful, or the Battle Hymn of the Republic, or God Bless America, all of which are great songs, the agency would have to ask Congress to act. Why? Because the Star Spangled Banner was named our National Anthem by law in 1931.

Likewise, the Oath of Allegiance should not be altered lightly—by a government agency, without public comment, and without approval from Congress. Of the five symbols and statements I've described—the Flag, the Anthem, the Pledge, the Motto, and the Oath, only the Oath of Allegiance is legally binding on those who take it. New citizens must take it, and they must sign it.

On September 11, 2003, when I spoke about my legislation, I said:

> To be clear, I have no objection to others proposing modifications to the Oath of Allegiance that we use today. . . . perhaps ways can be found to make it even stronger.
>
> Still, let's make sure any changes have the support of the people as represented by Congress. The Oath of Allegiance is a statement of the commitments required of new citizens. Current citizens, through their elected representatives, ought to have a say as to what those commitments are. That's a lesson in democracy. A legally binding statement on American citizenship ought to reflect American values, including democracy.

It is in that spirit that I offer this compromise language that prescribes an updated but very strong Oath of Allegiance. This is the right way to go forward in considering any changes, and, I hope, will allow us to finally enshrine this statement of what it means to be an American in law.

By Mr. KYL:

S. 1088. A bill to establish streamlined procedures for collateral review of mixed petitions, amendments, and defaulted claims, and for other purposes; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I rise today to introduce the Streamlined Procedures Act. This legislation will reduce delays in federal courts' review of habeas corpus petitions filed by State prisoners.

Currently, many Federal habeas corpus cases require 10, 15, or even 20 years to complete. These delays burden the courts and deny justice to defendants with meritorious claims. They also are deeply unfair to victims of serious, violent crimes. A parent whose child has been murdered, or someone who has been the victim of a violent assault, cannot be expected to ''move on'' without knowing how the case against the attacker has been resolved. Endless litigation, and the uncertainty that it brings, is unnecessarily cruel to these victims and their families. As President Clinton noted of the 1996 habeas-corpus reforms, ''it should not take eight or nine years and three trips to the Supreme Court to finalize whether a person in fact was properly convicted or not.'' For the sake of all parties, we should minimize these delays.

The 1996 habeas corpus reforms were supposed to prevent delays in Federal collateral review. Unfortunately, as the Justice Department noted in testimony before the House Crime Subcommittee in March 2003, there still are ''significant gaps [in the habeas corpus statutes] . . . which can result in highly protracted litigation, and some of the reforms that Congress did adopt in 1996 have been substantially undermined in judicial application.''

The Streamlined Procedures Act is designed to fill some of these gaps. First, the SPA imposes reasonable but firm time limits on court of appeals' review of Federal habeas petitions. It requires a court of appeals to decide a habeas appeal within 300 days of the completion of briefing, to rule on a petition for rehearing within 90 days, and to decide a case on rehearing within 120 days before the same panel, or 180 days before an en banc court.

As generous as these time limits are, they would make a real difference in some cases. In Morales v. Woodford, 336 F.3d 1136, 9th Cir. 2003, for example, the Ninth Circuit took 3 years to decide the case after briefing was completed. And after issuing its decision, the court took another 16 months to reject a petition for rehearing. Similarly, in Williams v. Woodford, 306 F.3d 665, 9th Cir. 2002, the court waited 25 months to decide the case—and then waited another 27 months to reject a petition for rehearing, for a total delay of almost 4½ years after appellate briefing had been completed. This is too long for either defendants or victims to have to wait.

The SPA also bars courts of appeals from rehearing successive-petition applications on their own motion—current law bars petitions for rehearing or certiorari for such applications, but some courts have interpreted this restriction to not preclude rehearing by the court of appeals sua sponte. The SPA also bars Federal courts from tolling the current 1-year deadline on filing habeas claims for reasons other than those authorized by the statute, and clarifies when a State appeal is pending for purposes of tolling the deadline.

In addition, the SPA creates uniform, clear procedures for review of procedurally improper claims. Current judicial caselaw creates a series of different standards for addressing claims in a Federal petition that were not exhausted in state court, that were presented in a late amendment, or that were procedurally defaulted. The SPA sets a uniform standard, allowing procedurally improper claims to go forward only if they present meaningful evidence that the defendant did not commit the crime, with all other improper claims barred.

The SPA also expands and improves the special expedited habeas procedures authorized in chapter 154 of the United States Code. These procedures are available to States that establish a system for providing high-quality legal representation to capital defendants. Chapter 154 sets strict time limits on Federal court action and places limits on claims. Currently, however, the court that decides whether a State is eligible for chapter 154 is the same court that would be subject to its time limits. Unsurprisingly, these courts

have proven resistant to chapter 154. The SPA would place the eligibility decision in the hands of a neutral party—the U.S. Attorney General, with review of his decision in the DC Circuit, which does not hear habeas appeals. The SPA also makes chapter 154's deadlines more practical by limiting the claims that can be raised under its provisions to those presenting meaningful evidence that the defendant did not commit the crime, and by extending the time for a district court to review and rule on a chapter 154 petition from 6 months to 15 months.

The SPA also eliminates duplicative Federal review of minor sentencing errors that already have been judged by State courts to be harmless or not prejudicial. It limits Federal courts to asking only whether the type of sentencing error at issue is one that could not have been harmless.

