PRESERVING UNITED STATES ATTORNEY INDEPENDENCE ACT OF 2007

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 214, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 214) to amend chapter 35 of title 28, United States Code, to preserve the independence of United States attorneys.

Pending:

Kyl amendment No. 459, to ensure that United States attorneys are promptly nominated by the President, and are appointed by and with the advice and consent of the Senate.

Sessions amendment No. 460, to require appropriate qualifications for interim United States attorneys.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 90 minutes of debate, equally divided between the two leaders or their designees.

The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I rise, first of all, to support Senator FEINSTEIN's bill, which I proudly have been a cosponsor of, and I urge all my colleagues to do the same. I wish to thank Senator FEINSTEIN for being the first to discover this provision and for asking the right questions, which then set us on this journey about the U.S. attorneys.

Second, I wish to thank Senator LEAHY, our leader in the Judiciary Committee on this issue, who has been stalwart in making sure we get to the truth.

Some have been content to casually dismiss the administration's actions relating to the firing of the eight U.S. attorneys as a comedy of errors at the Justice Department. Make no mistake about it, this is no comedy, this is a tragedy. It is a tragedy for eight public servants whose reputations have been wrongly trashed. It is a tragedy for the reputation of the Justice Department, as a whole, and for the Attorney General, in particular. Most importantly, however, it is a tragedy for public confidence in our system of justice.

How can people have faith when the documents show that in this Justice Department allegiance to party is apparently valued over loyalty to the rule of law? How can citizens not be cynical when it is clear the PATRIOT Act was cynically manipulated to bypass checks and balances?

We all know politics plays a role in the Justice Department, but it should be second to rule of law. On too many issues in this Justice Department, politics came first and rule of law came second.

Weeks ago, we suspected the provision we are correcting today was no more than a mechanism to allow end runs around the Senate and the people. The e-mails have proven our worst fears. This provision was apparently added to the PATRIOT Act not for efficiency or national security but to make it easier to install political loyalists. This is how Kyle Sampson, the former Chief of Staff to the Attorney General, described how the slipped-in PATRIOT Act should be manipulated:

By using these provisions we can give far less deference to home State senators and thereby get (1) our preferred court person appointed, and (2) do it far faster and more efficiently at less political cost to the White House.

That is a memo to Harriet Miers.

That scheme was, of course, followed to install Karl Rove's former deputy in the Eastern District of Arkansas.

Here is another e-mail from Mr. Sampson:

My thoughts: 1. I think we should gum this to death: Ask the Senators to give Tim a chance, meet with them, give him some time in office to see how he performs. If they ultimately say ''no, never,''—and the longer we can forestall that the better—then we can tell them we will look for other candidates, ask them for recommendations, evaluate the recommendations, interview their candidates, and otherwise run out the clock. All of this should be done in ''good faith,'' of course.

That is an astonishing breach of trust. That shows that, at least according to Mr. Sampson, this provision could be used to keep political appointees in office for a long time.

So there is no doubt we must pass this legislation, which provides—and has always provided—for checks and balances on a runaway Justice Department. If there is proof that it was ever needed, it is the actions of the Justice Department in the last several months. I am especially amazed, given the proof that this secret midnight provision was willfully abused at the highest levels of the Justice Department, how anybody could not vote for Senator FEINSTEIN's legislation. This is the latest example of an executive branch run amuck, the most recent evidence of a Justice Department almost drunk with its own power and with little regard for checks and balances.

That is why our work will not be done when we pass this bill in a few hours. It is not enough to reform the law, we must repair the Justice Department.

Finally, last night we received 3,000 pages of documents. Some in the administration have started to spin this: See, they were fired for cause. But if you look at these documents, that is not the case. They read like an ''Alice in Wonderland'' tale. There are thousands of pages of stock documents, and we still have no real idea why many of these fine men and women were fired.

Mr. President, I ask unanimous consent for 1 additional minute.

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

Mr. SCHUMER. Mr. President, the documents leave us scratching our heads in wonderment as to why they were fired. One e-mail shows that days before the purge, the Deputy Attorney General was uncertain about the reasons why Nevada U.S. attorney Daniel Bogden was fired: ''I'm still a little skittish about Bogden.''

The documents show that far from exhibiting performance problems, New Mexico U.S. attorney David Iglesias is highly praised by officials in Washington and even considered for promotion. Similarly, Washington U.S. attorney John McKay is also praised 3 months before he was fired. San Diego U.S. attorney Carol Lam was strongly defended by the Department on her pursuit of immigration cases months before she was fired. Finally, another U.S. attorney, Patrick Fitzgerald, widely considered to be one of the finest and most apolitical prosecutors in the country, was ranked in the middle tier and described as ''undistinguished.'' Meanwhile, two of the fired prosecutors were only a short time ago ranked in the top tier.

The more we dig, the deeper the hole it seems the Justice Department is in, with still no clear explanation as to why these fine prosecutors were fired. Make no mistake about it, we will get to the bottom of this.

This legislation is an early step, but we cannot rest until we have reformed the Department's ways and restored confidence, so that when people enter Justice Department buildings and see the eagle perched with arrows in her claws, it means justice and the rule of law, without fear or favor.

Mr. President, I yield the floor.

Mrs. MURRAY. Mr. President, every American needs to have confidence in our system of justice, but in the last few weeks that confidence has, frankly, been deeply shaken. Each day, we get new evidence that the Bush administration injected partisan politics into a process that requires independence, and each day we get more proof this administration has not been telling the truth.

I am here today on this floor to support the bill to restore the Senate's constitutional advise and consent in confirming nominees to serve as U.S. attorneys. I am deeply troubled by the many ways the Bush administration has politicized the administration of justice because it threatens all Americans.

Recently, we learned that the administration's political meddling reached into my own home State of Washington, and it led to the firing of a U.S. attorney who had received an excellent job performance review only months, months before he was fired. When I asked for answers, the Justice Department told me things that were not true. Deputy Attorney General Paul McNulty assured me the firing of John McKay was performance related. I didn't believe it at the time, and, unfortunately, the past few weeks have only confirmed my suspicions.

As the facts come out, the administration's untruths are coming to light. First we were told the White House had no role in the firing. Now we learn this whole scheme originated in the White

House. At first we were told the firings were performance related. Now documents have disclosed that the Justice Department was evaluating U.S. attorneys based on their loyalty to the administration. We were also told a significant change in the PATRIOT Act was needed for national security and would not be abused. That also was not true. Every day, this story gets worse and worse and climbs higher up the political ladder. Now we have learned that senior officials in the White House, including the President's former counsel, Harriet Miers, and his top political adviser, Karl Rove, were key players in these firings.

Why should folks at home care if the White House and Justice Department are politicizing the Office of the U.S. Attorney? It matters, and it matters for two reasons.

First, any American can become the subject of a civil or criminal investigation by a U.S. attorney, an investigation that could upend their life or ruin their reputation, destroy their business, and ultimately cause the Government to take their life or their liberty. That is a tremendous amount of power, and we need to make sure the people who wield that power are launching investigations based on the facts and based on the law—not based on political pressure.

Second, after all the ways the Bush administration has undermined the rights and liberties of our citizens, we need to vigorously stand up and fight back whenever new abuses come to light.

I believe we could have gotten the facts sooner if we had gotten straight answers from the Attorney General from the start. Unfortunately, Mr. Gonzales can't seem to get his stories straight. At a press conference last week, he said he didn't know about it, but he is responsible for it. He said mistakes were made, but the firings were appropriate. He said he believes the U.S. attorneys should be independent, but they can be fired for any reason.

Two years ago, I voted against confirming Alberto Gonzales as the Nation's top law enforcement officer. As I said in February of 2005, he ''lacks the independence and honesty to be Attorney General.'' I also said his troubling record would not assure public confidence in the fair administration of justice. I take no joy in saying that my fears have been borne out.

How did we get here? Last year, when Congress updated the PATRIOT Act, a change was inserted at the request of the White House. This change was not debated. It was made without the knowledge of many of us here in the Senate. Today, we know that change to the PATRIOT Act played an important role in this entire scheme. It significantly lowered the difficulty of removing any U.S. attorney and replacing him or her without consulting anybody.

We need to end these abuses. I support the bill that is before the Senate today because it will restore the Senate's role in confirming U.S. attorneys, and it will also restore a critical check on the administration's power.

Traditionally, when there has been a vacancy for a U.S. attorney, the White House has sent a nomination over here to the Senate. Last year, the White House changed that procedure.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mrs. MURRAY. I ask unanimous consent for 1 additional minute.

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

Mrs. MURRAY. Last year, the White House changed that procedure by slipping a change into the PATRIOT Act reauthorization. With that change, the White House was then able to install interim U.S. attorneys indefinitely without going through the normal Senate approval process.

This bill which is before us now restores the role of the Senate in confirming interim nominees. This legislation will force the White House to work with the Senate and home State Senators. This bill is an important step to protecting the U.S. Attorney's Office from the politicization it has suffered.

I urge my colleagues to take a step forward for justice and pass this critical reform today.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I ask to proceed for 5 minutes.

The ACTING PRESIDENT pro tempore. The Senator is granted that right.

Ms. KLOBUCHAR. Mr. President, as a former prosecutor, I am here to speak in behalf of S. 214. I would first like to thank the members of the Judiciary Committee for introducing and reporting out this important bill, and I am proud to be a cosponsor.

I returned from Iraq yesterday, and I look forward to reflecting on lessons learned from that trip later on this week. But I will say that my Senate colleagues and I had extensive discussions with Iraqi political leaders as well as the American military about the need to restore the rule of law in Iraq. I have always been proud that our judicial process has been the gold standard for the rest of the world. It is ironic, then, that even as I spoke with Iraqi leaders about their challenges, we Americans were learning a very public lesson about how the rule of law can be undermined in even the most advanced democracies.

We have learned this past month that our Nation's chief law enforcement officer, our leading guardian of the rule of law in this country, has allowed politics to creep too close to the core of our legal system. This administration has determined that Washington politicians, not prosecutors out in the field—and perhaps, in some cases, not even the facts—will dictate how prosecutions should proceed. The consequences are unacceptable.

Good prosecutors, by all accounts doing their jobs, upholding their oaths, following the principles of their profession, basing their decisions on the facts before them, were pressured and/or fired and/or unfairly slandered by this administration. All of this, it would seem, was motivated by rank politics. That is simply not how we do things in this country. That is why, last week, I called for the Attorney General to resign.

Before I came to the Senate, I was a prosecutor. I managed an office of nearly 400 people, and we always said in our office: If you do the right thing, if you do your job without fear or favor, at the end of the day, you have no regrets. It may not be easy; whatever your decision is, it may not make everyone happy, you may have to explain it, but if you do your job without fear or favor, you have no regrets. That was true, even though I was elected through the political process. I checked politics at the door when I came to my job.

I remember when I first came to my office there were two prosecutors in the office who supported my opponent. I went and met with them the day after I was elected, and I said: I heard nothing but good things about you two, I heard you are great prosecutors, and I would like to know what are the jobs you want in the office. One of them wanted to be head of the drug team, the other wanted to be head of the gang team, and I put them in those jobs and never regretted it. They did incredible jobs, got along well with the police, and they worked well with the community. That is because we knew, when it came to prosecutions, there were boundaries. Those boundaries, this month in Washington, we found out were crossed.

Another case I will always remember is a case where we prosecuted a judge who had stolen $400,000 from a mentally disabled woman he was supposed to protect. This young woman lived in a world of stuffed animals and dolls. She needed people to take care of her. He was the person who was in charge of her money in her accounts, and he systematically stole all $400,000 in those accounts. He was a politically connected judge. He was a Democrat. When that case came into our office, I got so many calls, dozens of calls, from people in the community, political people, saying: You know, he messed up, but he is a good guy. He should not go to jail.

He went to jail. We asked for a 4-year sentence, and we got that sentence. I still remember that courtroom packed with all of his friends, all of his pals, but we did the right thing, and at the end of the day we had no regrets.

This is a tradition in our country, a simple and deeply rooted tradition that our party affiliation should not get in the middle of decisions about whom we prosecute and how we enforce the law.

That tradition is as true—perhaps even more true—in our Federal prosecutor's office as it is in the local DA's office. This tradition emerged because our justice system is ultimately built on a foundation of trust. Without that trust, the system does not work.

