call time be equally divided between the majority and minority between now and 3.

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

Mrs. MURRAY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

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

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 767, H.R. 6049, the Renewable Energy and Job Creation Act of 2008.

Harry Reid, Max Baucus, Barbara Boxer, Amy Klobuchar, Benjamin L. Cardin, E. Benjamin Nelson, Maria Cantwell, Patty Murray, Bernard Sanders, Daniel K. Akaka, Robert Menendez, Ron Wyden, Debbie Stabenow, Blanche L. Lincoln, Patrick J. Leahy, Richard Durbin, Sheldon Whitehouse.

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

The question is, Is it the sense of the Senate that debate on the motion to proceed to H.R. 6049, the Renewable Energy and Job Creation Act of 2008, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Arizona (Mr. MCCAIN) and the Senator from Alaska (Mr. STEVENS).

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

The yeas and nays resulted—yeas 53, nays 43, as follows:

[Rollcall Vote No. 190 Leg.]

YEAS—53

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

NAYS—43

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

NOT VOTING—4

Kennedy	Obama
McCain	Stevens

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader is recognized.

FREE FLOW OF INFORMATION ACT OF 2007—MOTION TO PROCEED—Resumed

Mr. REID. Mr. President, I now move to proceed to S. 2035, which is the media shield bill.

The PRESIDING OFFICER. The motion is now pending.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I thank the distinguished Presiding Officer. I want the distinguished Presiding Officer to know the weather in our home State is much nicer today than it is here.

I support the Free Flow of Information Act, S. 2035, which the distinguished majority leader has moved to. I hope the minority will allow us to consider this important legislation.

I thank the majority leader for his willingness to bring this legislation before the Senate. I have worked with him on this matter to find an opportunity for Senate action since the Judiciary Committee reported this bill last October. I appreciate the support of the majority leader. He has offered a generous response to the bipartisan request Senator SPECTER and I made to him and the Republican leader earlier this year to proceed to this bill. In a bipartisan letter, we asked if he would proceed to the bill. He has done that. I applaud him for it.

Our bill has 20 Senate cosponsors, Members of both parties. I hope the Republican cosponsors will join us in moving to the bill and will bring along the seven or eight Republicans we will need to overcome yet another filibuster and make progress.

I have also supported and urged the Senate to proceed to the strong House-passed version of the Free Flow of Information Act, H.R. 2102. That bill passed the House of Representatives by a vote of 398 to 21—so it obviously has overwhelming bipartisan support. The House bill has more than 70 cosponsors—both Republicans and Democrats alike.

Years ago, my mother and father owned a small daily newspaper in Waterbury, VT, the Waterbury Record. As a child, I grew up hearing, at the kitchen table, that a free and vibrant press is essential to a free society. That has been demonstrated again and again over the last eight years. That is why I cosponsored the Senate version of this bill and I have worked hard to enact a meaningful reporters' shield law this year.

That is why I made sure that for the first time ever—for the first time ever—the Senate Judiciary Committee reported a media shield law to protect the public's right to know. The Judiciary Committee reported a bill sponsored by Senators LUGAR, DODD, SPECTER, SCHUMER, GRAHAM, and myself with a strong bipartisan 15-to-4 vote.

I wish to commend the leadership of Senator LUGAR and Senator DODD in connection with this matter. They began this quest for fairness when it seemed an impossibility several years ago. They have worked diligently to bring us to where we are today—at the cusp of achieving a Federal shield law—if only the Senate gets the support of a handful of Republican Senators to proceed to the bill.

All of us—whether Republican, Democratic or Independent—have an interest in enacting a balanced and meaningful shield bill to ensure a free flow of information to the American people. Forty-nine States and the District of Columbia currently have codified or common law protections for confidential source information. But even with these State law protections, the press remains the first stop, rather than the stop of last resort, for our Government and private litigants when it comes to seeking information. Time and time again—especially during the years when this Congress refused to do real oversight of the current administration—when there was waste in Government, when there were serious mistakes in Government, even when Government was breaking the law, we found out about it first and foremost because of the press in America.

Earlier this year, Toni Locy, a professor of journalism at West Virginia University, also a former USA TODAY reporter, was held in contempt of court for refusing to divulge her confidential sources. There are scores of other reporters who have been questioned by Federal prosecutors about their sources, notes, and reports in recent years. This is a dangerous trend that can have a chilling effect on the press, but even more so, on the public's right to know. If you don't have a free press,

then you don't have a free society. If you don't have a way for Americans to know what their Government is doing, then we will all hurt. To paraphrase Mark Twain, you should support your country all the time but question your government when it deserves it. We need a press willing and able to do that.

Enacting the Free Flow of Information Act—which carefully balances the need to protect confidential source information with the need to protect law enforcement and national security interests—would help to reverse this troubling trend and benefit all Americans. The bill creates a qualified privilege to protect journalists from being forced to reveal their confidential sources. The bill contains exceptions to the privilege for criminal conduct or national security. The legislation also requires that Federal courts weigh the need for the information with the public's interest in the free flow of information, before compelling reporters to disclose their confidential sources.

Although I strongly support the enactment of a Federal shield law, I have some reservations about possible revisions to the bill we passed out of Committee. I am pleased that language has been drafted to address my concerns about making sure that legitimate bloggers and freelance journalists are included in the definition of the persons covered by this bill.

However, I hope that any amendments to this legislation will include stronger protections for journalists and their sources with regard to matters of national security and classified information. No one would quibble with the notion that there are circumstances when the Government can and should have the right to compel information in order to keep us safe. But many newsworthy stories concerning national security, such as the exceptional reporting on the CIA's secret prisons and the warrantless—and many feel illegal—wiretapping by the National Security Agency were published with the help of confidential sources, to the great benefit of the general public and the accountability that ordinary Americans deserve from their Government.

I fear that proposals from some in this body do not go far enough to protect against Government abuse in this area or to protect the public's interest in the dissemination of newsworthy information.

Not all reporters will be as lucky as Bill Gertz of the Washington Times was when a judge recently upheld his claim in a case in a California Federal court. Even with this victory, however, the Government has responded by broadening its inquiries. To prevent further intrusions on our fundamental first amendment rights, we need some uniform standards. We need procedures to evaluate claims of privilege and protect the public's right to know. To do that, of course, the Congress must act.

In a much touted speech to the American Enterprise Institute last week, current Attorney General Mukasey, who still opposes a Federal shield law, articulated principles that argue for enacting one. Attorney General Mukasey endorsed congressional legislative action when there exists a ''serious risk of inconsistent rulings and considerable uncertainty.'' He noted that congressional action to provide procedures in national security cases is ''well within the historic role and competence of Congress.'' Although he was proposing action in another setting, the Attorney General's remarks likewise support congressional action to standardize and clarify the procedures governing a Federal statutory press shield law. In view of the disparate rulings and outcomes that have developed in the courts since the Supreme Court's Branzburg decision 36 years ago, it is now time for Congress to establish a framework for the courts to resolve press privilege assertions fairly and consistently, and we can do this while preserving our national security.

When he testified before the Senate Judiciary Committee in favor of the Federal shield law in 2005, William Safire told us that the essence of news gathering is this: If you do not have sources you trust and who trust you, then you don't have a solid story—and the public suffers for it. Well, Bill Safire is exactly right. We simply have no idea how many newsworthy stories have gone unwritten and unreported out of fear that a reporter would be forced to reveal a source or face jail time. We also do not know how many potential whistleblowers, or other confidential sources, have chosen to remain silent out of fear that journalists could be compelled to disclose their identity.

Just recently, investigative journalism and confidential sources have helped to uncover significant Government failures in Iraq, in New Orleans, as well as Government neglect at the Walter Reed Medical Center. We wouldn't have found out how poorly the returning soldiers were being treated—people who have lost limbs or have been paralyzed or blinded in the war in Iraq—by the Veterans' Administration and the problems and events at our Government facilities. We would not have found out about that if a confidential source hadn't told a reporter.