The SPA also applies the deferential review standard enacted in the 1996 reforms to all pending cases. Remarkably, some current habeas petitions still are not governed by the 1996 reforms. The SPA corrects this oversight, ending the need to apply the pre-1996 legal regime to any cases that still are being litigated today.

And finally, the SPA limits judicial review of State clemency and pardon decisions, guaranteeing that a State won't be sued for formalizing and regularizing its pardon procedures; it limits defendants' ability to ask Federal courts for investigatory funds without allowing prosecutors to be present and rebut defense allegations; and it guarantees a crime victim's right to be notified of, to be present at, and to speak at a criminal defendant's Federal habeas hearing.

To many people, the issues addressed by the SPA—petitions for rehearing, State remedies exhaustion, procedural default, chapter 154, AEDPA deference—may seem abstract and remote. For surviving crime victims, however, these matters can be very concrete.

A case recently in the news illustrates the importance of these concerns: that of the man who murdered three member of the Ryen family and Christopher Hughes in Chino Hills, California in June 1983. The killer in that case was an escaped convict from a nearby prison. He has since admitted that he spent 2 days hiding in a vacant house next to the home of the Ryen family. After several unsuccessful telephone calls to friends asking them to give him a ride, the killer took a hatchet and buck knife from the vacant house and set out to find a vehicle. The California Supreme Court describes the rest of what occurred, 53 Cal.3d 771, 794–95:

On Saturday, June 4, 1983, the Ryens and Chris Hughes attended a barbecue in Los Serranos, a few miles from the Ryen home in Chino. Chris had received permission to spend the night with the Ryens. Between 9 and 9:30 p.m., they left to drive to the Ryen home. Except for Josh [the Ryen's 8-year-old son], they were never seen alive again.

The next morning, June 5, Chris's mother, Mary Hughes, became concerned when he did not come home. A number of telephone calls to the Ryen residence received only busy signals. [Mary's husband] William went to the Ryen home to investigate.

William observed the Ryen truck at the home, but not the family station wagon. Although the Ryens normally did not lock the house when they were home, it was locked on this occasion. William walked around the house trying to look inside. When he reached the sliding glass doors leading to the master bedroom, he could see inside. William saw the bodies of his son and Doug and Peggy Ryen on the bedroom floor. Josh was lying between Peggy and Chris. Only Josh appeared alive.

William frantically tried to open the sliding door; in his emotional state, he pushed against the fixed portion of the doors, not the sliding door. He rushed to the kitchen door, kicked it in, and entered. As he approached the master bedroom, he found Jessica on the floor, also apparently dead. In the bedroom, William touched the body of his son. It was cold and stiff. William asked Josh who had done it. Josh appeared stunned; he tried to talk but could only make unintelligible sounds.

William tried to use a telephone in the house but it did not work. He drove to a neighbor's house seeking help. The police arrived shortly. Doug, Peggy, Chris, and Jessica were dead, the first three in the master bedroom, Jessica in the hallway leading to that bedroom. Josh was alive but in shock, suffering from an obvious neck wound. He was flown by helicopter to Loma Linda University Hospital.

The victims died from numerous chopping and stabbing injuries. Doug Ryen had at least 37 separate wounds, Peggy 32, Jessica 46, and Chris 25. The chopping wounds were inflicted by a sharp, heavy object such as a hatchet or axe, the stabbing wounds by a weapon such as a knife.

The escaped prisoner who committed this crime was caught 2 months later. Again, he admitted that he stayed in the house next door, but denied any involvement in the murders. According to the California Supreme Court, however, the evidence of defendant's guilt was ''overwhelming.'' Not only had the defendant stayed at the vacant house right next door at the time of the murders; the hatchet used in the murders was taken from the vacant house; shoe prints in the Ryen house matched those in the vacant house and were from a type of shoe issued to prisoners; bloody items, including a prison-issue button, were found in the vacant house; prison-issue tobacco was found in the Ryen station wagon, which was recovered in Long Beach; and defendant's blood type and hair matched that found in the Ryen house. Defendant was convicted of the murders and sentenced to death in 1985, and the California Supreme Court upheld the defendant's conviction and sentence in 1991.

The defendant's Federal habeas proceedings began shortly thereafter, and they continue to this day—22 years after the murders. In 2000, the defendant asked the courts for DNA testing of a blood spot in the Ryen house, a t-shirt near the crime scene, and the tobacco found in the car. Despite the overwhelming evidence of his guilt, the courts allowed more testing. All three tests found that the blood and saliva matched defendant, to a degree of certainty of one in 320 billion. Blood on the t-shirt matched both the defendant and one of the victims.

One might have thought that this would end the case. Not so. In February 2004, the en banc Ninth Circuit sua sponte authorized defendant to file a second habeas petition to pursue theories that police had planted this DNA evidence. Since the evidence had been in court custody since 1983, the Ninth Circuit's theory not only required police to plan and execute a vast conspiracy to plant the evidence—it also required them to foresee the future invention of the DNA technology that would make that evidence useful in future habeas proceedings.

