him with recommendations as to how the Veterans' Administration, along with the Department of Defense, can best provide service to our dramatically injured veterans in a seamless fashion.

Our action, with passage of this legislation, is a step in the same direction. It fulfills the pledge we made a few months ago when the Veterans' Affairs Committee, along with the Armed Services Committee, held joint hearings to receive testimony on needed changes to transition programs and health care benefits.

At that time, many of us stated our intention to make a good-faith effort to work on issues under our respective committees' jurisdictions and then to merge our work back together again at the earliest possible time.

This bill not only contains the legislation that went through the Armed Services Committee earlier in the form of S. 1606, but it also includes title II of the bill, legislation sponsored by Senator DANNY AKAKA and me to address issues surrounding the treatment provided to those veterans with traumatic brain injuries.

Of course, I am proud of the comprehensive nature of the legislation Senator AKAKA and I have put forward in this legislation and pleased to see its passage.

Under the provisions in this bill, injured veterans will benefit from new investments in research into mild, moderate, and serious traumatic brain injury. They and their families will be assured that care is provided in age-appropriate settings. We will explore whether assisted living services are the most appropriate and least restrictive settings to provide care for those with traumatic brain injury.

Most important to me is that our servicemembers, veterans, and their families will have peace of mind knowing the Secretary can provide traumatic brain injury care in a private, non-VA facility anytime the Secretary determines that doing so would be optimal to the recovery and the rehabilitation of that patient. In other words, with passage of this legislation, we are assuring that whenever it is in the best interest of the patient's recovery, then VA can purchase private care to treat traumatic brain injury.

These are a few of the very important provisions in title II of the legislation. Of course, there are many other notable pieces of the bill in title I, which, as I previously stated, was produced by my colleagues in the Armed Services Committee. I compliment them again for their work on this important bill.

We said we would do this as expeditiously as possible. The earliest time possible was, of course, the National Defense Authorization Act, which was on the floor a few weeks ago. There, we added the substance of the bill as an amendment to that act.

Unfortunately, the NDAA was pulled from the floor—a little premature, in my judgment, but it was. But I do wish to compliment both leaders for agreeing in a bipartisan way to bring this important part of that bill before us quickly so our troops and our injured veterans and their families can receive the care and benefits they deserve as quickly as it can be delivered.

I said on the floor a few weeks ago, during consideration of the National Defense Authorization Act, the legislation was very important because it demonstrated that Congress can break down the walls of jurisdiction and territory and do the right thing at the right time for our troops.

I and other Senators have been very critical of the bureaucratic roadblocks DOD and VA can put up against one another, when we all want to make sure they are working together in a seamless fashion. We now see those walls breaking apart. So I believe we are going to demand that these two agencies break down further those barriers of territory and jurisdiction. When we demonstrate we can do it, we then must ask them to do it. In this legislation, you saw two committees come together to make it possible. I am proud we have done so. It is the kind of work we ought to do.

I also think it is fitting we passed this bill yesterday because the President's Commission on Care for America's Returning Wounded Warriors is set to issue its final report. That happened. We have now had an opportunity to review it. I thank all of the Members of that Commission for their service and for all of the work they did in a short timeframe. Former Senator Bob Dole and Secretary Donna Shalala were great leaders on this issue for us and for our veterans and for our troops.

The passage of this bill is only the beginning of changes that we will make and must make for the health care and the benefit services offered to our veterans and offered through VA and DOD. I look forward to hearings on the panel's recommendations soon and to finalize the reading of the report. I now have it in hand. I am hopeful that with the passage of this legislation, which will soon be on its way to the President for signature, we in the Congress can focus on the recommendations of the Dole-Shalala panel.

With that, I again thank the chairman of the Veterans' Affairs Committee, Senator AKAKA, for his work and support in the production of title II of this bill. I also want to thank and compliment Senator MCCAIN and Senator LEVIN and Senator WARNER for their work on title I, the Wounded Warrior legislation. I truly appreciate the coming together of these diverse but connected jurisdictions to show we can break down our walls and to once again demonstrate and encourage both the Department of Defense and VA to work in a progressive, seamless fashion for the benefit of our fighting men and women and for the benefit of those same men and women when they become veterans and the responsibility for them shifts to a different jurisdiction. It is important legislation and work of which we can be proud.