We have seen just in the past few days news articles about politicization at the Department of Justice. A lot of the spotlight on how politicized this administration's Justice Department has become came out of hearings we held in the Judiciary Committee. But much of what we found out about what was going on at the Justice Department came out of press reports based on confidential sources.

We learned from the press that the White House, afraid that they might find out the truth, avoided implementing the Environmental Protection Agency's recommendations on global warming by not opening the agency's e-mails. Again, we find out about that from confidential sources.

As a former prosecutor, I understand the importance of making sure that the Government can effectively investigate criminal wrongdoing, combat terrorism, and preserve national security. The Federal shield legislation we are seeking to bring before the Senate strikes a balance among these important objectives. The bill addresses the legitimate need for law enforcement to obtain information from reporters to prevent a crime or a national security threat.

In addition, by providing a qualified and not an absolute privilege to withhold the identity of confidential sources, the bill also advances other important law enforcement objectives, such as encouraging whistleblowers to disclose fraud, waste, and abuse that might otherwise go unreported.

The opposition to this carefully crafted bill by the Department of Justice and Office of the Director of National Intelligence, ODNI, is simply misplaced. Although 49 States, the District of Columbia, and several Federal courts have recognized a reporter's privilege either by statute or common law for years, the Department of Justice and ODNI have not cited a single circumstance where the privilege caused any harm to national security or to law enforcement. In fact, the legitimate concerns about the need to effectively combat crime and protect national security have been satisfied by the bill and by amendments to this bill offered in a bipartisan fashion by Senators FEINSTEIN, BROWNBACK, and KYL.

A free press in our country is what sets us apart from so many other nations in the world. The distinguished Presiding Officer, in his years in the House and in the Senate, can certainly point to examples where we have found out things that have been kept hidden from the Congress only because the press uncovered them. Certainly, that has been my experience in my years here in the Senate.

I also know that there is a temptation—when any administration has made a serious mistake or is trying to hide wrongdoing by their administration, the first thing they want to do is to make sure nobody in the press or the Congress or the public finds out what they have done. For every administration, it is easy to have all of their press people go out and tout the things they want us to know, the things they consider a success. None want us to hear about the embarrassments or the mistakes or, more recently, out-and-out wrongdoing. That is where you need a press willing to go in and uncover Government wrongdoing and protect the sources who help them to do so.

Do you think even with all of the hearings I and others have held we would have found out how law enforcement was manipulated and thwarted by this administration in the selection and manipulation of U.S. attorneys?

We found out about it first and foremost by the press, and then through witness testimony in hearings, and now by the Justice Department's Inspector General who had the willingness to stand up and point to the wrongdoing of this administration. And then there was Abu Ghraib—how did we find out about that? We learned about it in the press, not because the administration was willing to say: Look at this terrible thing we have done.

So after months and months of delaying tactics and opposition by the Bush administration, the time has come to pass a Federal shield law. I thank and commend the more than 60 news media and journalism organizations including ABC News, the Associated Press, CNN, the National Newspaper Association, the Society of Professional Journalists, and the Vermont Press Association, that worked so hard to get us to this point.

I ask unanimous consent to have a copy of a support letter from the Media Coalition Supporting the Free Flow of Information Act printed in the RECORD following my statement.

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

(See exhibit 1.)

Mr. LEAHY. Mr. President, I will just leave with this: Let's make sure the Congress—especially this Senate—takes steps, as the other body did, to make it easier for the public to know not all the things the Government wants them to know but the times when our Government has made mistakes, the times when our Government has not followed the law, the times when our Government has tried to give disinformation. We are a stronger nation if we know the truth. We are a weaker nation if our laws allow the truth to be shielded from the American people. I trust the American people. I trust the American people to question our Government. I trust the American people to be able to handle the information. I do not trust those who would try to use every barrier to keep that information from the American people.

Mr. President, I yield the floor.

MEDIA COALITION SUPPORTING THE FREE FLOW OF INFORMATION ACT

JULY 21, 2008.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, Russell Bldg., U.S. Senate, Washington, DC.

Re: S. 2035—The Free Flow of Information Act.

DEAR CHAIRMAN LEAHY: On behalf of the men and women across the country who work to bring the American people vital news and information, we, the undersigned media companies and organizations, thank you for your support and co-sponsorship of S. 2035, the Free Flow of Information Act. Your leadership in support of this bill has been invaluable in fighting to ensure that the American public has access to news and information about their government and the institutions that affect their daily lives. Protecting confidential sources through federal legislation has broad support on both sides of the aisle, in both chambers of Congress, and from state attorneys general across the nation.

The legislation is vitally important to the national interest, an informed citizenry, and a free and vibrant press. As you know last October, S. 2035 was favorably reported out of the Senate Judiciary Committee on a strong 15–4 bipartisan vote and is supported by the presumptive Republican and Democrat presidential nominees, Sens. John McCain and Barack Obama. A similar shield bill (H.R. 2102) passed by an overwhelming 398–21 vote.

Chairman Leahy, we appreciate your leadership and respectfully request that you do whatever you can to make sure that S. 2035 is approved by the Senate, without any further amendments that would weaken the well-reasoned protections in the bill.

Very truly yours,

ABC News, ABC Owned Television Stations, Advance Publications, Inc., A. H. Belo Corporation, Allbritton Communications Company, American Business Media, American Society of Magazine Editors, American Society of Newspaper Editors, The Associated Press, The Associated Press Managing Editors Association.

Association of Alternative Newsweeklies, Association of American Publishers, Association of Capitol Reporters and Editors, Belo Corp., Bloomberg News, CBS Corporation, Clear Channel, CNN, Coalition of Journalists for Open Government, The Copley Press, Inc.

Cox Television, Cox Newspapers, Cox Enterprises, Inc., Daily News, L.P., First Amendment Coalition of Arizona, Inc., Freedom Communications, Inc., Gannett Co., Inc., Gray Television, Hachette Filipacchi Media U.S., Inc., Hearst Corporation.

Lee Enterprises, Inc., Magazine Publishers of America, The McClatchy Company, The McGraw-Hili Companies, Media Law Resource Center, National Association of Broadcasters, National Conference of Editorial Writers, National Federation of Press Women, The National Geographic Society, National Newspaper Association.

National Press Photographers Association, National Public Radio, NBC Universal, News Corporation, Newspaper Association of America, The Newspaper Guild-CWA, Newsweek, The New York Times Company, North Jersey Media Group Inc., Online News Association.

Pennsylvania Newspaper Association, Radio-Television News Directors Association, Raycom Media, Inc., The Reporters Committee for Freedom of the Press, Reuters America LLC, E. W. Scripps, Society of Professional Journalists, Stephens Media LLC, Time Inc.

Time Warner, Tribune Company, truTV, The Walt Disney Company, The Washington Post, U.S. News & World Report, White House News Photographers Associations.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

ENERGY

Mr. DOMENICI. Thank you, Mr. President. I rise to talk about the subject that has to do with the energy legislation that has been pending before the Senate for I think 9½ days. I wish we would have had votes before this time because it is one of the most important, if not the most important, issues confronting the American people. I am going to speak about one of the amendments the majority has to offer with reference to the Energy bill.

First, I wish to say I have no doubt that both sides of the aisle—because we do know what the public is thinking, so I would think both sides do know the public has changed its mind dramatically about drilling for American oil. It wasn't too long ago that you were afraid to use the word ''drill.'' You had to use the word ''explore'' because drilling had a bad connotation. But when the American people got around to thinking about this idea that if we had more oil available and the world knew it and it was American and we could develop it, they knew that would require drilling. No matter how sophisticated the drilling has become with these giant offshore drilling pads which, if anybody had a chance to see one, such as I have, you would see what we can do hundreds of miles underwater, without any degradation of the environment, and how men can go to work with that equipment and build these giant facilities, where people can sleep while they maintain them.