When our leaders play politics with the judicial process, we lose that trust. When people get fired for political reasons, we lose that trust. When good prosecutors are removed to make room for political cronies, we lose that trust. In losing that trust, the very lifeblood of our justice system comes under threat.

The legislation we are considering will not undo the damage this administration and this Attorney General have caused, but it will prevent this Attorney General and future Attorneys General from ever doing something like this again.

It is time once again to allow Federal prosecutors to do their jobs without fear or favor. It is time to place much needed limits on an administration that has far too often and far too flagrantly exceeded its authority and abused the public trust. Today, by passing this bill, we seek to curb that abuse and to give trust back to those who gave it to us—the people of this country.

Mr. President, I suggest the absence of a quorum, and I ask that the time be charged equally to both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CARDIN. Mr. President, I take this time to rise in support of S. 214, Preserving United States Attorney Independence Act of 2007. This legislation would restore the appointment of our interim U.S. attorneys to how it was prior to the passage of the PATRIOT Act.

The PATRIOT Act included a provision many of us did not know was in that legislation. It was a provision that affected the appointment of interim U.S. attorneys.

Prior to the passage of that provision, the Department of Justice had the ability to appoint interim U.S. attorneys for up to 120 days, without the confirmation of this body. This legislation will restore that provision, which will establish the right balance between the executive and legislative branches of Government. It will encourage the Department of Justice to work with this body so that interim U.S. attorneys and permanent appointments can be considered timely and the confirmation process can move forward. Most importantly, this legislation is necessary because of the recent actions of the Department of Justice in removing several U.S. attorneys, which is currently under investigation by the Judiciary Committee.

I serve on the Judiciary Committee. On March 6, we had a hearing that I think was remarkable. It was unfortunate because we had former U.S. attorneys who appeared before our committee and talked about being intimidated and pressured by the Department of Justice and by the White House. They were fired despite the fact that they had received excellent performance evaluations by the Department of Justice. In several of these cases, the office was involved in high-profile political investigations, some of which the administration was not happy about.

The U.S. attorney is the chief Federal law enforcement officer in our States. The U.S. attorneys must work independently. The Attorney General must carry out his responsibility for the entire country. He is not the attorney for the President. The Department of Justice must maintain that independence. A U.S. attorney has enormous power to determine who should be investigated, who should be prosecuted, and what type of punishment should be recommended. It is a tremendous amount of power which must be exercised with total independence.

The manner in which these eight U.S. attorneys were removed from office raised many concerns that all of us should be concerned about. This raises concerns about the independence of the U.S. attorney and whether these investigations will be conducted with the public interest in mind or to further a political agenda. It raises concerns as to whether the Department of Justice or the White House was trying to influence the independent judgments of the U.S. attorney in a specific investigation. It raises concerns as to how Congress was kept informed as to how these removals were being handled. Information that was made available to us was inconsistent and certainly raises questions as to whether Congress itself was being misled by the Department of Justice. This raises concerns about the morale within the U.S. Attorney's Offices throughout the country and whether they will be able to attract the best possible people in order to prosecute these activities and get the best people in the U.S. Attorney's Office.

The work of this body is continuing as it relates to the U.S. attorneys. The Judiciary Committee is continuing its work. I must tell you that I know there were a lot of documents made available last night to the Judiciary Committee, but what we need to have is the personal appearance of those who were directly involved—Ms. Miers, Mr. Rove, Mr. Sampson. Those testimonies need to take place in the Judiciary Committee, open testimony, so we can get the information as to what exactly happened in regard to the dismissal of these U.S. attorneys and whether it was improper activity, trying to influence the judgment of our U.S. attorneys.

It starts with the passage of S. 214. It starts with our restoring the proper balance between the executive and legislative branches of Government as it relates to the use of interim U.S. attorneys and the confirmation process by this body.

I urge my colleagues to support S. 214 and to support the work of the Judiciary Committee as we continue our investigation as to the dismissal of U.S. attorneys.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, I have listened with interest to all of my colleagues who have made a case for changing the law, but I have yet to hear any of them discuss the specific proposal they presumably intend to support. The disconnect is that it does not solve the problem they have identified. It doesn't even begin to solve the problem.

I urge my colleagues, before simply voting on a partisan basis for a bill which is allegedly designed to solve a problem, that they at least ask the question whether it solves the problem they have identified. It does not.

That is why I proposed an amendment that does solve the problem. I urge my colleagues, before they vote in 45 minutes, to read the underlying bill—it is only 2½ pages—to read my amendment—it is about the same length—and perhaps to listen to 5 minutes of what I have to say.

This is not partisan. We are going to have Republicans and Democrats as President and a Republican- and Democratic-controlled Senate. We want the U.S. attorneys to be nominated by the President, and we want the Senate to be able to act on the nominees. The underlying bill does not guarantee that. In fact, it does not even provide for it. My amendment ensures that happens.

So I urge my colleagues, you have stated the case for a change. Please listen to what I have to say because I think you will see that the bill, the underlying bill, was drafted in great haste; it does not solve the problem. My amendment does. I made several arguments yesterday on behalf of this amendment. I argued that it corrects the flaws in the underlying bill that all of us should want to correct.

Briefly, yesterday, I noted that the committee-reported bill does not ensure the President will nominate a U.S. attorney. That is the first thing we want to happen. Secondly, as a result, therefore, it certainly does not solve this problem my colleagues have been trying to identify here this morning about being accountable for Federal criminal prosecutions.

Secondly, the Senate would have no say in the selection of a U.S. attorney who is appointed by a Federal judge, which the committee-reported bill allows to happen.

Third, I noted that even the district judges themselves do not want to be

placed in the position of selecting the U.S. attorneys. They have found this to be a conflict of interest, and they have refused in some cases to appoint a U.S. attorney.

Fourth, I have argued that the district judges are ill-equipped in selecting U.S. attorneys. By the way, to my knowledge, no one has sought to dispute what I have been saying here.

Fifth—I think this would be of interest to my Democratic colleagues—the committee-reported bill does not even end the practice of allowing an individual to serve as a U.S. attorney without Senate confirmation and without a nomination even being sent to the Senate. The committee-reported bill restores the 1986 to 2006 statutory language, and that language allowed consecutive appointments of interim U.S. attorneys by the Attorney General—the exact practice my Democratic colleagues are criticizing here today. So they permit the continuation of exactly what they object to. It would allow an administration to stack the terms of acting U.S. attorneys and interim U.S. attorneys, which would allow an individual to serve as U.S. attorney for nearly a year without confirmation ever being submitted to the Senate, and perhaps beyond that.

I made these same arguments in a ''Dear Colleague'' I circulated Monday morning. I am going to try to have that letter distributed to the desks of all Senators, so when they arrive, they can at least take a look at it and evaluate what I am saying.

Yesterday, I had expected that opponents of my amendment would come to the floor and respond as to why they disagreed with my amendment. A significant number of Democratic Senators did come to the floor yesterday and today to speak to the bill. All of them urged passage of the bill. Not one of them even mentioned my amendment, an amendment the Senate will be voting on in about 45 minutes.

My staff ran a computer search this morning to see if someone at least had the decency to submit a statement for the record explaining why they opposed my amendment. No such statement exists. I listened carefully to the speeches this morning. All made a case for a change. Not one referred to the underlying bill or showed how it solves the problem, because it does not, and not one referred to my amendment, which, as I said, does solve the problem they have identified.

I understand this issue has become very political. I understand there is great pressure within the Democratic caucus to vote down any amendments to preserve an undiluted victory over the administration. But this has nothing to do with the political issue that is raging out there; it has to do with solving a specific problem we have all agreed exists with the existing law, a problem not solved by the underlying bill.

I would urge my colleagues to think before they jump over this cliff. We are all elected to a 6-year term for a reason: We are given this much time so we can stop and think about things and not be rushed into decisions that in retrospect do not appear to be a very good idea. That is how the legislation got into the PATRIOT Act that everybody is complaining about today. We are going to be compounding one mistake, I expect, with another.

Allow me, therefore, to make one final pitch to my colleagues on the Democratic side who presumably simply will follow the leader and vote against my amendment without having read it or the underlying bill. If you think about the long term, I think you will agree that my proposal is the one that makes sense. But let us think about the short term and compare how the committee-reported bill and my amendment would operate over the remaining 2 years of this administration. Let's see how they work.

Under the committee-reported bill, which presumably would be signed into law maybe in April, all interim U.S. attorneys would continue to serve for another 120 days until sometime in July. What would happen then, after that 120 days? One of three things could happen.

A district judge could pick a U.S. attorney. Well, the Senate has no say in that. Most judges who do so are very likely to reappoint the current interim U.S. attorney. If the judge does so, that interim U.S. attorney could serve through the remainder of this administration without a nomination ever having been sent to the Senate.

The second alternative is that if the district judge does not choose to appoint an interim U.S. attorney, the Attorney General could then reappoint the current one to one or more consecutive terms—the very thing all of my colleagues on the Democratic side have objected to here, that the Attorney General could appoint an interim U.S. attorney. That judicial district would have a U.S. attorney, likely for the remainder of the administration, who was not submitted to or confirmed by the Senate.

The third possibility under the committee-reported bill is that after the 120 days are up, sometime in July, the administration could simply designate the interim U.S. attorney as the acting U.S. attorney—a designation that could last until March of 2008 without a nomination having ever been submitted the Senate. By March of 2008, it is likely that no nomination would ever be submitted to the Senate and that the acting or interim U.S. attorney would simply be recess-appointed for the remainder of the President's term.

In all three scenarios, no Presidential nomination, no Senate confirmation or consideration of the nominee—the very thing the Democrats here are objecting to would continue to exist under the bill so many of them have spoken in support of.

The bottom line is, if the Senate blindly votes down my amendment and passes the committee-reported bill without fixing any of its flaws, the judicial districts that have no Senate-confirmed U.S. attorney today will stand an excellent change of having no Senate-confirmed U.S. attorney for the remainder of this administration.

Compare this to the result that would happen if my amendment were adopted. Under my amendment, the interim authority is repealed in its entirety. In other words, the main thing my Democratic colleagues have complained about—that Attorney General Gonzales can make an interim U.S. attorney appointment—would be gone. He would not be able to do that anymore. Not so under the bill.

Under my amendment the President would be required to nominate a U.S. attorney candidate within 120 days; obviously, by the middle of summer. Under my amendment, even if the President doesn't comply with this deadline because acting authority expires after 210 days if no nomination is submitted, the President would be forced to nominate a U.S. attorney before the end of the year. The bottom line is, if my amendment is adopted, all judicial districts in the country will have a Senate-confirmed U.S. attorney or at least a nomination pending in the Senate for most of the remainder of the administration.

Just in case my colleagues think I am kidding, lets look at the underlying bill. This is all there is to it. There is not a whole lot here. Let's read what it says. First, it says:

> The Act may be cited as the ''Preserving United States Attorney Independence Act of 2007.''

That is a misnomer if I ever heard one. Why? The code is amended by striking the provision above and inserting the following:

> A person appointed as United States Attorney under this section may serve until the earlier of—
>
> (1) the qualification of a United States attorney appointed by the President—

That is the normal process—

> or
>
> (2) the expiration of 120 days after appointment by the Attorney General under this section.

Wait. I thought the object was not to have the Attorney General appoint U.S. attorneys. Let's read this again:

> Or . . . the expiration of 120 days after appointment by the Attorney General under this section.

So under the underlying bill, the Attorney General still gets to appoint interim U.S. attorneys. Not so under my amendment. That section is repealed. Or, third:

> If an appointment expires under subsection (c)(2), the district court for such district may appoint a United States attorney until the vacancy is filled.

The district court, for all the reasons we have discussed, is not the best entity to be appointing a U.S. attorney. All of us would agree it would be preferable not to have the district court do that. In any event, if the object is to preserve the Senate's ability to evaluate a

nominee and to act on that nomination and reject it or confirm the individual, we have no such authority if the district judge appoints the U.S. attorney.