LIVESTOCK INDEMNITY PROGRAM PAYMENTS

Mr. THUNE. Mr. President, I rise today to highlight an important piece of legislation that was passed by the Senate last night. This legislation would fix a potentially devastating mistake in the agriculture disaster assistance legislation Congress passed last May.

Over the past few years, drought conditions and other natural disasters have financially strained tens of thousands of agriculture producers across the country. Last May, Congress responded to the needs of America's producers by enacting more than $3 billion in emergency disaster assistance for farmers and ranchers who experienced losses in 2005, 2006, and early 2007.

This assistance includes payments for livestock losses under the Livestock Indemnity Program and compensation for grazing losses under the Livestock Compensation Program.

Last month, it was brought to my attention that as many as 90% of livestock producers will be ineligible for assistance due to an unintended technicality in the emergency supplemental bill. The USDA's Office of General Counsel is interpreting Section 9012 of the emergency supplemental bill in a very narrow manner. This section requires participation in the Non-Insured Crop Disaster Assistance Program—NAP—or Federal crop insurance pilot program during the year livestock disaster assistance is requested.

If disaster benefits are limited to only those livestock producers with NAP or crop insurance coverage, the vast majority of livestock producers in drought-stricken regions will be ineligible for disaster assistance.

While crop insurance is typically required for crop disaster assistance, similar requirements are highly unusual for livestock disaster assistance. In fact, NAP coverage has never been a prerequisite for livestock disaster assistance in previous emergency spending bills.

Only a small percentage of livestock producers have traditionally participated in the NAP program, because indemnity payments range from $1 to $2 per acre. Since NAP payments are so low, few grazing producers have participated. It is simply bad policy to exclude producers from disaster assistance who chose not to participate in an ineffective program.

Congress clearly intended disaster assistance to be available to those producers most impacted by years of devastating weather conditions. My legislation would strike Section 9012 of the 2007 emergency supplemental spending bill, and would ensure that livestock producers impacted by natural disasters receive assistance they deserve in a timely manner.

The USDA is currently preparing policy, procedure and software to implement disaster programs authorized under this legislation. USDA has promised to conduct signup and deliver financial assistance to our agriculture producers this fall. By the time these disaster dollars reach individual producers, many will have waited for over two years since first experiencing weather-related losses. Without this legislative fix, unacceptable disaster program implementation delays will occur.

I thank the cosponsors of this legislation who have made another strong stand for America's farm and ranch families. I also thank my colleagues in the Senate for recognizing the urgency of this situation and passing this bill by unanimous consent last night.

Cosponsors of the bill are: Senators NELSON of Nebraska, BAUCUS, TESTER, JOHNSON, CONRAD, HARKIN, LANDRIEU, BARRASSO, ENZI, HAGEL, DORGAN, and INHOFE.

I urge the House of Representatives to quickly pass my bill to ensure that livestock producers are able to qualify for the disaster assistance that was signed into law earlier this year.

NOMINATION OF LESLIE SOUTHWICK

Mr. DURBIN. Mr. President, I made remarks yesterday on the Senate floor about the nomination of Judge Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit.

Some of my Republican colleagues then came to the floor and made their own remarks about Judge Southwick. I would like to respond to some of their points and set the record straight.

First, I take issue with the way they described the procedural history of a case involving a White employee in Mississippi who was fired for calling an African-American colleague the ''N'' word. In this sharply divided 5- to 4-case, Judge Southwick joined the majority, and he voted to reinstate the White employee with full backpay and no punishment whatsoever.

Senator CORNYN came to the Senate floor and said that the Southwick majority ''was ultimately upheld by the Mississippi Supreme Court in compliance with appropriate legal standards.''

That statement does not accurately describe what actually happened.

Yes, the Mississippi Supreme Court said that termination was too Draconian a punishment, but it also said that the decision to reinstate the White employee with full backpay and with no punishment whatsoever—the decision that Judge Southwick signed onto—was erroneous.

Let me read the last three words of the Mississippi Supreme Court's opinion in this case so the record is clear. The three words are: ''reversed and remanded.''

The Mississippi Supreme Court concluded: ''[W]e remand this matter back to the Employee Appeals Board for the imposition of a lesser penalty, or to make detailed findings on the record why no penalty should be imposed.''