Underground, they can drill 10, 12, even 14 wells, and they all get piped into 1 pipe, and there isn't any seepage. When we had the great hurricane, they showed pictures of the pipes underground moving with the current but not breaking. That is what is going to happen under the ground off the coast—producing billions of barrels of oil and trillions of cubic feet of natural gas. It belongs to us. Eighty-five percent of our coast is now closed.

We can speak about the fact we are already producing and already leasing, but 85 percent is not leased. Whatever is being talked about, saying that leases are there and not producing—I don't have enough time today, but I am going to explain why one of the amendments the majority has that talks about producing doesn't produce anything because it is supposedly one of these amendments that talks about drilling—drill it or lose it. That is already governed by a ''drill it or lose it'' condition in every lease. So nobody is out there operating with leases they are not using, because if they do, they lose them. They paid big money to get them so they can go down there and produce energy for us.

I rise to speak on the status of the debate on this bill and on an amendment the majority has put forth under the pretext of increasing our energy supply. That is what we have been talking about—increasing our energy supply. For the most part, all the amendments we have talked about wanting to offer are increasing our energy supply. The current energy crisis is derived from many factors, but the bill the majority leader has called up attempts to deal with only one of them: speculation. There is no question that speculation is not the whole problem. In fact, four of the most prominent leaders we have in matters economic and matters that pertain to securities and matters that pertain to such things as speculation have indicated the oil and gas prices are not driven by that but, rather, by supply and demand.

As I have said before, never in my 36 years in the Senate have I seen a problem so big met with a proposed solution by the majority leader that is so

small. Speculation is adding to the severity of our energy crisis, but without question, an imbalance between supply and demand is at the root of the problems we face.

The Republican caucus has proposed a number of solutions that measure up to the present challenge. Despite this, as we begin the eighth day of debate on this bill, we have not had a single substantive vote on it. The American people certainly deserve better, and we ought to be able to come up with something better. But that is the way the process is—7 or 8 days without voting on an amendment. For most of that time, the contention was that we could offer amendments. The truth is we could not because we would have had to withdraw some amendments the majority leader had offered, and certainly he would not have relished that.

For the past week, the other side of the aisle has told the American people to believe that Republicans are up to no good, and we are obstructing progress. The truth is we merely want to complete the work our constituents sent us here to do.

We know what Republican amendments seek to do. My legislation was introduced more than 12 weeks ago, and the Republican leader's bill was filed nearly 5 weeks ago. The Republican proposals clearly answer the question of how to produce more energy here at home while, at the same time, reducing the amount we consume. Our motto has been abundantly clear: find more and use less. We will, perhaps, be voting and giving everybody in this body an approach to do that. I hope when we make such agreement, we will have a clear opportunity to have votes on that kind of proposition.

What has been less clear, outside of the speculation-only bill now pending, is what exactly the Democrats are willing to do to reduce the energy prices. Despite stalling progress on a real energy bill, the other side has realized they must at least appear to support greater domestic production of energy. So late last week, 14 Democratic Senators introduced their own version of the Republican plan to find more and use less.

Now, finally, the text of that amendment is public. However, we know it falls short of its own goals. Gone from it are the windfall profits tax, price-gouging, and NOPEC provisions that were soundly discredited by energy experts and editorial pages of all ideological stripes. They were part of what was being tendered by the majority. They are gone from the proposal that 14 Senators from the other side of the aisle have offered.

In their place is a bill that would still bring no new energy to market. It does not open any new areas to exploration—or shall I say drilling? By increasing the fees applied to leases and preproduction requirements, it could actually drive up the cost of energy and lengthen the time it takes to get that energy to market. It would delay the development of one of America's most abundant energy reserves and increase our vulnerability to an interruption in oil supply.

In short, the majority party's new ''production'' proposal contains far more problems than it does solutions. It will not lower prices at the pump, it will not reduce our dependence on foreign oil, and it will not help resolve our energy crisis. That is the amendment that has been touted by Senator BINGAMAN and about 12 or 13 other Senators. Our dependence upon foreign oil will in no way be ameliorated, and it will not help resolve our energy crisis.

It is worth taking time on the floor to examine the substance of the proposal. The amendment is No. 5135, and it claims to address a number of so-called supply side issues, including lease duration, lease rentals, lease sales, resource estimates, the Roan Plateau, and the Strategic Petroleum Reserve.

I would like to take a few moments to address these issues.

On the duration of leases, the amendment shortens the amount of available time to complete all the activity leading up to and including drilling for oil and natural gas. This approach would fail to increase supply for several different reasons. It ignores the reason why it takes so much time to get a lease into production in the first place. Oil companies are not just wasting time, they are mandated to use up that time. It actually adds to the central cause of those delays by creating new bureaucratic requirements for writing ''diligent development plans.'' In other words, all they are doing and all they plan to do and all this wonderful work offshore that is out there, no thanks to the Congress and the President, because we kept most of it closed—85 percent is still closed—but within that 15 percent you see terrific development and tremendous facilities. They are following rules. If you had them in a witness room and asked them what rules they are following, they would explain to you it takes a long time to go from the bid day—the day you get that lease—until you can actually drill. They do everything possible to expedite, but some of the reasons for delay they can do nothing about; they follow the rules. There are environmental rules—sometimes duplicated, but they are there. This amendment I am speaking of, in an effort to say we are going to get more and squeeze more out of what is there, I imagine these people who own it at $1.35 are not interested in squeezing out the oil for America. They are interested in lollygagging. They paid money for the lease and they have money invested, but they are not in a hurry. So we have to pass a new diligent development plan requirement.

There are already as many as 39 permits, documents, and analyses that have to be done in the development of a lease. It is unclear how adding the 40th step will move the process any faster.

Next, the amendment seeks to increase rental fees that leaseholders pay to occupy Federal land. The increased fees that have been proposed would discourage companies from bidding on and subsequently exploring leases that contain marginally attractive lands. Increasing the cost of doing business is not the answer. Once you think about it, most Senators overwhelmingly will agree that we don't need to add to the fees. We don't need to add to the regulatory requirements. We need the opposite if we want more production.

The leader on the other side has an amendment that also attempts to alter the frequency of lease sales. This is appealing in principle, but as drafted the amendment merely pretends to speed up a process for areas where lease sales are already scheduled to take place or where lease sales have already been held without any interest from industry. In effect, this bill is attempting to take credit for something that was going to happen anyway or, worse, has already occurred without success.

What the amendment does not do is open any new areas to leasing, which is the fundamental change that is so desperately needed in our management of Federal lands. Energy companies should not be forced to drill when and where it is politically convenient; they should be allowed to drill where resources are most concentrated and when conditions most warrant their development.

Something of a pattern is becoming evidence here. And not surprisingly, it carries over to the so-called resource estimate—more new words and new bureaucracy—called for by this amendment. Predictably, the inventory contemplated by this amendment is only for areas that are already leased or are already open for lease sale.

Instead of conducting an estimate of the resources within already open areas and already existing leases, we should authorize a full inventory of the Nation's entire resource potential, including areas that have historically been kept off-limits. Only then can Congress make an informed decision. We must fully understand what our past energy policies have kept off-limits and how those resources could be used to meet our future needs. Again, the Democratic amendment avoids this very pressing task.

Another troublesome provision is the amendment's proposed swap of oil in the Strategic Petroleum Reserve. The sponsors would have 70 million barrels of light sweet crude—that is a specific type of oil that is very expensive and very versatile—they would have that released within 180 days and not replace it with fuel until as many as 5 years have gone. So had the Energy Committee not cancelled a hearing on this very topic last week, we might know if this proposal makes any sense at all. I suspect it does not.