So there are three possibilities. That the President would nominate is one; but if he does not, there is no penalty. For those who argue that the President is trying to get by with something by having his Attorney General appoint interim U.S. attorneys who never have to be confirmed by the Senate, under this first point the President can simply do nothing, and then his Attorney General can appoint an interim U.S. attorney. I thought that was what we were trying to avoid. If the Attorney General doesn't do it, then a Federal court judge can do it. In none of those cases does the Senate have anything to say about it.

Clearly, the bill doesn't solve the problem that everybody has identified. My amendment, on the other hand, does. It does so in three specific ways. This is all of one page and three lines. It is not hard to read. What we say is that under the new law, if my amendment is adopted, section 546 of title 28 is repealed. That is the interim appointment authority of the Attorney General, the thing that everybody is objecting to: Alberto Gonzales is going to appoint an interim, and the Senate will never have a chance to act on that nominee. My amendment eliminates his ability to do that or any subsequent Attorney General, unlike the underlying bill.

So how would we fill the vacancy?

Not later than 120 days after the date on which a vacancy occurs in the office of United States attorney for a judicial district, the President shall submit an appointment for that office to the Senate.

My amendment, unlike the underlying bill, requires the President to make a nomination within 120 days. Why? A, the President should be making these nominations—as we all agree—B, the Senate would then have the ability to act on that nomination. How do we know? Because we also say that 120 days after the date of submission of an appointment under paragraph 1, ''the Senate shall vote on that appointment.'' So we have ensured that the President will make a nomination and that the Senate will act on that nominee.

People have said: But you can't sue the President for not actually nominating someone. So we have a final provision that creates a very strong incentive for the President to nominate to fill the vacancy:

If the President fails to comply with paragraph (1) with regard to the submission of any appointment for the office of United States attorney, paragraph (2) of this subsection shall have no force or effect with regard to any appointment to the office of U.S. Attorney during the remainder of the term of that President.

What that means is that the President has a very strong incentive to nominate people to fill the vacancy so that the Senate can act on that nomination because, if he fails to do so, the requirement that the Senate act on his nominations for U.S. attorney is vitiated for the remainder of his term. He no longer has any assurance that his nominees will be acted upon by the Senate.

This is about as simple—it is all on one page—a way of solving the problem that I can imagine. Let me summarize. The problem my colleagues have suggested is that in the PATRIOT Act we put a provision that allows the Attorney General to fill vacancies with an interim U.S. attorney, and the Senate has no say-so. Under the bill, that exact process continues. It is not changed. We haven't solved a thing in that regard.

What we have said is, if he doesn't do that, a district judge could fill the vacancy. That is a great solution. Actually, it is not great. District judges don't want the authority. They haven't exercised it well in the past. They are not the best people; in fact, they have an inherent conflict of interest to be appointing prosecutors who are going to appear before them. In any event, the Senate has no ability to act on the nominee. It is not even a nominee, it is an appointment. The Attorney General can appoint or a Federal district judge can appoint. In neither case does the Senate get an opportunity to confirm or reject the nominee.

The underlying bill does not solve the problem that everybody is talking about. Only my amendment solves the problem which says, first, the ability of the U.S. Attorney General to fill these vacancies with an interim U.S. attorney is now gone. He cannot do that anymore. The very thing we don't like can't happen under my amendment.

Secondly, instead of having a Federal district judge appoint a prosecutor with no Senate confirmation, we require the President to make his nomination, that the Senate will act within 120 days of receiving that nomination, and if the President fails to do so, the Senate no longer has to act on any of his U.S. attorney nominations for the remainder of his Presidency.

Those who have argued that there is a problem have an obligation to explain how their proposed solution solves the problem. I issue this challenge to any of my Democratic colleagues who plan to vote for the underlying legislation, S. 214.

Please come to the floor within the next 40 minutes and explain to me what it is in these two pages that solves the problem. Can they point to where the Attorney General can no longer appoint a U.S. attorney? No, they cannot. It says right here that the Attorney General can appoint an interim U.S. attorney, and the Senate can't do anything about it.

Can they show how the Senate would be able to act on the appointment by a Federal district judge? No. It says that a Federal district judge may appoint the U.S. attorney. Not nominate, appoint. Again, the Senate has nothing to say about it.

I challenge my Democratic colleagues—they have done a great job of saying we have a problem—to show me how their bill solves the problem. Have enough humility to come to the Senate floor and say: We made the case for a change. We are willing to acknowledge that actually your solution is a better solution than ours, and we are willing to say we will support your solution.

That would solve the problem. For the future we would all be happy. We wouldn't have politics dictate the solution that in the end doesn't work to anybody's satisfaction.

I urge colleagues, vote yea on the Kyl amendment to solve the problem that has been presented.

Mr. SESSIONS. Will the Senator yield for a question?

Mr. KYL. Absolutely.

Mr. SESSIONS. We have people pointing out a flaw in the current bill that we did pass, that the Senator acknowledges is there, and I acknowledge is there. People cite potential abuses from the system. But as the Senator was speaking yesterday on his amendment, a hypothetical came to mind. He has been in the Senate a long time. He is one of the great lawyers in the Senate. He has been on the Judiciary Committee for many years.

Let's assume this hypothetical: A President of the United States believes strongly that the Federal gun laws should be enforced, that the Federal immigration laws should be enforced, that the Federal death penalty should be enforced. He or she nominates a person who shares those general philosophies to be U.S. attorney. Under the Feinstein amendment, if this Senate were a liberal Democratic Senate that didn't share those views and did not confirm that U.S. attorney within 120 days, it would then fall to a district judge in some district to make that appointment. Would the Senator agree with that?

Mr. KYL. Mr. President, there are two alternatives in that situation. Either the President's Attorney General could appoint an interim U.S. attorney with no Senate confirmation or a district judge could appoint that U.S. attorney with no Senate confirmation.

Mr. SESSIONS. The Feinstein legislation would have the judge make that appointment.

Mr. KYL. Actually, there are two alternatives. Let me read them. I am reading from the bill. I urge my colleagues to read the bill. It really helps.

There are two options if the President does not submit a nomination. This is No. 2, if the President hasn't nominated someone, ''the expiration of 120 days after appointment by the Attorney General under this section.''

The first option is that the President could try to submit another nomination. But if he chose not to do so, his Attorney General could appoint the U.S. attorney. Or the third possibility is, if an appointment expires under this section, the district court for such district may appoint a U.S. attorney. So

there are two options if the President doesn't nominate another candidate. His Attorney General can appoint the U.S. attorney, with no Senate confirmation, or a Federal district judge can appoint the U.S. attorney with no Senate confirmation.

Mr. SESSIONS. Federal judges I have practiced before had philosophical views. Some of them have been pretty activist Federal judges. Some of them think there are too many gun prosecutions in Federal court, too many drug prosecutions, maybe too many immigration prosecutions. They could, under that power, appoint someone who would not follow the policies of the President who was elected to set prosecutorial policy; is that not correct?

Mr. KYL. Mr. President, that is exactly correct. Let's go to the other side of the coin. The President's own Attorney General could appoint someone who very aggressively followed his policies, and the Senate would have nothing to say about it.

Mr. SESSIONS. That is correct also. I suggest this is an odd thing we are doing. This is an executive branch appointment. That is what has been contemplated since the founding of the Republic, and that is what we have done since the founding of the Republic.

I was a U.S. Attorney for 12 years. It was always considered an oddity, if some vacancy occurred and the confirmation did not occur within the required time, that a Federal judge would be involved in appointing an executive branch appointment. But that is what the statute was. It worked to some degree, and we went on with it over the years.

But it was never a thoughtful, principled approach to how the executive branch of the Government should be operated because I am not aware of any other appointment in the executive branch of Government for which if it is not filled in a timely basis, the Senate—a coequal branch—can up and fill that appointment, nominate and fill it; nor am I aware of any other office in the entire Government where a Federal judge would fill it if the Senate did not act properly or the President did not nominate and follow through properly.

I want to say I think Senator KYL's solution to this problem is thoughtful. The more I considered it, the more I believed he was on the right track. Truthfully, if our colleagues who are concerned about the difficulty in the statute would pay attention to what he has said, you would want to support the Kyl amendment because it goes beyond President Bush. He has less than 2 years left in his term. There will be another President, and this law could be in effect for hundreds of years.

So what is the right, principled approach to the appointment of U.S. attorneys? The right approach is that it should be done by the executive branch because it is an executive branch function. I was the attorney general of Alabama. The court did not appoint me. I was elected by the people in a political race. Most attorneys general are elected in political races around the country.

Prosecutors are accountable to policies. They are responsible for effectively utilizing limited resources to effect appropriate and just policies of the United States. Presidents and the people of States who elect them elect them to execute certain policies. They usually understand that and make commitments to that as a political candidate, or the President asks if they will support his policies before he appoints them.

Now, I want to say this very clearly. Every U.S. attorney who is worth 2 cents understands they did get their office through some sort of political process. Confirmation in the Senate is a political process. A lot of the talk we have had about U.S. attorneys has been more politics than substance in the last few days. It is a political process.

But what is absolutely critical is that U.S. attorneys remember the oath they took. That oath is to faithfully enforce the law, whether it involves a Republican, a Democrat, a rich person, or a poor person; that no matter what their station in life, they treat everyone fairly and objectively. They must comply with that. They have been given the chance to do the job, like any attorney general is who runs and gets elected. But their oath, their responsibility, their duty is to do it correctly.

You get pressure all the time. They say: Well, somebody tried to pressure a U.S. attorney. It should not happen from Congress, in my view. I do not believe that. I would not call a prosecutor to suggest that I know more than they know about a case that is before them. But sometimes newspapers write editorials: You are not prosecuting this case. Sometimes local mayors and politicians say: You should not be investigating this case. You are under pressure all the time. If a person is not strong and is not committed to integrity and the right principles and doing the right thing, they are going to be a sorry U.S. attorney. That is the bottom line. It is not a job for the cringing or the weak, I will tell you. I had to make some tough calls. In one case where I prosecuted against two judges, I remember one of the legal aid lawyers who testified on my behalf—his client did—he told me during the trial: Jeff, if these guys are acquitted, both of us are going to have to go to Alaska. It is tough business. You have to do what you think is right and proceed with the case.

Now, if Senator KYL's amendment is not accepted, I have an amendment I think would help. I hope Senator FEINSTEIN would not be maybe even opposed to it, although I am not sure she is comfortable with it at this point. But I would point out to my colleagues and ask them to consider this amendment as an appropriate step.

My amendment would make a very limited modification to the underlying Feinstein bill, if it moves forward without the Kyl amendment, to ensure that only qualified candidates will be appointed by judges to serve as interim U.S. attorneys. The amendment allows district judges, under this statute, if it becomes law, to appoint only those individuals who are qualified and have proper background checks and security clearances.

Under my amendment, a district court can only appoint an interim attorney if they are a current DOJ, Department of Justice, employee or a Federal law enforcement officer, employee, who is already authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law.

This effectively places the same limitations in effect to which the Department of Justice adheres when making interim appointments on district judges. According to the Department of Justice, in addition to the full field investigation, background check conducted by the Federal Bureau of Investigation—when you are appointed to be U.S. attorney, they conduct a full field investigation by the FBI to see if you have any skeletons in your closet, to see if you are worthy of the office and if you can be trusted. That is done for every interim U.S. attorney, too.

Further, the Department of Justice reviews matters under the jurisdiction of the Department's Office of the Inspector General, Office of Professional Responsibility, and the General Counsel's Office at the Executive Office for United States Attorneys to see if this Department of Justice employee has problems, to see if there are complaints, deficiencies, ethical complaints about the person. That can also keep them from being appointed.

So even if the candidate is a qualified DOJ employee or Federal law enforcement officer, a district court would not be allowed to appoint them if the court learns they are under investigation or have been disciplined by the DOJ or other Federal agencies such as the inspector general or the Office of Professional Responsibility.

Finally, the amendment requires a district judge to confidentially inform the Department of Justice, the Attorney General, of the identity of the person they expect to name 7 days before the appointment so these checks can be made.

I think this has two saving graces. It will eliminate some examples we have had of judges appointing people who should not have been appointed, who were not qualified to examine the cases in the office because those cases required security clearances, as all grand jury testimony does, for that matter. They did not have those security clearances. That is important. Also, since the prosecution of criminal cases is an executive branch function, the appointment being from the Department of Justice would at least be making it an

appointment from the executive branch of the United States.