The Streamlined Procedures Act would have made a difference in this case. For example, it would have eliminated the need to return to state court to exhaust new claims, reducing the delay in the Federal proceedings by nearly 3 years. It would have applied the 1996 reforms to this case, allowing deferential review of state factual findings and legal analysis. It would have placed time limits on Federal appeals court decisionmaking and grants of rehearing. And it would have prevented the court of appeals from ordering rehearing of the defendant's successive-petition application on its own motion, thereby barring the current round of O.J. Simpson-style conspiracy-theory litigation. The SPA could have brought this case to closure a long time ago.

And this case deserves to be brought to closure. One cannot underestimate the grievous impact that crimes like these have on the families of the victims. Mary Hughes, the mother of 11-year-old Christopher Hughes, who was sleeping over at the Ryen house on the night of the murders, has spoken movingly of the loss of her son:

Christopher Hughes loved his bicycle, swimming and showing off for his mom and dad.

The 11-year-old's bedroom was filled with swimming trophies and Star Wars collectibles. He was a handsome kid who was chased by a lot of fifth-grade girls on the playground during recess at Our Lady of the Assumption in Claremont.

He wasn't short on friends, either.

Christopher really liked Joshua Ryen, an 8-year-old boy who lived up the street from him. They would trick-or-treat together on Halloween, play together, and their parents were good friends.

On the night of June 4 1983, Christopher asked his parents if he could spend the night at the Ryen house.

It was a decision that would change the Hughes family forever.

[Mary Hughes'] son Christopher would have been 32 today. She sometimes wonders who he would have been, what he would've looked like, and even during her most solemn moments, she wonders what life would've been like if Cooper had never gone to the Ryens' house.

''It never really ever gets better,'' she said. ''Kevin Cooper robbed him of the chance to be a child, to attend his first dance, to have a girlfriend, and to one day get married and

have kids of his own. He robbed me of my child.''

Mary Ann Hughes does have one special memory of her son she holds close to her heart. A week before his death, she took him to see the movie ''Return of the Jedi.''

''He was so happy. It was such a great day,'' she said. ''It seems like such a small thing, but it's the best memory I have of both of us.'' (Sara Carter, ''He Was at the Beginning of His Life When He Died,'' Inland Valley Daily Bulletin, February 9, 2004.)

In light of how much the surviving family already has suffered, one might expect that all participants in the criminal proceedings would take great concern and care for the feelings of the family. Unfortunately, that has not been the case. The Ninth Circuit has proved willing to turn the appeals into a three-ring circus, allowing continual pursuit of the most frivolous conspiracy theories. The impact of these now 22 years of trial and appeals on the victims' families has been predictable: they feel that they and the victims have become irrelevant to the entire process. Shortly after the Ninth Circuit authorized an additional round of appeals in this case, a local newspaper described what the families have experienced:

For nearly 20 years, since convicted murderer Kevin Cooper was sentenced to death for the 1983 slayings of a Chino Hills family and their young houseguest, families of the victims have waited silently for the day the hand of justice would grant them peace.

For those families, the last two decades have seemed like an eternity.

''I lived through a nightmare,'' said Herbert Ryen, whose brother Douglas Ryen was among those killed, along with Douglas' wife Peggy, their 11-year-old daughter Jessica, and her 10-year-old friend Christopher Hughes.

[O]n the morning of Feb. 9, [2004,] the day of Cooper's scheduled death by lethal injection, word came down that the 9th U.S. Circuit Court of Appeals had decided to block the execution.

[T]o the Ryen and Hughes families, the stay just hours before Cooper's scheduled execution at San Quentin State Prison was nearly incomprehensible. The indefinite delay has left them in a sort of emotional limbo, questioning whether the legal system had abandoned them.

''The bottom line is that this whole issue is not about Kevin Cooper . . . it is about the death penalty,'' said Mary Ann Hughes, the mother of Christoper Hughes. ''We're so mad—mad because we feel as though the courts turned their back on my son.''

''They (Court of Appeals) are holding us hostage,'' Hughes said.

For Herbert Ryen and his wife Sue, waiting for justice has taken an equally destructive toll on their lives. The torment their family experienced following the murders, and the subsequent years lost to depression, could never be replaced, he said from his home in Arizona.

Mary Ann Hughes said the pain her family suffers is only amplified by the seemingly continuous bombardment of celebrities campaigning against Cooper's execution. She wonders who will cry out in anger for the victims.

One former television star and anti-death penalty activist, Mike Farrell of the popular series MASH, spoke of the case on a recent news program.

''He claimed that we must feel relieved since the stay of execution was granted,'' Hughes said. ''How can (Farrell) have the audacity to say he knows what we are feeling?''

Farrell could not be reached for comment.

Since Christopher's death, the Hughes family has chosen to remain out of the media spotlight. And until recently, their efforts were successful, due largely to the support of their surviving children, family members and a strong network of close friends, Hughes said.

The court's decision Feb. 9 has re-opened the case, forcing the families to re-live the nightmare they have fought so hard to leave behind, they say.

Mary Ann Hughes is left wondering about other families who have had loved ones taken from them, about the legal battles they have had to endure in their own quests for justice.

She thinks of the parents of Samantha Runion, the 5-year-old Orange County girl who was murdered in 2003, and of what her family could face in the next 20 years.

For Bill Hughes, the anguish is intensified—he will forever know the pain of walking into the Ryens' home the morning after the murders, and finding his son, dead and covered in blood near the Ryens' bedroom door. He was also the first to discover Joshua Ryen, also drenched in blood, clinging to life.