Having watched the price of oil climb by $20 a barrel from around $127 to a

high of $147—and we are all grateful it has come down a little bit after deliveries of the SPR were suspended—it is highly unlikely that a short-term release of oil will reduce oil prices over any sort of time horizon.

I urge my colleagues to remember the purpose of SPR is to provide oil in the event of a supply disruption, not in the event of a price increase. In the event of an emergency, enactment of this provision would reduce our ability to cover import losses from 58 days to 52. Just imagine, the American people should know with all the troubles in the Middle East and the straits, with boats loaded with crude oil, many soon to be laden with natural gas, where they can pass—look at the danger that is there. Look at America's future in terms of what might happen there. Look at what might happen accidentally, much less intentionally.

We only have 58 days of Strategic Petroleum Reserve oil in the repository underground that we could use. The American people ought to be grateful—and I think they are—that we did this. We have 58 days to pump out that oil and use it if we are in one of these problems that could come about from an oil shortage on the world market because of accidents, war, conflagration, or the like.

The other side would take that and say: Let's take 6 days of that reserve and put that oil out for sale and that might lower the price of oil on the market and thus lower the price of gasoline. Anybody who sees that—we will show them the numbers later what that means—will know that is not producing a new source of oil, drilling for it or exploring it. It is nothing but a short-term use of our petroleum reserves for price reasons when it should never be used for that, and it won't work anyway.

The amendment has many other shortcomings. The most damaging provision to our energy security deals with the Roan Plateau in Colorado.

The way the language is drafted speaks for itself.

On page 26:

The Secretary shall include in any mineral lease . . . a stipulation prohibiting surface occupancy or surface disturbance for purposes of exploration for or development of oil and natural gas.

On page 29:

The Secretary may not permit through a lease or other means any exploration for or development of oil shale resources.

And then on page 30:

The Secretary may not at any time issue mineral leases on public land within more than one of the phased development areas.

These restrictions are somehow fit for inclusion, even after a finding on page 20 which asserts that ''the Roan Plateau Planning Area likely contains significant energy resources.''

Why were these provisions included in a title called ''Oil Supply and Management''? A plain reading of this language clearly demonstrates that it is the sponsors' desire to manage that plateau in such a way that its abundant energy resources will never be produced. In short, this is a production amendment which prohibits production.

What my colleagues across the aisle don't want you to know is that a lease sale including parcels on the Roan Plateau is scheduled for August 14, a little over 2 weeks from now. If this section were enacted into law, it would likely require the land use plan or the entire area to be redone, generally taking 2 to 3 years or more.

Let us not forget that the current plan for the Roan Plateau took 9 years to develop and that this provision could require that the process begin again from scratch and will eliminate any revenue from the coming August 14 lease sale which is already assumed in the budget at $100 million.

For all the shortcomings in this amendment, most revealing are the measures not included in it. There is no repeal of the restriction on regulations for commercial oil shale leasing. The other side has decided to stand by a ban that they imposed last year on that resource. There is no lifting of the congressional moratorium on the development of deep sea energy resources, despite the President already taking action to do so.

There is no mention of our Nation's vast domestic coal reserves which could be used to provide secure, affordable energy for decades to come.

And there is no repeal of section 526 which impairs the Defense Department's efforts to develop resources of alternative domestic fuel.

Taken altogether, this amendment and the underlying speculation-only bill that is before the Senate suggests that the majority is content to move on without having done anything to address the energy crisis. Nothing. We were faced with an effort to proceed to another matter this past weekend, and the Senate rightly voted to reject it.

Yesterday afternoon, we were again faced with another attempt by the majority to change the topic from what we were on to another topic. Again, the Senate rightly defeated that effort. I hope we continue to defeat efforts to move away from the No. 1 domestic issue facing the American people.

This issue deserves our undivided attention. There is nothing to be afraid of. We have ample time to write a good bill that makes real progress and provides real relief at the pump for the American people.

I yield the floor.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from New York.

Mr. SCHUMER. Madam President, I will be brief. I know Senator GRASSLEY has been waiting as well. I will not speak for very long.

I rise to speak about S. 2035, the Free Flow of Information Act, a bill that Senator SPECTER and I have spent a lot of time on, worked on, and is cosponsored by many in the House and notably Senators DODD and LUGAR who had a previous bill, as well as, of course, Senator LEAHY who led the charge on so many different issues and has been very helpful in us moving this legislation forward.

I am going to speak tomorrow when we address the bill, but I wanted to let my colleagues know of a substitute amendment that Senator SPECTER, I, and others will offer because it will modify the bill and meet some of the objections.

First let me say the bill is very much needed. We have to find the right balance between the free flow of information and the ability of reporters to get that information from those in Government and, at the same time, not be so far in that direction that we allow people to either break the law or harm the security of the United States.

This has been much more difficult than it appears to achieve, but we are very close. The bill codifies and standardizes existing tests used by Federal courts so that journalists, say, in Illinois are not subject to different treatment than journalists in California.

It certainly allows whistleblowers to be protected when they tell somebody about something untoward. We certainly don't want, if a test is being fixed in the FDA because a drug company wants it, to prevent some public servant in the Government from letting a reporter know to prevent harm. But at the same time, there is no absolute privilege and there are exceptions in terms of harming national security, acts of terrorism, and other matters, such as kidnaping or murder.

Again, I will talk about this bill at some length tomorrow. But I do want to go over some of the changes we have made so my colleagues are aware of them before we vote.

As I said, Senator SPECTER and I have put together a substitute which if we adopt the motion to proceed—and I hope we will—we will immediately offer, and that will be the base bill we will discuss. Let me talk about the changes made.

First, the intelligence community had concern that it would be too difficult to prosecute leaks of classified information. The new bill moves consideration of leaks of classified information from section 2 of the bill to section 5, and that removes two major hurdles for Federal prosecutors.

Under the new law, prosecutors will not have to prove any longer that they have exhausted all options for finding the information or that the information is essential to their investigation. These hurdles still remain in the Department of Justice internal guidelines, but the bill is not as strict in that regard.

The bill also no longer requires that the person who leaked the information was authorized to have it.

This substitute clarifies that the act will have zero impact on intelligence gathering under the Foreign Intelligence Surveillance Act. This bill does not affect FISA.

Third, the substitute explicitly provides that sensitive Government information will not be disclosed in open court. There was worry that under a whistleblower law, that might happen. We make it clear that security has to come first, but there also has to be balance in the test.

Four, the definition of a covered person—and this has been one of two areas of some controversy—has been narrowed to ensure that it protects only legitimate journalists, first used in the Second Circuit case of von Bulow v. von Bulow to determine who qualifies as a covered person. Someone who blogs occasionally is not going to get the protection here. Of course, someone on a blog who is a regular journalist but happens to use the blog as a medium will be protected. And that is how it ought to be.

Five, the substitute creates an expedited appeals process ensuring that litigation regarding whether the protection applies will be resolved as quickly as possible. In section 8, we expedite the appeals process.

These are the changes made. They make the bill better. The bill has the support of the journalistic community. It has the support of 41 sitting States attorneys general, both Democrats and Republicans. It is one of those rare bipartisan moments. It has the support of Senator OBAMA and Senator MCCAIN and, of course, passed out of the Judiciary Committee 15 to 4. A similar bill passed out of the House by 398 to 21 and, obviously, it has been endorsed by 100 newspapers. That is easy to say, but in this town both the Washington Post, a more liberal paper, and the Washington Times, a more conservative paper, have endorsed it.

This bill has taken lots of time and lots of work to achieve a careful balance. This is a rare moment, praise God, a broad consensus, and I hope we can move this bill forward tomorrow.

Madam President, I will speak at greater length tomorrow when we are on the bill, but I wanted to let my colleagues know the substitute changes which we will publish in the RECORD this evening so people will have a chance to look at it.

I yield the floor so that my colleague from Iowa can speak.

The PRESIDING OFFICER. The Senator from Iowa.