Both of those, I think, are healthy policies. I join with Senator KYL in saying, let's do this thing right, if we are going to do it. It is going to be there maybe for 100 or more years. Let's set a policy that would be principled and consistent with the separation of powers that has served us so well and we can be proud of, and not focusing on this specific set of events that led us to these ideas.

Mr. President, I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent that the use of calculators be permitted on the floor of the Senate during consideration of the budget resolution.

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

Mr. LEAHY. Mr. President, I see the Senator from California on the floor, and I am about to yield to her. Could I ask, Mr. President, how much time is available to the Senator from Vermont or his designees?

The ACTING PRESIDENT pro tempore. Eight minutes.

The Senator from California has 5 minutes.

Mr. LEAHY. Mr. President, the Senator from Vermont has 8 minutes; the Senator from California has 5?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. LEAHY. Thank you, Mr. President.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. FEINSTEIN. Mr. President, thank you. And I thank the chairman of the committee as well.

Mr. President, I rise today to speak in support of S. 214. As we all know, that is a bill to reinstate the Senate's role in the confirmation process of U.S. attorneys. I thank both Senators LEAHY and SPECTER for supporting this bill. I wish to say right upfront I believe we should pass a clean bill today. I have had the privilege of working with both Senators KYL and SESSIONS. I understand their amendments, but essentially what I have been trying to do is put the law back to the way it was before the PATRIOT Act reauthorization.

Now, at that time—March of last year—unbeknownst to Democratic and Republican Senators a provision was included in the PATRIOT Act reauthorization that essentially allows the Attorney General to appoint an interim U.S. attorney for an indefinite period of time without Senate confirmation.

Surprisingly, less than 1 year after receiving this new authority, serious allegations and abuse of the process have come to light. We now know that at least eight U.S. attorneys were forced from office, and that despite shifting rationales for why, it has become clear that politics has played a considerable role.

We know that six of the U.S. attorneys who were fired were involved with public corruption cases. Unfortunately, it is now clear that the bigger issue is what we do not know. Despite last night's production of some 3,000 pages related to the firing process, we are now faced with a growing list of unanswered questions, including:

What was the White House's role in these decisions?

In one e-mail produced last night, there is a conversation about involving the President in the process, and asking who decides what his level of involvement should be. But there are no subsequent documents showing the answers. Obviously, the question is: Who did decide and what was his role?

Who made these determinations about who to fire, and who was involved in the loyalty evaluation? Again, the documents produced last night do not answer this question, and we are still faced with several lists of targeted U.S. attorneys that beg the question: Who else was a target and what happened?

We also need to know what role, if any, did open public corruption cases play in determining who would be fired? What was the Attorney General's role in the process? Was the change to the law in March of 2006 done in order to facilitate the wholesale replacement of all or a large number of U.S. attorneys without Senate confirmation?

While I believe the Senate and the House will exercise our due diligence investigating these questions, we have an opportunity right now to ensure this politicization of U.S. attorneys does not happen again.

The bill before the Senate would return the law to what it was before the change that was made in March of 2006. It would still give the Attorney General the authority to appoint interim U.S. attorneys, but it would limit that authority to 120 days. If after that time, the President had not nominated a new U.S. attorney or the Senate had not confirmed a nominee, then the district courts would appoint an interim U.S. attorney. This is the process that was developed under the Reagan administration and it worked from 1986 to 2006. That is 20 years. It worked with virtually no problems for 20 years.

I think it is important we reinstate these important checks and balances and ensure that Senate confirmation is required. So I urge my colleagues to support the bill and to vote against all amendments.

I think it is necessary we pass this bill today, and I hope it is by a very substantial margin. I am so distressed at the politicization of the Department of Justice. I am so distressed that there is not an arm's length between politics and the law today in this country. I believe it is a very serious situation. I believe strongly that once the U.S. attorney takes that oath of office, they must be independent, objective, and follow facts wherever they lead them in the pursuit of justice. I believe that is what both political parties want and I believe that is what the American people want. There is only one way we are going to get back there with U.S. attorneys, and that is by simply returning the law to what it was before.

I also wish to point out the administration's interest in saying this is a political appointment has a limit, and I have expressed what that limit is. The only way we are going to effect the necessary changes is to pass this law this morning, and I very much hope it will be passed and passed without amendment.

I thank the Chair, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the Senator from California for her statement and her leadership. She has been so forthright in her comments right from the beginning of this scandal, and I appreciate it. I will have more to say about her efforts at the end of my statement.

In a few minutes, the Senate will have an opportunity to begin restoring accountability and checks and balances to what is our Government, the Government that belongs to all Americans. We should pass the Preserving U.S. Attorneys Independence Act. We have to close a loophole that has been exploited by the Department of Justice and the White House—a loophole that led to the mass firings of U.S. attorneys.

When we roll back this excessive authority given the Attorney General by the PATRIOT Act reauthorization, we can restore—or at least take a step toward restoring—the independence of our Federal law enforcement system. We will be acting to reverse one more incident of overstepping by an earlier ''rubberstamp'' Congress, which was all too often willing to dance to the tune of a power-hungry White House.

The Attorney General—and I will agree with the Attorney General on this—he is right that mistakes were made. Mistakes were made, all right. It was a mistake to conduct the mass firings to send the message to our U.S. attorneys that they had better act like ''loyal Bushies''—their words, the Administration's words—rather than act as objective law enforcement officers. Mistakes were made, absolutely.

It was a mistake to malign the reputations of these officials by contending that the firings were prompted by their badly performing their law enforcement responsibilities.

It was a mistake to mislead the Senate Judiciary Committee in hearings and Senators during phone calls and in meetings about the firings.

It was a mistake to give the Attorney General the unlimited authority to fill these critical posts with his selections or the selections of the White

House without the advice and consent of the U.S. Senate.

But most of all, it was a mistake to inject crassly partisan objectives into the selection, evaluation, firing, and replacement of the top Federal law enforcement officers in our country.

I still have no sense that the administration or the Attorney General understand the seriousness of this matter. The apparent effort to corrupt the Federal law enforcement function for partisan political purposes has cast a cloud over all U.S. attorneys. Now every U.S. attorney is under a cloud. People are asking about those who were retained as ''loyal Bushies.'' People are wondering what prosecutorial judgments were affected. These mass firings have served to undermine the confidence of the American people in the Department of Justice and the local U.S. attorneys.

In the same way that any employer has the power to hire, we understand that people cannot be fired because they are Catholic or because of their race or because they are a whistleblower. The power of employment is not without limit. It can be abused. When it is abused in connection with political influence over Federal law enforcement the American people and their representatives in Congress have a right to be concerned. We need to get to the bottom of this situation. We need the facts, not more spin, not another concocted cover story.

The U.S. Department of Justice must be above politics. The Attorney General of the United States has to ensure the independence of Federal law enforcement from political influence. The Department of Justice should serve the American people by making sure the law is enforced without fear or favor. It should not be a political arm of the White House.

The Attorney General is not the President's lawyer. The President has a lawyer. The Attorney General is the Attorney General for the people of the United States of America—all of us—Republicans, Democrats and Independents.

The advice and consent check on the appointment power is a critical function of the Senate. That is what this administration insisted be eliminated by the provision it had inserted in the reauthorization of the PATRIOT Act. That measure struck the time limit on the ability of the Attorney General to name a so-called interim U.S. attorney. And that is what this bill, the Preserving United States Attorney Independence Act of 2007, is intended to restore. It is vital that those holding these critical positions be free from any inappropriate influence.

We are finding out more and more abuses by this administration. We learned for the first time earlier this month in testimony by a Congressional Research Service attorney before the House Judiciary Committee about another loophole this administration has tried to create and exploit. In 2003, the Department's Office of Legal Counsel issued a secret legal opinion to try to create an end run around the Senate's role. This administration is the first I am aware that is employing the Vacancies Act in addition to the interim U.S. attorney appointment authority sequentially. The horror that Senator KYL speaks about is one that this administration created and has apparently been employing. That is not what Congress intended.

With the passage of S. 214 today we should put an end to that untoward practice, too. As one of the authors of S. 214 and chairman of the Judiciary Committee, I say it is not our intent to allow such an abuse by having the Vacancies Act provisions and those of S. 214 used in sequence. We do not intend for the Attorney General to use such a misguided approach and seek to install a choice for 330 days without the advice and consent of the Senate. Nor do we intend for the Attorney General to make Senator KYL's other suggestion a reality by seeking to use the 120-day appointment authority more than once. It is not designed or intended to be used repeatedly for the same vacancy. These double dipping approaches run afoul of congressional intent, the law and our bill. Our bill should put a stop to that, too. Instead, the President should fulfill his responsibilities, work with home State Senators and nominate qualified people to serve as U.S. attorneys so that they can be considered by the Senate and confirmed. If he does not the district court will be restored the stopgap authority they previously had.

I was pleased that Senator FEINSTEIN worked so hard with Senator SPECTER to craft the consensus measure we consider today to reinstate vital limits on the Attorney General's authority and bring back incentives for the administration to fill vacancies with Senate-confirmed nominees. We reported out this measure with bipartisan support 13–6 after debating and voting down several amendments, including amendments similar to those offered today by Senators KYL and SESSIONS. We should again vote down these amendments and pass the bipartisan bill without delay.

Senator SESSIONS' amendment would attach certain conditions to a district court's authority to appoint an interim U.S. attorney after 120 days, but none to the Attorney General's interim appointment authority. Our bill is meant to roll back a change in law that allowed an abuse of power by the administration and the Department of Justice. There is no record of problems with the appointment of interim appointments by the district court. In fact, for almost a hundred years until the law was changed in 1986 during the Reagan administration, district courts were the sole means of appointing interim U.S. attorneys. There are many criteria that we want U.S. attorneys to possess—chief among them the ability to enforce the laws independently without fear or favor. But both the prerogatives of the administration in putting in place the people it wants and the home State Senators in ensuring fairness and independence in their States are protected when the President nominates and the Senate considers and confirms U.S. attorneys.

Senator KYL's amendment provides unjustified limitations on the Senate's role in confirming U.S. attorneys that could short-circuit the Senate's ability to undertake a thorough consideration of a nominee's qualifications and wholly disregards the role of the home State Senators.

It is true that this President has been slow in nominating U.S. attorneys. There are currently 22 vacancies and only three nominees. Building incentives for this President to fulfill his responsibilities and work with home State Senators would be a good thing. That is not what Senator KYL's amendment does. Instead, in the guise of setting a time limit on the Senate, what it actually does is override the traditional deference paid to home State Senators and the Judiciary Committee itself. In fact, no time limit is needed to require the committee or the Senate to act on qualified nominees.

During this President's term, U.S. attorneys have been confirmed quickly, taking an average of 68 days from nomination to confirmation. Only three people nominated to be U.S. attorneys have not been confirmed and two of those withdrawn by the President. In fact, when I first chaired the Judiciary Committee during President Bush's first term, we confirmed 84 of President Bush's U.S. attorney nominations in a little more than a year.

Some critics of the district court's role in filling vacancies beyond 120 days claim it to be inconsistent with sound separation of powers principles. That is contrary to the Constitution, our history, our practices, and recent court rulings. In 2000, in United States v. Hilario, the First Circuit upheld the constitutionality of the prior law on interim appointments, including the district court's role. In fact, the practice of judicial officers appointing officers of the court is well established in our history and from the earliest days.

Morrison v. Olson should have laid to rest the so-called separation of powers concern now being trumpeted to justify these political maneuvers within the Justice Department. Certainly no Republicans now defending this administration voiced concern when a panel of judges appointed Ken Starr to spend millions in taxpayer dollars going after President Clinton as a court-appointed prosecutor.

During committee consideration we heard from some who had not read what the Constitution says. The Constitution provides congressional power to direct the appointment power. In article II, the part of the Constitution that this administration reads as if it says that all power resides with the President, the President's appointment power is limited by the power of Congress. Indeed, between its provisions

calling for appointments with the advice and consent of the Senate and for the President's limited power to make recess appointments, the Constitution provides:

But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the Heads of Departments.