''It is a memory he will always have to live with,'' Mary Ann Hughes said.

Indeed, time has been no friend to the victims' families, as California's recent appellate court ruling has further denied them closure, she added.

''What this decision has done to our legal system in California is unthinkable,'' she said. ''Somewhere along the line, the courts have got to uphold the law, and we will wait it out until they do.'' (Sara Carter, ''Families of Murder Victims Wait for Justice in Cooper Case,'' Inland Valley Daily Bulletin, February 24, 2004.)

Mary Hughes' story demonstrates why the use of Federal judicial power must be measured and fair it illustrates the heavy cost imposed by judicial excess.

No statement, however, better explains the gross cruelty caused by allowing endless litigation and appeals in a case like this than that given by one of the surviving victims of the 1983 attack. Josh Ryen was 8 years old when he was stabbed in his parents' bedroom and his parents and sister were murdered. He is now 30 years old. On April 22, 2005, he gave a statement pursuant to the recently enacted Crime Victims' Rights Act in the federal habeas corpus hearing for his parents and sister's killer. I will close my remarks by asking unanimous consent that Josh Ryen's statement be printed in the RECORD.

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

STATEMENT OF JOSHUA RYEN, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SAN DIEGO

APRIL 22, 2005.—The first time I met Kevin Cooper I was 8 years old and he slit my throat. He hit me with a hatchet and put a hole in my skull. He stabbed me twice, which broke my ribs and collapsed one lung. I lived only because I stuck four fingers in my neck to slow the bleeding, but I was too weak to move. I laid there 11 hours looking at my mother who was right beside me.

I know now he came through the sliding glass door and attacked my dad first. He was lying on the bed and was struck in the dark without warning with the hatchet and knife. He was hit many times because there is a lot of blood on the wall on his side of the bed.

My mother screamed and Cooper came around the bed and started hitting her. Somehow my dad was able to struggle between the bed and the closet but Cooper bludgeoned my father to death with the knife and hatchet, stabbing him 26 times and axing him 11. One of the blows severed his finger and it landed in the closet. My mother tried to get away but he caught her at the bottom of the bed and he stabbed her 25 times and axed her 7.

All of us kids were drawn to the room by mom's screams. Jessica was killed in the doorway with 5 ax blows and 46 stabs. I won't say how many times my best friend Chris was stabbed and axed, not because it isn't important, but because I don't want to hurt his family in any way, and they are here.

After Cooper killed everyone, and thought he had killed me, he went over to my sister and lifted her shirt and drew things on her stomach with the knife. Then he walked down the hallway, opened the refrigerator, and had a beer. I guess killing so many people can make a man thirsty.

I don't want to be here. I came because I owe it to my family, who can't speak for themselves. But by coming I am acknowledging and validating the existence of Kevin Cooper, who should have been blotted from the face of the earth a long time ago. By coming here it shows that he still controls me. I will be free, my life will start, the day Kevin Cooper dies. I want to be rid of him, but he won't go away.

I've been trying to get away from him since I was 8 years and I can't escape. He haunts me and follows me. For over 20 years all I've heard is Kevin Cooper this and Kevin Cooper that. Kevin Cooper says he is innocent, Kevin Cooper says he was framed, Kevin Cooper says DNA will clear him, Kevin Cooper says blood was planted, Kevin Cooper says the tennis shoes aren't his, Kevin Cooper says three guys did it, Kevin Cooper says police planted evidence, Kevin Cooper gets another stay from another court and sends everyone off on another wild goose chase.

The courts say there isn't any harm when Kevin Cooper gets another stay and another hearing. This just shows they don't care about me, because every time he gets another delay I am harmed and have to relive the murders all over again. Every time Kevin Cooper opens his mouth everyone wants to know what I think, what I have to say, how I'm feeling, and the whole nightmare floods all over me again: the barbecue, me begging to let Chris spend the night, me in my bed and him on the floor beside me, my mother's screams, Chris gone, dark house, hallway, bushy hair, everything black, mom cut to pieces saturated in blood, the nauseating smell of blood, eleven hours unable to move, light filtering in, Chris' father at the window, the horror of his face, sound of the front door splintering, my pajamas being cut off, people trying to save me, the whap whap of the helicopter blades, shouted questions, everything fading to black.

Every time Cooper claims he's innocent and sends people scurrying off on another wild goose chase, I have to relive the murders all over again. It runs like a horror movie, over and over again and never stops because he never shuts up. He puts PR people on national television who say outrageous things and then the press wants to know what I think. What I think is that I would like to be rid of Kevin Cooper. I would like for him to go away. I would like to never hear from Kevin Cooper again. I would like Kevin Cooper to pay for what he did.

I dread happy times like Christmas and Thanksgiving. If I go to a friend's house on

holidays I look at all the mothers and fathers and children and grandchildren and get sad because I have no one. Kevin Cooper took them from me.

I get terrified when I go into any place dark, like a house before the lights are on. I hear screams and see flashbacks and shadows. Even with lights on I see terrible things. After I was stabbed and axed I was too weak to move and stared at my mother all night. I smelled this overpowering smell of fresh blood and knew everyone had been slaughtered.