TAX POLICY

Mr. GRASSLEY. Madam President, 2 days ago, I came to the floor to talk about tax policy and the history of tax policy. I have come to follow up on that speech of 2 days ago to talk about the recent history of speeches that were made in past Presidential elections and the tax policy that was associated with those speeches and in another day or two, come to the floor to speak about the different tax policies between Senator OBAMA on the one hand and Senator MCCAIN on the other hand.

History is very important. Elections have consequences. Policy coming out of an election has consequences and eventually affects real people. The impact upon the voter of past elections, what people said in those elections, what happened after the election in policy, ought to be things people are taking into consideration for the upcoming Presidential election. As to that speech I gave 2 days ago, I want to go back and remind my colleagues of a couple of comments I made at that particular time.

At various times during the past 25 years, we have had times when Democrats have controlled both the Presidency and the Congress. There have been times when the Democrats have controlled Congress and we had a Republican President. And there have been times when we have had both a Republican President and a Republican Congress. Tax cuts or tax increases have resulted from that. And you find a pretty good pattern of when you have both a Democratic Congress and a Democratic President that you have big tax increases, as is the case in 1993—if you remember the big tax increase of 1993.

Then there are periods of time when we have had a Republican President and a Republican Congress and you can see tax decreases—very deep decreases in taxes. Then you have a period of time in here where there was a little flurry—some tax cuts, some tax increases—when we had a Republican President and a Democratic Congress.

So elections do have consequences. Another chart that would show it a little better and more specifically would be this thermometer chart, where we have it very clear that when you have times when you have a Democratic President and a Democratic Congress, you have some of the biggest tax increases in history. And that would be this figure. There are times we have had a Republican President and a Democratic Congress with some tax increases but a little bit less. There are times we have had a Democratic President and a Republican Congress with slight tax decreases.

When you have a Republican President, a Republican Senate, and a Democratic House, you have some tax decreases but not very much. Then you have times when you have a Republican President, a Democratic Senate, and a Republican House, and you have tax decreases but not by very much. Then you have times when you have a Republican President and a Republican Congress and you have deep tax cuts.

So what this chart shows—this thermometer—over the last 25 years, is that if you have Republican Presidents and Republican Congresses you have deep tax cuts. When you have Democrats controlling both the Presidency and the Congress, you have very rapid tax increases. So elections do have consequences.

I want to go now to a period of time of a specific election and the tax consequences that came as a result of that election. But I think you have to realize that the relationship is clear from the past 25 years: the more relative power Democrats have, the higher the probability of a tax increase. So Americans will need to think long and hard about campaign promises of tax relief as they consider their choices in this Presidential election. The reason is that history shows very clearly, if Democrats obtain the White House and control of Congress, taxes are certain to go up. And not just go up on the wealthy but across the board.

Today, I would like to follow up last week's discussion. This week, I want to focus on a campaign season most like this one and take a look at how the victors in that campaign used their taxing power once sworn in. The period I am thinking about is 16 years ago. Well, in 16 years you can learn a lot from history, and I think people ought to be reminded of it.

But before I get into details, I would like to say that I hope this election doesn't go the same way that it did 16 years ago because President Bill Clinton was elected. I want people to be clear that I am pulling for a Republican colleague, Senator MCCAIN, to defeat another one of our Senate colleagues, Senator OBAMA.

So let's turn the clock back to this time 16 years ago, and I have another chart. This chart considers the story of Rip Van Winkle, which I think is very appropriate during this period of time. You know the story about Rip Van Winkle. He was a person who slept for 20 years. Here is the chart showing Rip Van Winkle.

If you round up just a little bit, it is almost 20 years since that 1992 campaign, and you will see from this chart those events from a while ago might have led to a form of tax hike amnesia.

If we go back to the 1992 campaign—and I will show you eventually how this is pretty appropriate to the campaign coming up—in 1992, you find a very charismatic, a very likable, a very articulate young Governor from Arkansas barnstorming across the country. Bill Clinton was 46 years old, facing a 47th birthday in mid-August. He was widely acknowledged as the most talented public speaker on the Presidential scene since Ronald Reagan.

America had been in a recession at that time. Although it was not reported until after the election, which is something you might expect from our liberal media, the American economy had recovered in the latter half of 1992, but it was not officially announced until the day after the 1992 election, when all of a sudden the recession was over, just because of the election. But all during that election, reading the media, you would always be reminded about the recession we were in. But magically, election day 1992, 1 day later, and the recession was over.

The charismatic Democratic Presidential candidate promised to focus, in his words, ''like a laser beam'' on the economic ills that Americans worried about. In a key speech on June 21, 1992,

this ''different kind of a Democrat'' laid out his economic plan. He called the plan ''Putting People First.'' I am going to focus in a laser-like way on then-Governor Clinton's tax agenda that he announced for that 1992 campaign.

In that speech, candidate Clinton was very critical of the marginal tax rate relief that President Reagan had put into effect. To quote candidate Clinton:

For more than a decade, this country has been rigged in favor of the rich and the special interests.

And we still hear that today.

While the very wealthiest Americans get richer, middle-class Americans pay more to their government and get less in return. For 12 years, the driving idea behind American economic policy has been cutting taxes on the richest individuals and corporations and hoping their new wealth would ''trickle down'' to the rest of us.

That is a quote from his speech of June 21, 1992.

As a relief from this version of the middle-class squeeze, candidate Clinton proposed middle-income tax relief, and here is what he said:

Middle class tax fairness. Virtually every industrialized nation recognizes the importance of strong families in its Tax Code. We should too. We will lower the tax burden on middle class Americans by forcing the rich to pay their fair share. Middle class taxpayers will have a choice between a children's tax credit and a significant reduction in income tax rate.

Now, doesn't all of this sound very familiar to speeches that are going on this year? I have quoted from a June 21, 1992, speech given by candidate Clinton, but you would think that you are hearing exactly the same thing this year.

Now, let's get down to basic facts. The definitions of rich and middle class are always open. They probably vary from candidate to candidate and everything with intellectual honesty and where you might set rich and where you might set middle class. A person who is rich in Mason City, IA, might be middle class in New York City.

An irony I continue to notice around here relates to this point. It seems as if the politicians from the highest income, highest cost of living, highest taxed States seem to be the most obsessed with raising taxes on their Presidential candidate's definition of the rich. In this case, I am referring to a single person who makes $125,000, or double it for a married couple to $250,000. That seems to be the dividing line between the rich and other people, according to the 2008 Democratic Presidential candidate.

Now, is $250,000 a rich family in Manhattan? Is $250,000 a rich family in San Francisco? Is $250,000 a rich family in Chicago? Is $250,000 a rich family in Boston? By the definition of Senators from those areas, I guess I would have to say it is. Do those families in those cities know they are rich and that their Senators think they pay too little tax?

But I digress. In candidate Clinton's economic plan that was announced on June 21, 1992, the rich were—put another way—the top 2 percent income earners in the United States. On September 8, 1992, candidate Bill Clinton said:

The only people who will pay more income taxes are the wealthiest 2 percent, those living in households making more than $200,000 per year.

By definition, you would think under candidate Clinton's plan that everybody below that level of 2 percent, or $200,000, is either middle class or low income. Now, remember what I said that he said—the only people who will pay more income taxes are the wealthiest 2 percent—because I am going to show you, after being sworn in, how that turned out to be a heck of a lot more people than the wealthiest 2 percent.

On January 20, 1993, President Clinton was inaugurated. Democrats retained their solid majority, 56 to 44, in this body. Although losing 9 seats in the U.S. House, the Democrats retained a heavy majority of 258 to 176. Once elected, the Democratic White House and the Democratic Congress converted the campaign economic plan, as you would expect them to, into a legislative blueprint. A key feature of the program, the middle-class tax cut, was thrown to the side.