Just last week, the Eastern District of Arkansas joined at least two other courts addressing the interim appointment of U.S. attorneys, the First Circuit in Hilario, and the Ninth Circuit in United States v. Gantt, in concluding that U.S attorneys are ''inferior officers.'' Thus, the Constitution contemplates exactly what our statutes and practices had previously provided and what our bill will restore. Congress is well within its authority when it vests in the courts a share of the appointment power for those who appear before them.

One of the finest Attorneys General of the United States ever to serve was Robert H. Jackson. He also served as one of our most admired Justices on the U.S. Supreme Court. He was a principal prosecutor at the International Military Tribunal for German war criminals in Nuremberg after World War II.

The day after I was born, on April 1, 1940, as a new Attorney General, he spoke to the U.S. attorneys from across the country. They were assembled in the Great Hall at the Department of Justice in Washington. He told them about the responsibilities of being a Federal prosecutor. I think it is appropriate today to recall his guidance. His words serve to show the Senate and the American people how wrong this Administration's practices are and how far off the mark.

This is what then-Attorney General Jackson said and they are words that serve today. He said:

The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.

Because of this immense power to strike at citizens, not with mere individual strength, but with all of the force of government itself, the post of Federal District Attorney from the very beginning has been safeguarded by presidential appointment, requiring confirmation of the Senate of the United States.

Your responsibility in your several districts for law enforcement and for its methods cannot be wholly surrendered to Washington.

Robert H. Jackson continued:

If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: That he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted.

It is in this realm in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself.

In times of fear or hysteria political, racial, religious, social, and economic groups, often for the best of motives, cry for the scalps of individuals or groups because they do not like their views. Those who are in office or apt to regard as ''subversive'' the activities of any of those who would bring about a change of administration.

Mr. President, I ask unanimous consent that a copy of Attorney General Jackson's full statement be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. LEAHY. Mr. President, I have said many times on this floor that one of the greatest opportunities I have ever had in my public life was to serve for 8 years as a prosecutor. Prosecutors have to be independent. Prosecutors have to prosecute without fear of favor. Prosecutors can never not prosecute someone because they are a Republican or Democrat; they have to do it because they have to uphold the law.

Let us restore the situation where our Federal prosecutors, whether we have a Democratic President or a Republican President, serve the law and not a political purpose. That is what prosecutors have to do. Many of us in this Chamber have served as prosecutors and know that is what we meant when we took our oath of office. Let's not have a system that at the outset subverts that oath of office.

I wish to commend Senator FEINSTEIN for leading this effort and Senator SPECTER, the ranking Republican on our committee, for joining her. We have all cosponsored the substitute to restore the statutory checks that existed. I commend the many Senators who contributed to this debate, including the majority leader, Senator KENNEDY, Senator DURBIN, both Senators from Arkansas, Senator WHITEHOUSE, Senator MCCASKILL, Senator SCHUMER, Senator MURRAY, Senator CARDIN, and Senator KLOBUCHAR.

Many speak from their own experiences as former prosecutors.

Let's pass this bill without amendments. We have a piece of legislation to protect the integrity of prosecutors and law enforcement. Let's pass it without amendment, pass it as it is, and strike a blow for the integrity of our Federal prosecutors and strike a blow for law enforcement. Because if you politicize a prosecutor, you politicize everybody in the whole chain of law enforcement. We should never do that. Let's pass this bill and restore integrity to Federal law enforcement.

Mr. President, I yield the floor.

EXHIBIT 1

THE FEDERAL PROSECUTOR

(By Robert H. Jackson, Attorney General of the United States, April 1, 1940)

It would probably be within the range of that exaggeration permitted in Washington to say that assembled in this room is one of the most powerful peace-time forces known to our country. The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations. Or the prosecutor may choose a more subtle course and simply have a citizen's friends interviewed. The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. He may dismiss the case before trial, in which case the defense never has a chance to be heard. Or he may go on with a public trial. If he obtains a conviction, the prosecutor can still make recommendations as to sentence, as to whether the prisoner should get probation or a suspended sentence, and after he is put away, as to whether he is a fit subject for parole. While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.

These powers have been granted to our law enforcement agencies because it seems necessary that such a power to prosecute be lodged somewhere. This authority has been granted by people who really wanted the right thing done—wanted crime eliminated—but also wanted the best in our American traditions preserved.

Because of this immense power to strike at citizens, not with mere individual strength, but with all the force of government itself, the post of Federal District Attorney from the very beginning has been safeguarded by presidential appointment, requiring confirmation of the Senate of the United States. You are thus required to win an expression of confidence in your character by both the legislative and the executive branches of the government before assuming the responsibilities of a federal prosecutor.

Your responsibility in your several districts for law enforcement and for its methods cannot be wholly surrendered to Washington, and ought not to be assumed by a centralized Department of Justice. It is an unusual and rare instance in which the local District Attorney should be superseded in the handling of litigation, except where he requests help of Washington. It is also clear that with his knowledge of local sentiment and opinion, his contact with and intimate knowledge of the views of the court, and his acquaintance with the feelings of the group from which jurors are drawn, it is an unusual case in which his judgment should be overruled.

Experience, however, has demonstrated that some measure of centralized control is necessary. In the absence of it different district attorneys were striving for different interpretations or applications of an Act, or were pursuing different conceptions of policy. Also, to put it mildly, there were differences in the degree of diligence and zeal in different districts. To promote uniformity of policy and action, to establish some standards of performance, and to make available specialized help, some degree of centralized administration was found necessary.

Our problem, of course, is to balance these opposing considerations. I desire to avoid any lessening of the prestige and influence of the district attorneys in their districts. At the same time we must proceed in all districts with that uniformity of policy which is necessary to the prestige of federal law.

Nothing better can come out of this meeting of law enforcement officers than a rededication to the spirit of fair play and decency that should animate the federal prosecutor. Your positions are of such independence and importance that while you are being diligent, strict, and vigorous in law enforcement you can also afford to be just. Although the government technically loses its case, it has really won if justice has been done. The lawyer in public office is justified in seeking to leave behind him a good record. But he must remember that his most alert and severe, but just, judges will be the members of his own profession, and that lawyers rest their good opinion of each other not merely on results accomplished but on the quality of the performance. Reputation has been called ''the shadow cast by one's daily life.'' Any prosecutor who risks his day-to-day professional name for fair dealing to build up statistics of success has a perverted sense of practical values, as well as defects of character. Whether one seeks promotion to a judgeship, as many prosecutors rightly do, or whether he returns to private practice, he can have no better asset than to have his profession recognize that his attitude toward those who feel his power has been dispassionate, reasonable and just.

The federal prosecutor has now been prohibited from engaging in political activities. I am convinced that a good-faith acceptance of the spirit and letter of that doctrine will relieve many district attorneys from the embarrassment of what have heretofore been regarded as legitimate expectations of political service. There can also be no doubt that to be closely identified with the intrigue, the money raising, and the machinery of a particular party or faction may present a prosecuting officer with embarrassing alignments and associations. I think the Hatch Act should be utilized by federal prosecutors as a protection against demands on their time and their prestige to participate in the operation of the machinery of practical politics.

There is a most important reason why the prosecutor should have, as nearly as possible, a detached and impartial view of all groups in his community. Law enforcement is not automatic. It isn't blind. One of the greatest difficulties of the position of prosecutor is that he must pick his cases, because no prosecutor can even investigate all of the cases in which he receives complaints. If the Department of Justice were to make even a pretense of reaching every probable violation of federal law, ten times its present staff would be inadequate. We know that no local police force can strictly enforce the traffic laws, or it would arrest half the driving population on any given morning. What every prosecutor is practically required to do it to select the cases for prosecution and to select those in which the offense is the most flagrant, the public harm the greatest, and the proof the most certain.

If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted. With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone. In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. It is in this realm—in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself.

In times of fear or hysteria political, racial, religious, social, and economic groups, often from the best of motives, cry for the scalps of individuals or groups because they do not like their views. Particularly do we need to be dispassionate and courageous in those cases which deal with so-called ''subversive activities.'' They are dangerous to civil liberty because the prosecutor has no definite standards to determine what constitutes a ''subversive activity,'' such as we have for murder or larceny. Activities which seem benevolent and helpful to wage earners, persons on relief, or those who are disadvantaged in the struggle for existence may be regarded as ''subversive'' by those whose property interests might be burdened or affected thereby. Those who are in office are apt to regard as ''subversive'' the activities of any of those who would bring about a change of administration. Some of our soundest constitutional doctrines were once punished as subversive. We must not forget that it was not so long ago that both the term ''Republican'' and the term ''Democrat'' were epithets with sinister meaning to denote persons of radical tendencies that were ''subversive'' of the order of things then dominant.

In the enforcement of laws which protect our national integrity and existence, we should prosecute any and every act of violation, but only overt acts, not the expression of opinion, or activities such as the holding of meetings, petitioning of Congress, or dissemination of news or opinions. Only by extreme care can we protect the spirit as well as the letter of our civil liberties, and to do so is a responsibility of the federal prosecutor.

Another delicate task is to distinguish between the federal and the local in law enforcement activities. We must bear in mind that we are concerned only with the prosecution of acts which the Congress has made federal offenses. Those acts we should prosecute regardless of local sentiment, regardless of whether it exposes lax local enforcement, regardless of whether it makes or breaks local politicians.

But outside of federal law each locality has the right under our system of government to fix its own standards of law enforcement and of morals. And the moral climate of the United States is as varied as its physical climate. For example, some states legalize and permit gambling, some states prohibit it legislatively and protect it administratively, and some try to prohibit it entirely.

The same variation of attitudes towards other law-enforcement problems exists. The federal government could not enforce one kind of law in one place and another kind elsewhere. It could hardly adopt strict standards for loose states or loose standards for strict states without doing violence to local sentiment. In spite of the temptation to divert our power to local conditions where they have become offensive to our sense of decency, the only long-term policy that will save federal justice from being discredited by entanglements with local politics is that it confine itself to strict and impartial enforcement of federal law, letting the chips fall in the community where they may. Just as there should be no permitting of local considerations to stop federal enforcement, so there should be no striving to enlarge our power over local affairs and no use of federal prosecutions to exert an indirect influence that would be unlawful if exerted directly.

The qualities of a good prosecutor are as elusive and as impossible to define as those which mark a gentleman. And those who need to be told would not understand it anyway. A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I ask unanimous consent that between the votes there be 2 minutes equally divided in the usual fashion.

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

The Senator from Arizona is recognized.

Mr. KYL. Mr. President, the first vote will be on the amendment which I have offered which solves the problem that has been described here, unlike the underlying bill which does not solve the problem.

The problem is that the U.S. Attorney General can appoint interim attorneys and the Senate doesn't have a chance to confirm them. My amendment repeals that section of the law; the underlying bill does not. So it is still possible in the future, under the underlying bill, for the Attorney General to appoint interim U.S. attorneys without Senate confirmation. If he doesn't do that, then a Federal district judge makes the appointment, again without the Senate having the ability to act on the nomination. Again, my amendment solves that problem by requiring the President to nominate a candidate for U.S. attorney and requiring the Senate to act on that nomination. Should the President not fulfill his responsibility, the requirements for the Senate to act are vitiated. So there is a powerful incentive for the President to nominate.

The underlying bill reinstates the old law. The Senator from California has said the old system, which is the basis for her legislation, has worked well for 20 years. It hasn't worked well. The Senate has no ability to act on a nominee when there is no nominee. Under the existing law, the district court judge appoints the U.S. attorney. We have no ability to say yes or no to that individual. So I would argue that, from the Senate's prerogative and point of view, it has not worked well.

Secondly, yesterday, I noted two situations, one in the district for West Virginia in 1987, where the system of having a Federal judge appoint the

U.S. attorney did not work well at all. It is a case that perhaps the Presiding Officer is aware of. Eventually, the Justice Department had to remove the investigative files from the U.S. Attorney's Office and had to direct the nominee to recuse herself from some criminal matters until a background check could be effectuated. The situation was not resolved until another U.S. attorney was approved by the Senate.

We had the odd situation 2 years ago in South Dakota where we ended up having two U.S. attorneys serving at the same time because of the appointment by a district judge. The point is, the old system did not work well. In any event, the Senate has no say in the matter when a district judge appoints the U.S. attorney.