Every day when I comb my hair I feel the hole where he buried the hatchet in my head, and when I look in the mirror I see the scar where he cut my throat from ear to ear and I put four fingers in it to stop the bleeding which, they say, saved my life. Every year I lose hearing in my left ear where he buried the knife.

Helicopters give me flashbacks of life flight and my Incredible Hulks being cut off by paramedics. Bushy hair reminds me of the killer. Silence reminds me of the quiet before the screams. Cooper is everywhere. There is no escape from him.

I feel very guilty and responsible to the Hughes family because I begged them to let Chris spend the night. If I hadn't done that he wouldn't have died. I apologize to them and especially to Mr. Hughes for having to find us and see his son cut and stabbed to death.

I thank the judge who gave my grandma custody of me because she took good care of me and loves me very much.

I'm grateful to the ocean for giving me peace because when I go there I know my mother and father and sister's ashes are sprinkled there.

Kevin Cooper has movie stars and Jesse Jackson holding rallies for him, people carrying signs, lighting candles, saying prayers. To them and you I say:

I was 8 when he slit my throat,
It was dark and I couldn't see.
Through the night and day I laid there,
trying to get up and flee.
He killed my mother, father, sister, friend,
And started stalking me.
I try to run and flee from him but cannot get away,
While he demands petitions and claims, some fresh absurdity.
Justice has no ear for me nor cares about my plight,
while crowds pray for the killer and light candles in the night.
To those who long for justice and love truth which sets men free, When you pray
your prayers tonight, please remember me.

By Mr. AKAKA (for himself, Mr. COCHRAN, and Mr. DODD):

S. 1089. A bill to establish the National Foreign Language Coordination Council to develop and implement a foreign language strategy, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. AKAKA. Mr. President, today I rise to introduce the National Language Coordination Act of 2005 which provides a framework for leading and coordination the learning of foreign languages and cultures, with my good friends Senators COCHRAN and DODD.

The National Foreign Language Coordination Act would create the position of a National Language Director and a National Foreign Language Coordination Council to develop and oversee the implementation of a foreign language strategy. The proposed Council, chaired by the National Language Director, would identify crucial priorities, increase public awareness of the need for foreign language skills, advocate maximum use of resources, coordinate cross-sector efforts, and monitor the foreign language activities of the Federal Government.

The genesis of this legislation is a report entitled, ''A Call to Action for National Foreign Language Capabilities,'' issued by the National Language Conference held in June 2004 under the auspices of the Department of Defense. This conference was an extraordinary gathering of government, industry, academia, and language association representatives. The mission of this meeting was twofold: to discuss and deliberate initial strategic approaches to meeting the nation's language needs in the 21st century, and to identify actions that could move the United States toward a ''language-competent nation.'' It was hosted by the Office of the Under Secretary of Defense for Personnel and Readiness and by the Center for Advanced Study of Language (CASL) at the University of Maryland at College Park.

I ask unanimous consent that the executive summary of the report, ''A Call to Action for National Foreign Language Capabilities,'' be printed in the RECORD following my remarks.

I believe the recommendations of this report speak eloquently to the need for this legislation. As Dr. David Chu, Undersecretary of Defense for Personnel and Readiness, notes in his forward to the report, ''improving the nation's foreign language capability requires immediate and long-term engagement.''

The intent of this legislation is to ensure that immediate and long-term engagement.

The establishment of a National Language Director and the creation of a National Foreign Language Coordination Council will ensure that the key recommendations of the Department of Defense sponsored conference will be implemented, which include: developing policies and programs that build the nation's language and cultural understanding capability; engaging federal, state, and local agencies and the private sector in solutions; developing language and cultural competency across public and private sectors; developing language skills in a wide range of critical languages; strengthening our education system, programs, and tools in foreign languages and cultures; and integrating language training into career fields and increase the number of language professionals.

The terrorist attacks of September 11, 2001, showed how much more was needed to improve education in these critical areas. The investigations surrounding the attacks have underscored how important foreign language proficiency is to our national security. The Joint Intelligence Committee inquiry into the terrorist attacks found that prior to September 11, the Intelligence Community was not prepared to handle the challenge of translating the volumes of foreign language counter-terrorism intelligence that had been collected. Agencies within the Intelligence Community experienced backlogs in material awaiting translation and a shortage of language specialists and language-qualified field officers in the most critical terrorism-related languages used by terrorists.

America needs people who understand foreign cultures and who are fluent in locally-spoken languages. The stability and economic vitality of the United States and our national security depend on American citizens who are knowledgeable about the world. We need civil servants, including law enforcement officers, teachers, area experts, diplomats, and business people with the ability to communicate at an advanced level in the languages and understand the cultures of the people with whom they interact.

Experts tell us we should develop long-term relationships with people from every walk of life all across the world, whether or not the languages they speak are considered critical for a particular issue or emergency.

They are right.

As then-Deputy Secretary of Defense Paul Wolfowitz noted at the National Language Conference, ''The greater our ability to communicate with people, the easier the burden on our troops and the greater the likelihood that we can complete our missions and bring our people home safely. Even better, the greater our linguistic skill, the greater the possibility that we can resolve international differences and achieve our objectives without having to use force.''