On January 14, 2003, at a press conference, President-elect Clinton stated:

From New Hampshire forward, for reasons that absolutely mystify me, the press thought the most important issue in the race was a middle-class tax cut. I never did meet any voter who thought that.

Now, how do you reconcile the contents of the economic plan and the shift in position after the election? Pulitzer Prize winning author Bob Woodward—who I think has a great deal of respect among most people of the Senate—wrote a comprehensive book about the first part of the Clinton administration. It was titled ''The Agenda.'' Mr. Woodward, of the Washington Post, described it this way:

While Clinton continued to defend his middle-class tax cut publicly, he privately expressed the view to his advisers that it was intellectually dishonest.

That is Woodward saying that, not CHUCK GRASSLEY. The late journalist, Michael Kelly, in an article in the New York Times, explained how the newly elected President planned to ''escape'' from his middle-class tax cut campaign promise. Here is what Mr. Kelly wrote, in part:

[T]he President built himself an escape hatch a little less than a month before Election Day. Every time Clinton said ''I'm not going to raise taxes on the middle class,'' he always added the phrase ''to pay for my programs,'' said a chief political adviser to the President, who spoke on condition of anonymity. He never, never, said just, ''I will not raise taxes on the middle class.'' He always said ''I will not raise middle-class taxes to pay for my programs.''

Madam President, I want to have Mr. Kelly's article printed in the RECORD. I ask unanimous consent to do that.

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

[From the New York Times, Jan. 26, 1993]

POLITICAL MEMO; RE-EXAMINING THE FINE PRINT ON CLINTON'S TAX PROMISES

(By Michael Kelly)

At a time when the public has repeatedly shown its distaste for the maneuvers and machinations of politics, President Clinton's White House is banking on a five-word loophole to save it from voter outrage should Mr. Clinton propose a broad-based energy tax.

During the campaign, Mr. Clinton promised tax cuts for the middle class. Now Mr. Clinton and his chief economic advisers are backing away from the tax cut and strongly hinting that an energy tax will hit the middle class the hardest.

''They campaigned on a middle-class tax cut and then four days into a new Administration the chief economic spokesman is talking about a middle-class tax increase,'' said Robert S. McIntyre, director of Citizens for Tax Justice, a liberal research group. ''That's a flip-flop.''

Although Vice President Al Gore and Treasury Secretary Lloyd Bentsen have mentioned the possibility of an energy tax in recent interviews, the President and his advisers insisted today that their economic plan was still under discussion and that no decision had been made.

Still some Clinton advisers say they are not worried about public outrage. They say the President built himself an escape hatch a little less than a month before Election Day.

''Every time Clinton said 'I'm not going to raise taxes on the middle class,' he always added the phrase ''to pay for my programs,'' said a chief political adviser to the President, who spoke on the condition of anonymity. ''He never, never, said just, 'I will not raise taxes on the middle class.' He always said 'I will not raise middle-class taxes to pay for my programs.' ''

By this logic, the adviser said, Mr. Clinton's legalistic construct was a ''distinction with a difference'' that allows him ''the opportunity he now has'' to raise taxes without incurring voter wrath.

But of late that sort of politics-by-loophole has not been playing well.

In 1990, President George Bush signed an agreement with Congress that obliged him to break his ''read my lips'' campaign promise of 1988 not to raise taxes. Mr. Bush and his advisers reasoned that voters had never taken his promise seriously in the first place and would forgive its being breached. The voters reacted with far more anger than understanding, and Mr. Bush never regained their trust when the economy turned sour.

In recent weeks, the gulf between Washington's view of what constituted acceptable behavior and that of many voters was again demonstrated in the matter of Zoe Baird. Mr. Clinton pressed forward with his choice of Ms. Baird as Attorney General despite the disclosure that she had once hired illegal aliens. Mr. Clinton and his advisers figured voters would forgive Ms. Baird what they considered a small transgression in an otherwise impressive career.

The voters, recalling Mr. Clinton's emotional promises to run a Government for the ''people who pay their taxes and play by the rules,'' saw him as trying to give a break to a rich woman who had done neither and forced Ms. Baird's withdrawal. Some See a Liability.

Mr. Clinton's aides know full well that Mr. Bush's mistake helped cost him his job. But they still contend that Mr. Clinton is protected by his escape clause. ''People won't get away with saying Clinton promised that

he was not going to raise taxes and then did,'' the adviser said. ''He had many opportunities to make a 'read my lips' statement, and he did not.''

Some outside the Clinton camp disagree strongly with that logic, however.

Kevin Phillips, a Republican political analyst who charted the rise of middle-class anger in the late 1980's and spared no criticism of Mr. Bush's broken promises, said: ''At the most recent count, only 800,000 Americans were lawyers, and I don't think the 248 million or so who are not lawyers are going to buy a caveat stuck on in the middle of a passionate plea to the middle-class voters that they should vote for him because he was going to save them. Talk about reading his lips.''

Mr. Clinton introduced the escape clause on taxes for the middle class before a national audience in an Oct. 19 Presidential debate in Richmond. ''I will not raise taxes on the middle class to pay for these programs,'' he said. 'Very Conscious Decision'

Listeners without the benefit of law-school training might have taken that as a pledge to not raise taxes on the middle class. But the President's adviser said Mr. Clinton had purposefully used, and reiterated, the phrase ''for these programs'' to allow himself a way out of what careless voters might have thought they had been promised.

''It was a very conscious decision on his part,'' the adviser said. ''I can tell you this from strategy sessions and debate prep sessions. The idea of a flat-out promise of 'I will not raise taxes on the middle class, period,' was rejected by the President. He refused to allow himself to be boxed in that way.''

The matter of the escape clause illustrates a larger point about Mr. Clinton that has become increasingly Obvious: It is always wise to read the fine print. The fine print of Mr. Clinton's promise on the tax cut for the middle class was quite different from the broad thrust of his oratory on the subject.

For a year, the Democrat campaigned on a platform of economic renewal in which the Federal deficit could be halved in four years rather painlessly by raising taxes on rich people and foreign corporations and by improving the way Government programs are managed.

In ''Putting People First,'' Mr. Clinton's often-touted plan for American renewal, the candidate promised: ''We will lower the tax burden on middle-class Americans by asking the very wealthy to pay their fair share. Middle-class taxpayers will have a choice between a children's tax credit or a significant reduction in their income-tax rate.''

On July 13, speaking to reporters in New York, Mr. Clinton said flatly, ''I'm not going to raise taxes on the middle class,'' according to reports by The Chicago Tribune and the Reuters news service. On the same day, in an interview shown by Cable News Network, he said, ''I don't think we should raise middle-class individuals' taxes, because their income went down and their tax rates were raised'' in the 1980's.

But in the fall campaign, when his words were scrupulously followed by a larger audience, Mr. Clinton took more care. After the Richmond debate, he regularly re-stated the position that his promise to the middle class was only that he would not raise their taxes ''to pay for these programs.''

Mr. GRASSLEY. While the middle-class tax cut was discarded, the definition of the group subject to a tax increase, ''the rich,'' expanded. According to a distribution analysis by the nonpartisan Joint Committee on Taxation, the taxpayers above $20,000 in income received a tax increase. So no longer was it just taxing the top 2 percent richest people in America. That was when you were campaigning for President. When you get to be President, it is $20,000.

It was true that taxpayers above $200,000 go up far more than other groups. But generally taxpayers above $20,000 saw their taxes rise.

Madam President, I ask unanimous consent to have printed in the RECORD a copy of the joint tax distribution analysis of the 1993 tax bill.