This conclusion is the same one reached by Judge Diaz, who dissented from Judge Southwick and the five-person majority at the appeals court level. Judge Diaz wrote: ''I write separately to object to the EAB's failure to impose sanctions upon Bonnie Richmond for using a racial slur in describing another DHS employee. . . . This is not to say that the EAB should have followed the DHS's recommendations to terminate Richmond, but there is a strong presumption that some penalty should have been imposed.''

That conclusion, which the Mississippi Supreme Court embraced, undermines Senator CORNYN's assertion that the Southwick majority ''was ultimately upheld by the Mississippi Supreme Court.''

The bottom line is that Judge Southwick voted to reinstate the White employee with complete impunity—with no punishment whatsoever. The Mississippi Supreme Court said: No, punishment should be considered.

Let me address another aspect of this case that was mentioned by a Republican colleague. In trying to minimize the significance of the case and defend Judge Southwick's position, this Senator stated that the White employee's use of the ''N'' word was ''a one-time comment.''

I would dispute that characterization. It is true that the Southwick majority referred to ''this one use of a racial epithet.'' However, according to a letter from the State agency reprinted in the State supreme court opinion, there were at least two instances in which the White employee used the ''N'' word: once in front of the victim and once at a meeting where the victim was not present.

In addition, as set forth in the State supreme court opinion, the White employee testified that she didn't think her Black colleague would be offended by use of the ''N'' word because: ''You know, I thought that we had used that terminology previously and Varrie [the black employee] didn't seem to have a problem with it, nor anyone else.''

So it seems that the use of the ''N'' word was not an isolated comment in this workplace.

Senator CORNYN tried to defend Judge Southwick's vote in this case, and he said the following: ''A judge has no choice but to vote. He voted for the result, for the outcome of the case, but I think it's unfair to attribute the writing of the opinion to Judge Southwick.''

I disagree. As I noted yesterday, Judge Southwick had other options in this case. He could have written a concurrence. He could have written a dissent. He could have joined one of two different dissents that were written by other members of his court in this case. He did none of these things.

The ''N'' word case is not the only case in which Judge Southwick has demonstrated racial insensitivity. A coalition of four leading civil rights groups—the NAACP, the NAACP Legal Defense and Educational Fund, the National Urban League, and the Rainbow/PUSH Coalition—wrote a letter to the Senate Judiciary Committee and stated:

> We are also troubled by Judge Southwick's record in cases involving race discrimination in jury selection. . . . Generally, Southwick has upheld the rejection of claims by defendants that the prosecution was motivated by race discrimination in striking African Americans from juries. However, Southwick appears to have less difficulty finding race discrimination when the prosecution makes 'reverse Batson' claims that defendants have struck white jurors for racial reasons.

The letter discusses several examples of this trend in Judge Southwick's track record.

Let me also say a little more about the case in which Judge Southwick voted to take away an 8-year-old girl from her lesbian mother.

What is troubling about this case is not only the result that Judge Southwick reached but also the fact that he was the only judge in the majority to sign onto a troubling concurring opinion that said sexual orientation is a choice and that losing a child in a custody battle is a consequence of that choice.

Judge Southwick is opposed by the Human Rights Campaign—a prominent gay rights organization—which has said the following about this nominee:

> No parent should face the loss of a child simply because of who they are. If he believes that losing a child is an acceptable 'consequence' of being gay, Judge Southwick cannot be given the responsibility to protect the basic rights of gay and lesbian Americans.

As I said yesterday, this nomination isn't just about the ''N'' word case and the gay custody case. Judge Southwick has a long track record of favoring employers and corporations over employees and consumers. There are two studies that bear this out: One was conducted by the Business and Industrial Political Education Committee, as reported by the Biloxi, Mississippi Sun Herald on March 24, 2004. The other study was undertaken by an organization called the Alliance for Justice and is available on their website.

I would make one final point. One of my Republican colleagues criticized me for opposing Judge Southwick for a seat on the Fifth Circuit while having voted for him last year to be a Federal district court judge.

It is true that Judge Southwick was voted out of the Senate Judiciary Committee last year by voice vote as part of a package of 10 judicial nominees. But we did not know about the ''N'' word case at that time. It is an unpublished decision and was not brought to our attention until this year.

In any event, the reality is that our circuit courts are more crucial to the protection of our rights and liberties than our district courts. Because the U.S. Supreme Court takes so few cases,