I am proud of my own State of Hawaii, whose language patterns reflect that we are a mixing pot of varying cultures. According to the 2000 Census, more than 300,000 people or about 27 percent of those five years and older spoke a language other than English at home. This is compared to about 18 percent nationwide. Language education offerings to improve conversational proficiency with formal training in non-English languages are working to keep pace with increased demand. In addition, enrollments in foreign language courses at the University of Hawaii have been markedly increasing—a trend that I am gratified to see happening across the country. But more needs to be done both in Hawaii and the rest of the country.

I am a passionate believer in beginning these programs at the earliest age possible. Americans need to be open to the world; we need to be able to see the world through the eyes of others if we are going to understand how to resolve the complex problems we face.

The need to hear and understand one another is timeless and essential.

An ongoing commitment to developing language and cultural expertise

helps prevent a crisis from occurring and provides diplomatic and language resources when needed. We cannot afford to seek out foreign language skills after an event like 9/11 occurs. The failures of communication and understanding have already done their damage. We must provide an ongoing commitment to language education and encourage knowledge of foreign languages and cultures.

The answer is simple. If we are committed to maintaining these relationships and creating a language proficient citizenry, we must have leadership. The National Foreign Language Coordination Act will provide this leadership and ensure that we are aware and involved in the world around us.

I ask unanimous consent that the text of the bill be printed in the RECORD.

I urge my colleagues to support this important legislation.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

EXECUTIVE SUMMARY—A CALL TO ACTION AND LEADERSHIP

Vision: Our vision is a world in which the United States is a stronger global leader through proficiency in foreign languages and understanding of the cultures of the world. These abilities are strengths of our public and private sectors and pillars of our educational system. The government, academic, and private sectors contribute to, and mutually benefit from, these national capabilities.

The terrorist attacks of September 11th, the Global War on Terrorism, and the continued threat to our Homeland have defined the critical need to take action to improve the foreign language and cultural capabilities of the Nation. We must act now to improve the gathering and analysis of information, advance international diplomacy, and support military operations. We must act to retain our global market leadership and succeed against increasingly sophisticated competitors whose workforces possess potent combinations of professional skills, knowledge of other cultures, and multiple language proficiencies. Our domestic well-being demands action to provide opportunities for all students to learn foreign languages important for the Nation, develop the capabilities of our heritage communities, and ensure services that are core to our quality of life.

Success in this crucial undertaking will depend on leadership strong enough to:

Implement policies, programs, and legislation that build the national language and cultural understanding capability;

Engage Federal, state, and local agencies and the private sector in solutions;

Develop language and cultural competency across public and private sectors;

Develop language skills in a wide range of critical languages;

Strengthen our education system, programs, and tools in foreign languages and cultures; and

Integrate language training into career fields and increase the number of language professionals, especially in the less commonly taught languages.

Leadership must be comprehensive, as no one sector—government, industry, or academia—has all of the needs for language and cultural competency, or all of the solutions. Some actions must be initiated immediately by specific agencies and Federal Departments should organize to work on proposed recommendations. Other necessary solutions must be long-term, strategic, and '' involve multiple organizations in all levels. To accomplish this agenda, the Nation needs:

A National Language Authority appointed by the President to develop and implement a national foreign language strategy;

A National Foreign Language Coordination Council to coordinate implementation of the national foreign language strategy.

This is the Call to Action to move the Nation toward a 21st century vision.

S. 1089

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Foreign Language Coordination Act of 2005''.

SEC. 2. FINDINGS.

Congress finds that—

(1) there is a severe shortage of qualified language professionals, including teachers, translators, and interpreters, especially in less commonly taught languages, across the United States;

(2) Federal, State, and local governments need individuals with bilingual and bicultural capabilities, including—

(A) diplomats;

(B) defense and intelligence analysts;

(C) military personnel;

(D) foreign language instructors;

(E) health professionals;

(F) medical and social services providers;

(G) court interpreters;

(H) translators; and

(I) law enforcement officers;

(3) deficiencies in the national language capabilities have—

(A) undermined cross-cultural communication and understanding at home and abroad;

(B) restrained social mobility;

(C) lessened national commercial competitiveness;

(D) limited the effectiveness of public diplomacy;

(E) restricted justice and government services to sectors of society; and

(F) threatened national security;

(4) ample resources are not available to develop language and cultural capabilities in all of the world's languages, requiring prioritization of such resources; and

(5) a National Foreign Language Coordination Council and a National Language Director can help to raise public awareness and provide top-down coordination and direction.

SEC. 3. ESTABLISHMENT OF THE NATIONAL FOREIGN LANGUAGE COORDINATION COUNCIL.

(a) ESTABLISHMENT.—There is established the National Foreign Language Coordination Council (referred to as the ''Council'' in this Act), which shall be an independent establishment as defined under section 104 of title 5, United States Code.

(b) MEMBERSHIP.—The Council shall consist of the following members or their designees:

(1) The National Language Director, who shall serve as the chairperson of the Council.

(2) The Secretary of Education.

(3) The Secretary of Defense.

(4) The Secretary of State.

(5) The Secretary of Homeland Security.

(6) The Attorney General.

(7) The Director of National Intelligence.

(8) The Secretary of Labor.

(9) The Director of the Office of Personnel Management.

(10) The Director of the Office of Management and Budget.

(11) The Secretary of Commerce.

(12) The Secretary of Health and Human Services.

(13) The Secretary of the Treasury.