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

DISTRIBUTIONAL EFFECTS OF THE REVENUE PROVISIONS CONTAINED IN THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993 AS AGREED TO BY THE CONFEREES

[103 income Levels]

Expanded income class [1]	Present-law Federal taxes [2] Billions	Present-law average tax rate [3] Percent	Proposed change in tax burden [4] Millions	Burden change as a share of income Percent
Less than $10,000	$9	10.4	−$1,152	−1.28
10,000 to 20,000	39	11.9	−993	−0.30
20,000 to 30,000	72	17.0	94	0.02
30,000 to 40,000	86	19.1	949	0.21
40,000 to 50,000	93	20.9	1,271	0.29
50,000 to 75,000	201	22.3	3,517	0.39
75,000 to 100,000	120	24.6	2,653	0.54
100,000 to 200,000	142	26.6	4,598	.85
200.000 and over.	168	30.2	29,663	5.39
Total, all taxpayers	$930	22.1	S40,800	0.97

[1] The Income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: [1] tax-exempt interest, [2] employer contributions for health plans and life insurance, . [3] employer share of FICA tax, [4] workers' compensation, [5] nontaxable Social Security benefits, [6] insurance value of Medicare benefits, [7] corporate income tax liability attributed to stockholder, [8] alternative minimum tax preference items, and [9] excluded income of U.S. citizens living abroad.

[2] Includes individual income tax, FICA and SECA tax, excise taxes, estate and gift taxes, and corporate income tax.

[3] Present-law Federal taxes as a share of expanded income.

[4] includes all revenue invasions except individual and corporate estimated tax changes, Information reporting for discharge of Indebtedness, targeted jobs credit, capital gains incentives, provisions affecting qualified pension plans, mortgage revenue bonds, low-income housing credit, luxury tax provisions, excise tax on diesel fuel used in noncommercial motorboats, empowerment zones and enterprise communities, vaccine excise tax, GSP and FUTA extensions, transfer of Federal Reserve funds, deduction disallowance for certain health plans, orphan drug credit, and diesel fuel compliance.

Mr. GRASSLEY. That comprehensive tax increase went into effect on the strength of Democratic votes only. I was here and I remember that. You could look at it as the consequences of the confidence in the large Democratic majorities in Congress, and a newly elected Democratic President. Basically, however, there was no check on one political party's agenda. If that agenda is to raise taxes and increase spending, then it is not a surprise.

Mr. Kelly's article notes the adverse reaction of a prominent player of the leftwing in this town. This is a Mr. Robert S. McIntyre, who was very active in causes that you consider liberal. Quoting from Mr. Kelly's article, this is what Robert S. McIntyre, director of Citizens for Tax Justice, a liberal research group, had to say.

They campaigned on a middle-class tax cut and then four days into a new Administration the chief economic spokesman is talking about a middle-class tax increase. That's a flip-flop.

That is the end of the quote of Mr. McIntyre, quoting from Mr. Kelly's article.

Most folks are unhappy about flip-flopping politicians. Fishermen may like a flip-flopping fish that they brought into the boat. This photo is the best fish I could find to demonstrate that. That is about the only kind of flip-flopper that would be received positively. If a politician flips from a tax cut promise to a tax hike, you can bet most folks will consider that move a flop in more ways than one.

All of this happened almost 16 years ago, but it is relevant for this year as we go into a debate on taxes for this campaign. During almost 14 years since Republicans have held either the White House or the Congress or both—and this chart shows, as I pointed out once before, Congress and the President have generally reduced the tax burden. That is during this period of time, when Republicans controlled both the House and the Senate.

It has been a long time, almost 15 years since the American people have seen a large tax increase, going back to the period of time when the Democrats controlled both the Presidency and the Congress.

Then I remember right here on the floor, because I was here when he said it, the then-Finance Committee chairman Pat Moynihan termed the 1993 tax bill:

. . . the largest tax increase in the history of public finance in the United States or anywhere else in the world.

Philosopher George Santayana said words to the effect that history repeats itself, and if you do not learn from history, you are bound to repeat the mistakes of the past. A risk Americans face, if we hand over all the reins of power to the Democratic Party, is to repeat the history of 15 years ago.

I am a Republican. I know what polls show. They show right now that the

electorate trusts Democrats more than Republicans on tax policy. But the 1992 campaign shows that if you listen too much to what is said in the campaign, it doesn't necessarily come out that way in the election. So I raise the question, during the debate of 2008, in the Presidential campaign, are we headed in the same direction? Are we going to hear all the talk about taxing nobody but the rich but end up doing as we did in 1993, taxing the middle class?

Our tax increase amnesia may lead us in that direction. We could find ourselves then being like Rip van Winkle. We will hear dreamy rhetoric about hope and about change. It will be clothed in a slumber of middle-class tax relief and tax increases on only the rich, as it was in the campaign of 1992. We could awaken from that slumber, our tax increase amnesia would probably fade, we could wake up to another world record tax increase.

I know what the folks who put in place that world record tax increase will say. They will defend it by arguing that it cut the deficit. They will argue that by cutting the deficit and moving to a surplus, that interest rates dropped. While it is true the fiscal situation went from deficit in 1992 to surplus in 1999, there were many other factors involved and a tax increase was not the biggest reason for it.

First, supporters of the 1993 bill touted it as a dollar of spending cuts matched by a dollar of tax increase. If you were a taxpayer, wouldn't you buy that? Pay one more dollar and get a dollar decrease in expenditures? But, you know, it doesn't work out that way. A close look at the numbers shows the bill contained $4 of tax increase to every $1 of spending cuts.

I ask unanimous consent to have a summary of the Senate Finance Committee Republican staff analysis dated June 28, 1993, printed in the RECORD.

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

COMPARISON OF TAXES/FEES, SPENDING CUTS AND RATIOS IN FINAL BUDGET RECONCILIATION BILL

[In billions of dollars over five years]

	Democrats	Republicans	In this bill
Taxes and User Fees:			
1. Net Tax Increases	$240	$240	$240
2. User Fees	0 (with mandatory spend. cuts)	15	15
3. Total-Taxes & Fees	240	255	255
Net Spending Cuts:			
1. Mandatory programs	88	65	55
2. Cap on discretionary programs	102	66	0
3. Spending outside of caps not in this bill	0	−11	0
4. Interest savings	65	*0	0
5. Total-Spending cuts	255	120	65
Ratio of taxes/fees to spending cuts	.94 to 1	2.13 to 1	3.92 to 1

Preliminary estimates as of August 4, 1993.

*Note: Republicans believe the interest savings are about $53 billion, not $65 billion as claimed by the Democrats. Zero is shown in the chart because interest savings are not counted as a spending cut in figuring the ratio.

Mr. GRASSLEY. I have another chart to back up what I say, that the tax increase was not responsible for the deficit going down. The chart shows the source of deficit reduction from 1990 through the year 2000. The tax increase represented only 13 percent, just 13 percent of the deficit reduction during that period. Other revenue, mainly from economic growth and defense spending cuts, made the deficit decline.

Even with the 1993 bill in effect, 2 years later the Congressional Budget Office projected President Clinton's budget as producing significant deficits as far as the eye could see.

But several events not related at all to the 1993 tax increase pushed the budget toward surplus until 1999. First, Republicans attained control of Congress in 1994 and made a deficit reduction a priority. Year after year, Republican Congresses resisted Democratic efforts to spend over tight budget caps placed in the Republican budget. Most often, President Clinton would extract additional spending in the end deal. Republican resistance, however, to popular Democratic spending proposals often had political consequences for Republican Members.

Second, revenues, especially capital gains revenues, grew after the bipartisan Tax Relief Act of 1997. The centerpiece of that bill was, ironically, a middle-class tax cut in the form of a $500-per-child tax credit. The child tax credit was a fundamental part of the Republican Contract With America.

Another key component of that bill was a reduction in the top capital gains rate from 28 percent down to 20 percent. It is down to 15 percent now, as a result of the 2003 tax bill, but then it went from 28 down to 20 in 1997.

As I said, there was a widely documented significant growth in capital gains revenue after that rate reduction in 1997, as there was with the rate reduction in 2003. Indeed, even the Clinton Treasury scored the reduction as a revenue raiser and was more than vindicated.