Conclusion: We have all recognized a problem exists. The problem is a U.S. attorney can be appointed without the Senate ever having a say in it, either by the Attorney General, as an interim, or by a district judge. The underlying bill permits both of those practices to continue. My amendment precludes both of those practices. It eliminates the Attorney General's ability to appoint an interim U.S. attorney and it eliminates the district court's ability to do so. It puts the responsibility where it belongs, on the shoulders of the President and the Senate.

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

Mr. KYL. Mr. President, I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. COBURN) and the Senator from Arizona (Mr. MCCAIN).

The PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 56, as follows:

[Rollcall Vote No. 79 Leg.]

YEAS—40

Allard	Enzi	Nelson (NE)
Bennett	Graham	Roberts
Bond	Grassley	Sessions
Brownback	Gregg	Shelby
Bunning	Hagel	Smith
Burr	Hutchison	Specter
Chambliss	Inhofe	Stevens
Cornyn	Isakson	Thomas
Craig	Kyl	Thune
Crapo	Lott	Vitter
DeMint	Lugar	Voinovich
Dole	Martinez	Warner
Domenici	McConnell	
Ensign	Murkowski	

NAYS—56

Akaka	Bayh	Brown
Alexander	Bingaman	Byrd
Baucus	Boxer	Cantwell
Cardin	Inouye	Obama
Carper	Kennedy	Pryor
Casey	Kerry	Reed
Clinton	Klobuchar	Reid
Cochran	Kohl	Rockefeller
Coleman	Landrieu	Salazar
Collins	Lautenberg	Sanders
Conrad	Leahy	Schumer
Corker	Levin	Snowe
Dodd	Lieberman	Stabenow
Dorgan	Lincoln	Sununu
Durbin	McCaskill	Tester
Feingold	Menendez	Webb
Feinstein	Mikulski	Whitehouse
Harkin	Murray	Wyden
Hatch	Nelson (FL)	

NOT VOTING—4

Biden	Johnson
Coburn	McCain

The amendment (No. 459) was rejected.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent that the next two votes be 10 minutes in duration.

The PRESIDENT pro tempore. Is there objection? Hearing no objection, it is so ordered.

AMENDMENT NO. 460

Under the previous order, there will now be 2 minutes of debate, equally divided, on the amendment offered by the Senator from Alabama, Mr. SESSIONS.

Mr. SESSIONS. Mr. President, am I recognized under the agreement for 1 minute?

The PRESIDENT pro tempore. The Senator is recognized.

Mr. SESSIONS. Mr. President, this is a friendly amendment to the Feinstein amendment. It would simply eliminate the difficulty that has occurred over the years when Federal judges, given the power of appointment, have appointed individuals who do not have security clearances and aren't able to function in the office, aren't able to participate in sensitive cases.

I would note that in recent years, U.S. attorneys have been given substantial responsibility against terrorism.

In every U.S. Attorney's Office today, there are the most highly secure telephones. They are wired into the most serious terrorism situations that might occur, and they become a coordinating officer in many instances. This would eliminate the danger of a judge appointing someone not qualified to participate as an effective member of that team because they lack the security clearance. It would require appointing someone with law enforcement experience and security clearance. This is a technical amendment. I ask my colleagues to support it.

The PRESIDENT pro tempore. There will be order in the Senate.

The Senator may proceed.

Mr. SESSIONS. This is a technical but important amendment that guarantees that any appointee to the office of U.S. attorney, a critical component in our law enforcement and terrorism matters, will have the required security clearance.

I yield the floor.

The PRESIDING OFFICER (Mr. CASEY). The Senator from Vermont.

Mr. LEAHY. Mr. President, we are trying to put the law back to the way it was before this little amendment was slipped into the PATRIOT Act. We should oppose the amendment of the Senator from Alabama. It would not put it back the way it was. Actually, under this amendment, the Senator from Alabama could not have been appointed U.S. attorney, and former Attorney General Thornburg and former Deputy Attorney General Larry Thompson could not have been.

The President should move quickly to appoint the U.S. attorney if there is a vacancy, but in the meantime, the judges are in the best position to appoint somebody. I hope a district court never has to make an appointment. But let's assume you have a case where there is widespread corruption. The judge has to be able to put in someone independent. It worked well for 100 years. It was changed by something slipped into the PATRIOT Act. Let's go back to the way we were, Mr. President.

I oppose this amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 50, as follows:

[Rollcall Vote No. 80 Leg.]

YEAS—47

Alexander	DeMint	McCaskill
Allard	Dole	McConnell
Bennett	Domenici	Murkowski
Bond	Ensign	Roberts
Brownback	Enzi	Sessions
Bunning	Graham	Shelby
Burr	Grassley	Snowe
Chambliss	Gregg	Specter
Coburn	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Thomas
Collins	Isakson	Thune
Corker	Kyl	Vitter
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	Martinez	

NAYS—50

Akaka	Cardin	Feingold
Baucus	Carper	Feinstein
Bayh	Casey	Hagel
Bingaman	Clinton	Harkin
Boxer	Conrad	Inouye
Brown	Dodd	Kennedy
Byrd	Dorgan	Kerry
Cantwell	Durbin	Klobuchar

Kohl	Murray	Sanders
Landrieu	Nelson (FL)	Schumer
Lautenberg	Nelson (NE)	Smith
Leahy	Obama	Stabenow
Levin	Pryor	Tester
Lieberman	Reed	Webb
Lincoln	Reid	Whitehouse
Menendez	Rockefeller	Wyden
Mikulski	Salazar	

NOT VOTING—3

Biden	Johnson	McCain

The amendment (No. 460) was rejected.

Mr. LEAHY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. HARKIN. Mr. President, I have come to the floor today to speak in support of S. 214, Senator FEINSTEIN's legislation to restore the independence of our U.S. attorneys. Like many in this body, I have watched in dismay as more and more details of this administration's efforts to fire Federal prosecutors and replace them with loyal partisans have become public. There has been a great deal of discussion of these facts on the floor of this Senate—the fact that those U.S. attorneys who were fired were criticized in one e-mail for not being ''loyal Bushies,'' and the fact that many of these U.S. attorneys had received glowing personnel reviews in the time leading up to their firings.

But one of the facts that I think we are losing sight of in this debate is the critical role that U.S. attorneys play in this country. These are incredibly important jobs, and the people that hold them are responsible for overseeing the most complex and serious prosecutions of the most treacherous crimes. U.S. attorneys around the country are responsible for overseeing major conspiracy cases including organized crime, large-scale drug trafficking by organized gangs, terrorism, and political corruption.

While these are political appointments, in the past, mere political loyalty was not generally sufficient to get you the job. In the past, under both Republican and Democratic administrations, you also needed to have the support of the legal community in the district and to have demonstrated solid legal skills. Ensuring that people who were known in the community and had the necessary judgment, skills, and independence to fulfill the demands of these positions is the reason that home State Senators are consulted.

It is because the importance of these positions has long been recognized on a bipartisan basis that it is simply astonishing that this administration gave real consideration to summarily dismissing all 94 U.S. attorneys. Even more appalling is that the Attorney General, the man who earlier this year told the Judiciary Committee that he would ''never ever make a change in the United States attorney position for political reasons,'' was involved in those discussions.

As difficult as it is to believe that the administration seriously considered wholesale replacement of the U.S. attorneys, it is even more troubling that they proceeded to summarily dismiss eight prosecutors for very murky reasons and then tried to justify their actions as performance based. Given that each of the prosecutors underwent a detailed favorable review, it has become very clear that this is simply not true.

More troubling still is that at least three of the fired prosecutors were involved in political corruption probes that were not proceeding in a way that the administration viewed as politically favorable, and in at least two of these cases lawmakers and their staff personally intervened with the prosecutors.

As if a large-scale effort to fire lead Federal prosecutors for political reasons wasn't sufficient, the Department of Justice clearly intended to replace sitting prosecutors with highly political White House and other administration staffers on an ''interim'' basis without sending them to the Senate for confirmation. That is what this bill before us today addresses. It revokes the ability of the Attorney General to appoint an interim U.S. attorney for an indefinite period of time and thus avoid the Senate confirmation process. This is just one of the problematic provisions slipped into the PATRIOT Act and I commend Senator FEINSTEIN for her efforts to bring this issue to light and to restore the balance to the process of appointing U.S. attorneys.

While the Deputy Attorney General has insisted that it wasn't the intent of the Department of Justice to avoid Senate confirmation, this has been flatly contradicted by the documents. In discussing the appointment of Karl Rove's Deputy Tim Griffin as the ''interim'' U.S. attorney in Arkansas, the former Chief of Staff to Attorney General Gonzales, Kyle Sampson, wrote in December 2006: ''I think we should gum this to death . . . Ask the senators to give Tim a chance, meet with him, give him some time in office to see how he performs, etc. If they ultimately say 'no never' (and the longer we can forestall that the better), then we can tell them we'll look for other candidates, ask them for recommendations, interview their candidates, and otherwise run out the clock. All this should be done in 'good faith' of course.''

The decision to fire the U.S. attorneys was finalized after the elections and the knowledge that Democrats would be taking control of the Senate. But even so, it raises the question of why the White House would feel it necessary to avoid Senate confirmation. After all, many of the current U.S. attorneys were confirmed smoothly under Democratic control in 2001 and 2002. Again, Kyle Sampson has the answer for us. In an early email, he laid out the benefits of avoiding the Senate stating: ''we can give far less deference to home-state senators and thereby get (1) our preferred person appointed and (2) do it far faster and more efficiently, at less political cost to the White House.''

This bill before us today restores the status quo prior to the renewal of the PATRIOT Act last fall by repealing the ability of the Administration to appoint ''interim'' U.S. attorneys for indefinite periods of time. I am glad the administration has dropped its opposition to this bill, and I look forward to seeing the President sign this bill in to law. But this exercise has been an eye-opener for those of us in the Senate, and I hope for the American people, about the contempt this administration has for the Congress and the willingness of the administration to politicize any and every office. It has also, once again, underscored the value of oversight into our system of government. For the past 6 years, this administration has operated without any independent check on its power. But those days are over. By passing this legislation and beginning the necessary work to restore the integrity of our Nation's U.S. attorneys, we can begin to restore Americans faith in our system of justice.

Mrs. BOXER. Mr. President, I wish to express my support for S. 214, which would serve to protect the independence of our U.S. attorneys.

The administration's attack on sitting U.S. attorneys is an unprecedented abuse of power. The White House and the Attorney General injected politics into the process and chose to fire eight U.S. attorneys, including our U.S. attorney in San Diego, Carol Lam. These attorneys were not fired because of poor job performance, as the Attorney General initially claimed, but because in one way or another they did not carry out the political agenda of the White House.

Despite the administration's efforts to downplay and spin these events to Congress, we now know that this plan was orchestrated at the highest levels of the White House. For example, Karl Rove misled the public when he asserted that the Justice Department's action was comparable to President Clinton's actions. This is untrue. No administration has ever lashed out and fired a group of their own U.S. attorneys in the middle of a term.

There is an immediate need for legislation to ensure that the administration can no longer appoint new U.S. attorneys without Senate confirmation. I thank my colleague, Senator FEINSTEIN, for her superb leadership on this issue.

Mr. LEVIN. Mr. President, time and time again we have seen this administration's inability to divorce politics from policy in areas that politics should have no place. The recent firing of eight U.S. attorneys lends yet another example to that failure. It is clear that some of these firings were politically motivated. I support S. 214 and have cosponsored this legislation because it will restore the 120-day limit for interim appointments made by the

Attorney General and restore the district court's role in making any subsequent interim appointments to deter the kind of Department of Justice actions we have seen recently.

Until 1986, interim U.S. attorneys were appointed by their respective district courts and were allowed to serve until the vacancy was filled by a U.S. attorney nominated by the President and confirmed by the Senate. In 1986, the law was changed to allow the Attorney General to make an interim appointment for 120 days, provided the appointee was not a person for whom the Senate had refused to give advice and consent. If a successor was not named at the end of the 120-day period, then the district court would appoint a U.S. attorney to serve until the vacancy was filled. This process remained unchanged for 20 years, until last year.

During the PATRIOT Act Reauthorization last year, the process was altered to eliminate appointments by the district court and to allow the Attorney General to appoint an interim U.S. attorney indefinitely, or until the vacancy is filled by a U.S. attorney nominated by the President and confirmed by the Senate.