(14) The Secretary of Housing and Urban Development.

(15) The Secretary of Agriculture.

(16) The heads of such other Federal agencies as the Council considers appropriate.

(c) RESPONSIBILITIES.—

(1) IN GENERAL.—The Council shall be charged with—

(A) developing a national foreign language strategy within 18 months of the date of enactment of this Act; and

(B) overseeing the implementation of such strategy.

(2) STRATEGY CONTENT.—The strategy developed under paragraph (1) shall include—

(A) identification of crucial priorities across all sectors;

(B) identification and evaluation of Federal foreign language programs and activities, including—

(i) recommendations on coordination;

(ii) program enhancements; and

(iii) allocation of resources so as to maximize use of resources;

(C) needed national policies and corresponding legislative and regulatory actions in support of, and allocation of designated resources to, promising programs and initiatives at all levels (Federal, State, and local), especially in the less commonly taught languages that are seen as critical for national security and global competitiveness in the next 20 to 50 years;

(D) effective ways to increase public awareness of the need for foreign language skills and career paths in all sectors that can employ those skills, with the objective of increasing support for foreign language study among—

(i) Federal, State, and local leaders;

(ii) students;

(iii) parents;

(iv) elementary, secondary, and postsecondary educational institutions; and

(v) potential employers;

(E) incentives for related educational programs, including foreign language teacher training;

(F) coordination of cross-sector efforts, including public-private partnerships;

(G) coordination initiatives to develop a strategic posture for language research and recommendations for funding for applied foreign language research into issues of national concern;

(H) assistance for—

(i) the development of foreign language achievement standards; and

(ii) corresponding assessments for the elementary, secondary, and postsecondary education levels, including the National Assessment of Educational Progress in foreign languages;

(I) development of—

(i) language skill-level certification standards;

(ii) an ideal course of pre-service and professional development study for those who teach foreign language;

(iii) suggested graduation criteria for foreign language studies and appropriate non-language studies, such as—

(I) international business;

(II) national security;

(III) public administration; and

(IV) health care; and

(J) identification of and means for replicating best practices at all levels and in all sectors, including best practices from the international community.

(d) MEETINGS.—The Council may hold such meetings, and sit and act at such times and places, as the Council considers appropriate, but shall meet in formal session at least 2 times a year. State and local government agencies and other organizations (such as

academic sector institutions, foreign language-related interest groups, business associations, industry, and heritage community organizations) shall be invited, as appropriate, to public meetings of the Council at least once a year.

(e) STAFF.—

(1) IN GENERAL.—The Director may appoint and fix the compensation of such additional personnel as the Director considers necessary to carry out the duties of the Council.

(2) DETAILS FROM OTHER AGENCIES.—Upon request of the Council, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Council.

(3) EXPERTS AND CONSULTANTS.—With the approval of the Council, the Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(f) POWERS.—

(1) DELEGATION.—Any member or employee of the Council may, if authorized by the Council, take any action that the Council is authorized to take in this Act.

(2) INFORMATION.—The Council may secure directly from any Federal agency such information the Council considers necessary to carry out its responsibilities. Upon request of the Director, the head of such agency shall furnish such information to the Council.

(3) DONATIONS.—The Council may accept, use, and dispose of gifts or donations of services or property.

(4) MAIL.—The Council may use the United States mail in the same manner and under the same conditions as other Federal agencies.

(g) CONFERENCES, NEWSLETTER, AND WEBSITE.—In carrying out this Act, the Council—

(1) may arrange Federal, regional, State, and local conferences for the purpose of developing and coordinating effective programs and activities to improve foreign language education;

(2) may publish a newsletter concerning Federal, State, and local programs that are effectively meeting the foreign language needs of the nation; and

(3) shall create and maintain a website containing information on the Council and its activities, best practices on language education, and other relevant information.

(h) REPORTS.—Not later than 90 days after the date of enactment of this Act, and annually thereafter, the Council shall prepare and transmit to the President and Congress a report that describes the activities of the Council and the efforts of the Council to improve foreign language education and training and impediments, including any statutory and regulatory restrictions, to the use of each such program.

SEC. 4. ESTABLISHMENT OF A NATIONAL LANGUAGE DIRECTOR.

(a) IN GENERAL.—There is established a National Language Director who shall be appointed by the President. The National Language Director shall be a nationally recognized individual with credentials and abilities across all of the sectors to be involved with creating and implementing long-term solutions to achieving national foreign language and cultural competency.

(b) RESPONSIBILITIES.—The National Language Director shall—

(1) develop and oversee the implementation of a national foreign language strategy across all sectors;

(2) establish formal relationships among the major stakeholders in meeting the needs of the Nation for improved capabilities in foreign languages and cultural understanding, including Federal, State, and local government agencies, academia, industry, labor, and heritage communities; and

(3) coordinate and lead a public information campaign that raises awareness of public and private sector careers requiring foreign language skills and cultural understanding, with the objective of increasing interest in and support for the study of foreign languages among national leaders, the business community, local officials, parents, and individuals.

(c) COMPENSATION.—The National Language Director shall be paid at a rate of pay payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

SEC. 5. ENCOURAGEMENT OF STATE INVOLVEMENT.

(a) STATE CONTACT PERSONS.—The Council shall consult with each State to provide for the designation by each State of an individual to serve as a State contact person for the purpose of receiving and disseminating information and communications received from the Council.

(b) STATE INTERAGENCY COUNCILS AND LEAD AGENCIES.—Each State is encouraged to establish a State interagency council on foreign language coordination or designate a lead agency for the State for the purpose of assuming primary responsibility for coordinating and interacting with the Council and State and local government agencies as necessary.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as necessary to carry out this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 149—HONORING THE LIFE AND CONTRIBUTIONS OF HIS EMINENCE, ARCHBISHOP IAKOVOS, FORMER ARCHBISHOP OF THE GREEK ORTHODOX ARCHDIOCESE OF NORTH AND SOUTH AMERICA

Ms. SNOWE (for herself and Mr. SARBANES) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 149

Whereas His Eminence, Archbishop Iakovos, former archbishop of the Greek Orthodox Archdiocese of North and South America and spiritual leader of Greek Orthodox Christians in the Western Hemisphere from 1959 to 1996, passed away at the age of 93 on April 10, 2005, in Stamford, Connecticut;

Whereas, when Archbishop Iakovos retired at the age of 85 on July 29, 1996, the Archbishop had given 37 years of outstanding service that were distinguished by his leadership in furthering religious unity, revitalizing Christian worship, and championing human and civil rights;

Whereas Archbishop Iakovos was born Demetrios A. Coucouzis on the tiny island of Imbros in the Aegean Sea to Maria and Athanasios Coucouzis on July 29, 1911;

Whereas Archbishop Iakovos enrolled in the Ecumenical Patriarchal Theological School at Halki at the age of 15;

Whereas, after graduating with high honors from Halki, Archbishop Iakovos was ordained deacon in 1934, taking the ecclesiastical name Iakovos;

Whereas 5 years after his ordination, Archbishop Iakovos received an invitation to serve as archdeacon to the late Archbishop Athenagoras, the primate of North and South America, who later became Ecumenical Patriarch of Constantinople;

Whereas in 1940, Archbishop Iakovos was ordained to the priesthood in Lowell, Massachusetts, beginning his service at St. George Church in Hartford, Connecticut, while teaching and serving as assistant dean of the Holy Cross Greek Orthodox Theological School, then in Pomfret, Connecticut, and now in Brookline, Massachusetts;

Whereas in 1941, Archbishop Iakovos was named preacher at Holy Trinity Cathedral in New York City, and in the summer of 1942 served as temporary dean of St. Nicholas Church in St. Louis, Missouri;

Whereas Archbishop Iakovos was appointed dean of the Annunciation Greek Orthodox Cathedral in Boston, Massachusetts, in 1942, and remained there until 1954;

Whereas in 1945, Archbishop Iakovos earned a Master of Sacred Theology Degree from Harvard University;

Whereas Archbishop Iakovos became a United States citizen in 1950;

Whereas in 1954, Archbishop Iakovos was ordained Bishop of Melita by his spiritual father and mentor, Ecumenical Patriarch Athenagoras, for whom he served four years as personal representative of the Patriarchate to the World Council of Churches in Geneva;

Whereas on February 14, 1959, the Holy Synod of the Ecumenical Patriarchate elected Archbishop Iakovos to succeed Archbishop Michael as primate of the Greek Orthodox Church in the Americas;

Whereas Archbishop Iakovos was enthroned April 1, 1959, at Holy Trinity Cathedral in New York City, assuming responsibility for a jurisdiction that has grown to be over 500 parishes in the United States alone;

Whereas the enthronement of Archbishop Iakovos in 1959 ushered in a new era for the Greek Orthodox Church in America, in which the Church became part of the mainstream of American religious life;

Whereas in 1959, shortly after being named archbishop, Archbishop Iakovos held a historic meeting with Pope John XXIII, becoming the first Greek Orthodox Archbishop to meet with a Roman Catholic Pope in 350 years;

Whereas Archbishop Iakovos was a dynamic participant in the contemporary ecumenical movement for Christian unity, serving for nine years as President of the World Council of Churches and piloting Inter-Orthodox, Inter-Christian, and Inter-Religious dialogues;

Whereas Archbishop Iakovos vigorously supported the passage of the Civil Rights Act of 1964, and had the courage to walk hand in hand with Dr. Martin Luther King, Jr. in Selma, Alabama, a historic moment for America that was captured on the cover of LIFE Magazine on March 26, 1965;

Whereas Archbishop Iakovos spoke out forcefully against violations of human rights and religious freedom and, in 1974, undertook a massive campaign to assist Greek Cypriot refugees following the invasion of Cyprus by Turkish armed forces;

Whereas Archbishop Iakovos was a recipient of the Presidential Medal of Freedom, the Nation's highest civilian honor, which was bestowed on him by President Carter on June 9, 1980;

Whereas in 1986, Archbishop Iakovos was awarded the Ellis Island Medal of Honor and was cited by the Academy of Athens, the National Conference of Christians and Jews, and the Appeal of Conscience;

Whereas Archbishop Iakovos, during his stewardship of the Greek Orthodox Church in America, became an imposing religious figure and a champion of social causes, encouraging the faithful to become involved in all aspects of American life;

Whereas Archbishop Iakovos was a friend to nine Presidents, and to religious and political leaders worldwide, receiving honorary