The legislation before us today is simple: it would repeal those changes, which were made without debate, and would require an interim appointment made by the Attorney General to expire after 120 days or when a successor is nominated by the President and confirmed by the Senate, whichever comes first. If at the end of the 120-day period no successor has been confirmed, the relevant district court would be authorized to appoint an interim U.S. attorney to serve until the vacancy is filled. The legislation would also terminate existing interim appointments 120 days from enactment or upon confirmation of a successor, whichever comes first.

We all know that U.S. attorneys serve at the pleasure of the President. However, U.S. attorneys are supposed to be loyal to the Constitution, not the President and Attorney General. When they are sworn in, U.S. attorneys swear to ''support and defend the Constitution of the United States against all enemies, foreign and domestic.'' There is no requirement that U.S. attorneys ''exhibit loyalty to the President and Attorney General,'' as was said to be a goal in an e-mail from Kyle Sampson, former chief of staff to Attorney General Gonzales, recommending the retention of those attorneys.

One of the U.S. attorneys who was asked to resign was Margaret Chiara, U.S. attorney for the Western District of Michigan. In an e-mail dated March 2, 2005, Kyle Sampson wrote to then White House Counsel Harriet Miers, designating Ms. Chiara as one of the U.S. attorneys who was recommended for removal because she was one of the ''weak U.S. attorneys who have been ineffectual managers and prosecutors, chafed against Administration initiatives, etc.'' That assessment ran contrary to the Department of Justice's evaluation of Ms. Chiara, which found her to be well regarded, hard working and a capable leader who had the respect and confidence of the judiciary, agencies, and U.S. Attorney's Office personnel. Further, during Ms. Chiara's tenure as the U.S. attorney from the Western District of Michigan, she achieved an overall increase of more than 15 percent in felony prosecutions and convictions (the Northern Division alone experienced an increase of 84 percent in the number of criminal cases prosecuted during the 2-year period of 2003–2005). The Department of Justice invited Ms. Chiara to serve on several key subcommittees of the Attorney General's Advisory Committee. Ms. Chiara developed an attorney training and mentoring program for the Western District of Michigan that now serves as a national model that was acknowledged as a ''best practice'' by the Department of Justice. Ms. Chiara was awarded the ''Building Bridges Award'' by the Arab-American Anti-Discrimination Committee, and ''Lifetime Achievement Recognition'' by the Women's Historical Center and Michigan Women's Hall of Fame.

On December 7, 2006, Mr. Sampson e-mailed William Mercer, then acting Associate Attorney General, stating that ''All Senators have been notified and are fine/no objections.'' Apparently Republican Senators were contacted, but Democrats were not contacted. This Senator was not notified. In fact, the ''Plan for Replacing Certain United States Attorneys'' drafted by Mr. Sampson, states that, on December 7, ''where there is no Republican home-state Senator, the home-state 'Bush political lead[s]' are contacted.'' Obviously, it was more important to contact the ''political lead'' than the home-state Senators of these U.S. attorneys, which is further evidence that these firings had political motivations.

I am pleased that we will pass this important legislation today, to restore integrity and political confidence to the process of filling the vacancies of U.S. attorneys. I am also pleased that the Judiciary Committee will continue their investigation into this matter by issuing subpoenas, if necessary.

Mrs. CLINTON. Mr. President, as part of the PATRIOT Act's reauthorization in 2006, Congress bestowed upon the Attorney General new authority to appoint interim U.S. attorneys indefinitely, without any independent oversight. The Department of Justice proceeded to abuse this provision to orchestrate a series of firings of U.S. attorneys. An ever-growing body of evidence reveals that the firings were little more than a political purge. To defend its conduct, the Department of Justice gave Congress misleading testimony about these politically motivated firings, tarnishing the professional reputations of these U.S. attorneys in the process. Sadly, this is only the latest in a long series of episodes that call into question the independence and the leadership of an Attorney General more concerned with advancing a partisan agenda than impartially enforcing the law. It is unacceptable that the Attorney General has allowed his loyalty to the President to politicize the Department of Justice and corrupt the administration of justice. Because his conduct is unbecoming an Attorney General, I have called on Attorney General Alberto Gonzales to resign his post.

For these same reasons I support and am a cosponsor of Senator FEINSTEIN's Preserving United States Attorney Independence Act of 2007, which would reinstate the process for the appointment of interim U.S. attorneys that existed for 20 years prior to 2006. Senator FEINSTEIN's legislation would authorize the Attorney General to make an interim appointment for 120 days. If a successor is not named and confirmed by the Senate at the end of the 120-day period, then the relevant district court must appoint a U.S. attorney to serve until the vacancy is filled. The legislation's provisions are also retroactive, meaning it would also terminate existing interim appointments 120 days from its enactment, or upon confirmation of a successor, whichever comes first. The legislation is an important measure that will make great strides toward restoring the historic independence of the U.S. attorneys.

But even with the passage of this legislation, there is still a lot of explaining to be done by the Attorney General and the Bush administration. Numerous questions remain about who called for the U.S. attorney firings, what specific reasons were cited to justify the firings, and to what extent the White House participated in the decision to achieve political ends. The Attorney General and the President and their respective staffs need to be forthcoming with explanations and documents that answer these and other questions and end the current practice of providing misleading, inconsistent, and unclear responses.

Some have attempted to defend the Attorney General's inexcusable behavior by positing arguments that divert attention away from what really occurred. First, much has been made of the fact that these fired U.S. attorneys served at the pleasure of the President and thus were subject to dismissal at any time. The administration's desire to have U.S. attorneys engage in politically motivated investigations in direct violation of their obligation to impartially enforce the law cannot serve as proper grounds for dismissal. Terminating these Federal prosecutors because they refused to serve as partisan henchmen cannot be the source of the President's displeasure.

Further, the assertion that the Clinton administration engaged in similar misdeeds is also baseless. Holdover U.S. attorneys appointed by a previous administration are routinely replaced by the new incoming President. Even Stuart M. Gerson, Assistant Attorney General in the administration of President

George H.W. Bush, observed, ''It is customary for a President to replace U.S. attorneys at the beginning of a term.'' This practice allows the new President to appoint new Federal prosecutors who share his or her priorities and strategy for fighting crime. You will find similar turnover when President Bush replaced President Clinton in 2001 and when President Reagan replaced President Carter in 1981.

The firings we are seeing today are nothing like what happened in 1981, 1993, or 2001. The essential question here is why were these U.S. attorneys—President Bush's own appointees—fired in the middle of his second term. There is substantial evidence that the Bush administration fired them for political reasons: for pursuing corruption charges against Republicans too aggressively, for failing to prosecute Democrats aggressively enough, or for not pursuing what one U.S. attorney described as ''bogus'' election claims against Democrats and public interest groups in the months leading up to the 2006 elections. This incursion on the independence of U.S. attorneys is unacceptable conduct, and the Attorney General and administration must be honest with the American people about what happened.

The Attorney General took an oath to uphold our Constitution and respect the rule of law. But time and time again, he has demonstrated that his loyalties lie with the President and his political agenda, not the American people or the evenhanded and impartial enforcement of our laws. In executing the White House's political directives by firing U.S. attorneys who would not carry out the administration's partisan witch hunts, the Attorney General undermined the objectives of the Department of Justice, putting politics ahead of the just enforcement of the law. The Department of Justice should not serve as a political arm of any party, and U.S. attorneys should not double as political operatives. The administration's insistence to the contrary and the Attorney General's complicity are a betrayal of the highest order to the fundamental mission of the Department of Justice to ensure fair and impartial administration of justice for all Americans.

Attorney General Gonzales acknowledges that ''mistakes'' were made in the dismissal of these U.S. attorneys and maintains that responsibility for these unjustified firings lies with him. I agree. Because he has betrayed his obligations and the trust of the American people, Attorney General Gonzales should resign his post as head of the Department of Justice.

Mr. FEINGOLD. Mr. President, last week the Senate Judiciary Committee held its second hearing on the unprecedented dismissal of eight U.S. attorneys in December. In the past few days, increasingly disturbing information has come to light that suggests that Congress was intentionally misled with regard to why these U.S. attorneys were fired and who was involved in making the decision to fire them. Under the leadership of Chairman LEAHY and Senator SCHUMER, the Judiciary Committee will continue to investigate these matters in the coming weeks.

But today, we will vote on legislation to repeal a change in the law that apparently helped to bring about these unfortunate events. I will vote in favor of S. 214 and against both amendments that have been offered.

In many ways, U.S. attorneys are the face of the Federal Government and of Federal law in our local jurisdictions. They make crucial decisions on how federal law will be enforced. To faithfully execute the law, they must be able to exercise that essential prosecutorial discretion that distinguishes our criminal justice system from a mere draconian rule book that is applied without regard for the circumstances of each individual case. Who fills these positions in our system is a matter of great consequence. That is why they are subject to confirmation by the Senate.

In Wisconsin, we take the nomination process for our two U.S. attorneys, and the participation of the Senate in that process, very seriously. In 1979, Senators William Proxmire and Gaylord Nelson created the Wisconsin Federal Nominating Commission to advise them on judicial and U.S. attorney nominations. The Commission process has been used for over a quarter century, by both Republican and Democratic senators from our State under both Republican and Democratic Presidents.

The Commission operates whenever a vacancy occurs for a Federal judge or U.S. attorney position in Wisconsin. The Commission reviews applications and then makes recommendations to the Senators. The two Wisconsin Senators, now Senator KOHL and myself, choose from those recommended by the Commission in making our recommendations to the President. This bipartisan Commission helps ensure that dedicated and qualified individuals fill the positions. It gives our citizens additional assurance that these important nominations are made based on merit, not politics. I believe commissions like this are a particularly reliable and transparent form of filling these vacancies.

That is one reason that I feel so strongly that the change made during the PATRIOT Act reauthorization process to the process for appointing interim U.S. attorneys was a mistake: It allows the Justice Department to sidestep the confirmation process for U.S. attorneys altogether. There is simply no good reason why the Attorney General needs the power to make indefinite interim appointments. When it exercises that power, the administration cuts Congress, and in the case of my state, the people of Wisconsin, out of that process.

As some of the recently released emails from the Attorney General's chief of staff reveal, this change in law allowing the Attorney General to make indefinite interim appointments was going to be used to circumvent congressional involvement and instead install preselected ''interim'' replacements for the fired U.S. attorneys with no intention to seek Senate confirmation. Worse yet, the emails indicate that the Department of Justice was actively planning to pretend it was following a traditional confirmation process ''in good faith.'' Such blatant disregard for Congress's legitimate role in this process—and for the integrity of a three branch system of government in general—is simply unacceptable.

S. 214 will repeal the provision that prompted this plan to circumvent the confirmation process. Enacting this bill is an important start in preventing further abuses.

I want to note that the concerns expressed by some of my colleagues about the involvement of the district courts in making interim appointments just don't ring true. Beginning in the late 1800s, and continuing until the fiasco of this past year, district courts were involved in the interim appointment process. In the time that the district courts were involved, either exclusively—until 1986—or as a fail-safe after the Attorney General exercised a temporary appointment power—from 1986–2006—the interim appointment process went smoothly. Never before have we seen an administration hatch a plan to replace a large number of U.S. attorneys in the middle of a term for what appear to be political reasons. The reason, of course, is that until this year, individuals appointed on an interim basis could only serve for 120 days without Senate confirmation.

By repealing this clearly ill-advised change to interim appointment power and returning to the law used for the previous 20 years, S. 214 allows for the needed flexibility to accommodate short-term interim appointments made by the Attorney General while also ensuring that the Senate confirmation process remains in place for permanent appointments. And the Senate confirmation process allows states like mine to encourage a transparent and accountable selection process for these important positions.

These are grave matters, for it is absolutely vital that our citizens be able to rely on the integrity of the justice system. It is equally important that they have confidence that individuals who represent the Federal Government in the justice system are above reproach, and are acting in the interest of justice—and not politics—at all times. Even an appearance of impropriety can harm our judicial system and, in turn, harm the rule of law by undermining citizens' confidence in its integrity.

Whatever role political motivations played in the dismissals of these U.S. attorneys—and each day more evidence surfaces to suggest that politics did, in fact, play quite a large role—I think it

is clear that the administration has not acted in a manner that upholds the best interests of law enforcement and the reputation of our criminal justice system. We have a duty to remedy this problem, and passing S. 214 is an important step towards doing so.

We must ensure that there is, once again, some accountability in how U.S. attorneys are selected to serve. It is the very least that we can do to help restore the public's confidence that our criminal justice system is above partisan interference.

Mr. BYRD. Mr. President, Robert Browning, a brilliant British poet, once wrote a stirring poem about an unpleasant subject, namely: Rats.

A key section of the poem reads as follows:

Out of the houses the rats came tumbling.
Great rats, small rats, lean rats, brawny rats,
Brown rats, black rats, gray rats, tawny rats.
Grave old plodders, gay young friskers,
Fathers, mothers, uncles, cousins,
Cocking tails and pricking whiskers,
Families by tens and dozens,
Brothers, sisters, husbands, wives—
Followed the Piper for their lives.

Mr. President, it is gotten so that, every morning when I open the paper and see another story describing the administration's incompetence or wrongdoing, Robert Browning's vision of administration wrongdoers tumbling out of the house comes into my mind. ''Brothers, sisters, husbands, and wives,'' who followed the misled Piper—in this case, the President, ''for their lives.'' And they may pay dearly, as a result. Just as the entire country is now paying dearly for the arrogant, reckless and misguided policies of this Administration.

We see more clearly, every day, that the executive branch of our Government is in dire need of a thorough housecleaning, to rid itself of the conniving agents lodged in its bureaus, who apparently will stop at nothing to grab power for the Executive at the expense of the Congress and the People who send us here to represent them.

Last year, in one of several bills reauthorizing the PATRIOT Act—all of which I voted against—a small provision was added by the then-Republican majority. It enabled administration officials to fire any U.S. attorney whose politics they did not like and replace them with what in Las Vegas are called ''shills.'' The word shill is defined by Webster's Dictionary to mean, ''one who acts as a pitchman''—in this case, for the administration.

The provision, which was tucked into the PATRIOT Act reauthorization, permits the administration to fire and appoint new U.S. attorneys, whose term in office can be indefinite and never subject to Senate confirmation. What an abomination!

I was one of only ten U.S. Senators who voted against the legislation that made this possible, and, in retrospect, I am feeling quite proud of that vote.

A U.S. attorney is supposed to be the chief Federal law enforcement officer in his or her state. It is critical that U.S. attorneys be able to enforce the law and perform their duties, free of political pressure to achieve a partisan end. Federal law is to be applied fairly and objectively; not to fuel a political witch hunt or to feather the nest of a political contributor.

This White House has made it crystal clear that it has no respect for the separation of powers; no respect for our constitutional system of checks and balances; and no respect for even the rule of law, going so far as to pervert the appointment of U.S. attorneys for its own partisan purposes.

Well, key officials in this administration may be in for a rude awakening. The rule of law remains alive and well in the hearts of most Americans. If our laws apply to the American people, must they not also apply to the Justice Department? And to the White House? Imagine how baffled the American public must be to hear that the nation's chief law enforcement officer, U.S. Attorney General Alberto Gonzales, defends the administration's actions as follows: in the March 14 Washington Post, Attorney General Gonzales stated that he knew nothing of the scandal surrounding this issue, because he ''was not involved in seeing any memos, was not involved in any discussions about what was going on,'' and, he said, ''that's basically what I knew as the attorney general.''

Is that possible? Isn't that preposterous? Are we really to believe that, as head of the Justice Department, the chief law enforcement officer of the nation knew nothing about efforts to replace a plethora of U.S. attorneys nationwide? Which is worse: that he knew nothing that his Deputy was doing, or, instead, that he did know there was a scheme in place, hatched by the White House, to evade congressional oversight?

The administration's appointment of these U.S. attorneys constitutes a serious breach of the public trust. Americans don't want law enforcement officials appointed based on their good looks, family connections, or because the Republican National Committee wants to groom them to run for Congress some day. U.S. attorneys should be nominated and confirmed by the Senate based on merit. Only the Constitution affords the people the powers and the prerogatives that keep us a free nation. The constitutional doctrines of checks and balances and separation of powers are the foundations of our government, so brilliantly formulated by the Founders in 1787. My long study of constitutional history and a lifetime of public service have made me keenly aware of why so many Americans have given their lives to protect these basic principles. This is why we must continue to fight to ensure that our constitutional rights and privileges are never undermined or trampled by an ambitious, overly zealous executive branch like the one now in the White House. That is why we must enact S. 214—to restore the Senate's role in the confirmation of U.S. attorneys. The Founders granted the Senate the power of confirmation, precisely so that we could prevent a corrupt White House from undertaking exactly the indefensible actions that this White House has embraced with respect to the appointment of U.S. attorneys. Let us put a stop to those actions right here and right now.

Let us begin today to clean the house and rid our ship of state of the pests that gnaw away at our constitutional protections.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, I believe there are 2 minutes equally divided. I simply ask all Senators, send a very strong signal. We want to correct the mistake made in the PATRIOT Act, a mistake that has been utilized the wrong way. We want to go back to the appointment of U.S. attorneys the way they should be appointed. We want to have the advice and consent of the Senate. I urge all Senators to vote for the legislation Senator FEINSTEIN and I and Senator SPECTER and others have introduced.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from South Dakota (Mr. JOHNSON), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

I further announce that, if present and voting, the Senator from Maryland (Ms. MIKULSKI) would vote ''yea.''

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

The result was announced—yeas 94, nays 2, as follows:

[Rollcall Vote No. 81 Leg.]

YEAS—94

Akaka	Casey	Dorgan
Alexander	Chambliss	Durbin
Allard	Clinton	Ensign
Baucus	Coburn	Enzi
Bayh	Cochran	Feingold
Bennett	Coleman	Feinstein
Bingaman	Collins	Graham
Boxer	Conrad	Grassley
Brown	Corker	Gregg
Brownback	Cornyn	Harkin
Bunning	Craig	Hatch
Burr	Crapo	Hutchison
Byrd	DeMint	Inhofe
Cantwell	Dodd	Inouye
Cardin	Dole	Isakson
Carper	Domenici	Kennedy

Kerry	Murkowski	Snowe
Klobuchar	Murray	Specter
Kohl	Nelson (FL)	Stabenow
Kyl	Nelson (NE)	Stevens
Landrieu	Obama	Sununu
Lautenberg	Pryor	Tester
Leahy	Reed	Thomas
Levin	Reid	Thune
Lieberman	Roberts	Vitter
Lincoln	Rockefeller	Voinovich
Lott	Salazar	Warner
Lugar	Sanders	Webb
Martinez	Schumer	Whitehouse
McCaskill	Sessions	Wyden
McConnell	Shelby	
Menendez	Smith	

NAYS—2

Bond	Hagel

NOT VOTING—4

Biden	McCain
Johnson	Mikulski

The bill (S. 214), as amended, was passed, as follows:

S. 214

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 ''Preserving United States Attorney Independence Act of 2007''.

SEC. 2. VACANCIES.

Section 546 of title 28, United States Code, is amended by striking subsection (c) and inserting the following:

''(c) A person appointed as United States attorney under this section may serve until the earlier of—

''(1) the qualification of a United States attorney for such district appointed by the President under section 541 of this title; or

''(2) the expiration of 120 days after appointment by the Attorney General under this section.

''(d) If an appointment expires under subsection (c)(2), the district court for such district may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.''.

SEC. 3. APPLICABILITY.

(a) IN GENERAL.—The amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICATION.—

(1) IN GENERAL.—Any person serving as a United States attorney on the day before the date of enactment of this Act who was appointed under section 546 of title 28, United States Code, may serve until the earlier of—

(A) the qualification of a United States attorney for such district appointed by the President under section 541 of that title; or

(B) 120 days after the date of enactment of this Act.

(2) EXPIRED APPOINTMENTS.—If an appointment expires under paragraph (1), the district court for that district may appoint a United States attorney for that district under section 546(d) of title 28, United States Code, as added by this Act.

Mr. SALAZAR. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. SALAZAR. Mr. President, I ask unanimous consent that at 2:15 p.m. today, the Senate proceed to the consideration of calendar No. 82, S. Con. Res. 21, the concurrent budget resolution.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SALAZAR. Mr. President, I ask unanimous consent to be permitted to speak for up to 10 minutes as in morning business.

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

PRESERVING UNITED STATES ATTORNEY INDEPENDENCE ACT

Mr. SALAZAR. Mr. President, I am very proud to have supported the Preserving United States Attorney Independence Act we just passed in the Senate. This bill will go a long way toward restoring the independence of Federal prosecutors—an independence which has, unfortunately, been chipped away at in recent months and years.

I have been disappointed to watch the drama unfolding over the past few weeks regarding the politicization of our justice system. Every day, as the Judiciary Committee continues its investigation, we see more revelations of how the Department of Justice may have allowed portions of the U.S. attorney corps to become a vehicle for political patronage—this despite the fact that U.S. attorneys are among the most powerful public officials in our country, making virtually unreviewable decisions about life and death, about punishment and leniency. They make these kinds of decisions every single day all across this country.

The U.S. attorneys must be individuals who have integrity. They must be above reproach. They must be free from any kind of partisan political interference.

I am disappointed the Department of Justice may have blurred the line between the representation of President Bush as a client and the representation of the people of the United States. I understand that distinction very well, having served both as chief counsel to the Governor of my State as well as attorney general for the State of Colorado. Those are two very different positions. One requires—in the case of chief counsel to the Governor or chief counsel to the President—a lawyer-client relationship. The other—Attorney General—requires the representation of the people whom you represent. In the case of a State attorney general, you are the representative of the people of that State. In the case of the U.S. Attorney General, you are the representative of the people of the United States of America.

If Attorney General Gonzales has, indeed, crossed this line, then in my view he has forfeited his right to lead the Department of Justice.

On January 28, 2005, I received a letter from Attorney General Gonzales as part of his confirmation process in this U.S. Senate. In that letter he reflected upon his understanding of the independence of the Office of the Attorney General. I quote in part from that letter where he says the following:

If confirmed, I will lead the Department of Justice and act on behalf of agencies and officials of the United States. Nevertheless, my highest and most solemn obligation will be to represent the interests of the People. I know that you understand this solemn duty well from your prior service as Chief Counsel to the Governor and as Colorado Attorney General.

I would hope as the Senate Judiciary Committee moves forward in examining the facts related to the allegations that have been raised, the Judiciary Committee makes sure those facts are evaluated against the standard of independence which is at the core of the Department of Justice and the U.S. Attorney General. If, in fact, this standard has been violated, then it is my view that Attorney General Gonzales should, in fact, resign.

In the meantime, the Senate has a responsibility to ensure that Federal prosecutors are indeed independent of partisan politics, and the bill we passed today is a good first step. But I believe we must do more. Later this week, I will introduce a bill which I believe will take us another important step toward restoring the independence of Federal prosecutors. I am hopeful it will be legislation that will have broad bipartisan support. My bill would simply make it a crime to coerce or to pressure or to attempt to influence a U.S. attorney's decision whether to commence the investigation or prosecution of a person based on that person's race, religion, sex, national origin, political activity, or political beliefs.

The U.S. Attorneys Manual itself, which is given to every U.S. attorney as they come into office, already prohibits any Federal prosecutor from taking action against a person for any of those reasons. My bill would make sure that standard of the United States Attorneys Manual is included in the law of the United States. It would also extend the prohibitions that are set forth in that manual to individuals who try to influence or manipulate Federal prosecutors.

Some may ask, why is this bill necessary? In my view, the bill is necessary because over the past few weeks we have seen evidence that the White House has politicized the appointment and termination of U.S. attorneys. We have also had concerns raised that individuals have tried to inject politics into the administration of justice.

I do not need to rehash the particulars of this controversy right now, but suffice it to say many Senators on both sides of the aisle are concerned that the independence of our Federal prosecutors has, in fact, been threatened. Fixing the process for appointment of interim prosecutors is an important first step, no doubt. But that alone will not prevent individuals—whether from the Department of Justice or anywhere else—from attempting to influence the decisionmaking process of U.S. attorneys in an inappropriate manner. That is what my bill is designed to prevent.