Finally, external factors aside from tax policy led to revenue growth. Free trade opened more markets to American goods and services. The Internet bubble started to form. It was burst in 2000 with the collapse of the NASDAQ and the business cycle yielded an economic expansion after the 1991 recession ended.

Economist J.D. Foster has documented this data. I commend to my colleagues WebMemo dated March 5, 2008, available on the Internet at www.heritage.org/Research/Taxes/wm1835.cfm.

At the end of the day, the justification for the tax flip-flop in 1993 mattered not one whit. Supporters of the 1993 tax hike can offer whatever reason they want for the record tax increase. A flip-flop of that size is, in fact, a flip-flop.

What they cannot dispute is their Presidential candidate promised a middle-class tax cut. Once they had the White House and congressional control, the other side abandoned the tax cut promise, raised taxes on Americans—not just above $200,000 a year but from $20,000 up.

That is not a tax cut. That is a middle-class tax increase. So, once again, like Rip Van Winkle, taxpayers do not want to wake up to that tax increase.

As a minimum, as the Presidential campaign unfolds, Americans need to keep this very clear history in mind. We need to probe the candidates in 2008 on where they want to go on tax policy so what they say in 2008 is done in 2009, not a repeat of what was said in 1992 and what was done in 1993. We need to be careful not to leave escape hatches on favorable sounding tax cut campaign promises.

In that vein, I will follow up on this discussion and the prior discussion with a later speech that concentrates on where each Presidential candidate stands this year on tax issues. I will examine these positions in the light of this history I have discussed—of the likelihood of each side, whether they will deliver on campaign tax policy positions.

To sum up, we are hearing from a very articulate and attractive Democratic Presidential candidate. On tax issues, as we heard 16 years ago from the soon-to-be President at that time, Bill Clinton, we are hearing a proposal to tax the rich this year to provide tax cuts for the middle class. We are hearing that this year.

The Presidential candidate on the Republican side has a different message. We need to explore that as well. His message, consistent with a Republican position for almost 30 years, has

been to continue progrowth, low levels of taxation. In light of history I look forward to discussing the two competing visions of tax policy in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, I ask unanimous consent to speak for up to 10 minutes, to be followed by Senator WHITEHOUSE from Rhode Island for 30 minutes, to be followed by Senator BROWNBACK for 10 minutes.

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

ENERGY

Mr. CRAIG. First and foremost, let me thank the Senator from Rhode Island for his courtesy. We have been moving back and forth throughout the last number of days of debate. My presence on the floor allowed him to offer the courtesy—and I greatly appreciate it—to speak for 10 minutes ahead of him. He would be entitled to be next. I thank him for that.

Let me speak to what Senator GRASSLEY has spoken to briefly in saying that the ranking Republican on the Finance Committee has spoken very clearly on the critical nature of tax policy to the economy. While that is valid, there is a tax at this moment in time that is being charged every consumer in America who buys gasoline at the gas pump. It is the tax of nonproduction. It is the tax of public policy that has denied our great country its continued ability to produce the necessary supply of energy to the phenomenal economy we have.

As a result of our failure to continue public policy that allowed production over the last 20 years, Americans are paying a higher price, a higher energy tax today at the pump than ever in our history; $4.10, $4.15, $4.20 gas is at this moment the No. 1 issue in America, not only taxing the pocketbooks of the average consumer but taxing the average family in a way that they not only feel less secure today because their energy bill has gone up over 20 percent this year but because we have a Congress stalled out at this moment. We have a Senate that is denying its responsibility to the American people to pass public policy that will allow us to continue to produce and, hopefully, drive down the price of oil.

In the absence of that kind of policy, what has happened in the last 6 months as energy prices have gone through the roof? American consumers have driven 40 billion less miles. They are voting with their feet at this moment and voting to stay away from the gas pump. As they stay away from the gas pump, as they drive less, as they conserve, not only are they changing the economy of our country, they are changing their lifestyles. I don't think they are very happy about it. In fact, those I talk to back home in Idaho are very angry about it. But they are having to do something to avoid the phenomenal tax energy has placed on the American family.

What happened in the last 2 weeks? Oil prices, world oil prices have begun to drop. They are dropping not because of increased supply, not because the Senate has done anything, but because the American consumer has said: We can no longer afford this. They are backing away from the pump and changing their lifestyle. It is truly an issue of supply and demand. Supply hasn't gone up in the last several months but demand is dropping.

Not only is demand dropping in our economy, it is dropping in Western Europe. It is dropping in Spain and Denmark, where there are significant recessions or downturns in the economy underway. In China and India, which have become the new large consumers of oil, our economy's slowdown is going to situate a slowdown in the Chinese economy, which has become a major supplier of goods to the American economy. That is just around the corner.

So are we going to be lulled into a sense of false security if energy prices over the course of the next several months drop below $4 a gallon and into $3 a gallon? Will the American consumer heave a sigh of relief and say: Crisis over?

I hope they don't. Here is why I hope they don't. It is very clear from this graph. This is a graph from 1890 to 2030 about the overall supply of oil in this country. Starting in about 1950, a very interesting pattern emerged that grew rapidly until today, when we buy our oil, 70 percent of it, from some other country; in other words, we don't supply it. We could supply it. We have the oil reserve under the ground. But for political purposes, we have denied ourselves, our market, our producers the right to go there and get it. Here is what has happened. The dependency has grown so that we are now nearly 70 percent dependent on foreign sources of oil. We are less secure today. We get whipsawed in the world market because oil is priced as a world commodity and now, in the last decade, China and India have entered the market in ever greater demand.

What I want to show next is a bit of a complication but it is true in the oil markets of today. Why do I know about it? I have been in Congress 28 years. I have spent a fair amount of time dealing with energy. All during that time, I have argued that if you don't produce, someday something would happen—it is called a breakpoint—that breakpoint would occur, and American consumers would all of a sudden find a phenomenal ramp-up in the price of energy at the pump, that tax I am talking about, that 20 percent hike in the cost of energy that American public policy produced for the American consumer in the last year.

Here is the chart. The dark area is U.S. production from 1970 to 2005. That is what we were producing. I shouldn't say just U.S. production; it was overall world demand production. What is interesting about it, this little green margin at the top was surplus supply. In other words, it was available. The market wasn't demanding it, but if the market demanded it, you could turn on a pump, turn a valve on a well somewhere in Saudi Arabia, probably, or maybe Venezuela, and you had spare capacity in the market. But as you will notice, this green margin, this spare capacity margin in world supply began to rapidly narrow starting in about 2000 through 2005. That is when China and India were entering the market at ever greater capacity because their economies were growing. They were becoming more wealthy, and they were using oil as a part of the energy supply to produce the goods and services they were selling to the world market. During that time, we were not expanding world capacity. So the margin, if you will, the bumper wasn't there anymore. Come 2005, we were nearly at a breakpoint. Beyond that, here is the rest of the story, and we know it today. There is no spare capacity out there. There is no way we can offset increased demand. So consumers in America and all over the world are starting to compete for the substance of oil by higher prices.

That is why for the last 2 weeks we have been on the floor talking about the ability to increase supply against ever-growing demand. But the market forces are at work. That demand has slipped off a little bit. Why? Because of that high tax at the gas pump. That doesn't mean it will go away, not at all. China and India are still consuming at ever-higher rates. They are simply going to grab that which we are not using today in the world market. So when our consumers want to come back to the market, when prices drop a little bit, will there be more oil in the market? There is a strong possibility there may not be, unless this Congress recognizes the error of its ways and allows us to get into the business of production again.

We have put off limits all around the United States vast quantities of oil that I and the world believe we ought to be producing. Guess what the American consumer is saying. In the State of Florida, where maybe a year ago or 2 years ago, 70 percent of Floridians would have said: Don't drill off our shore, I am being told by legitimate polling today that 70-plus percent of them are saying: Drill, produce. In fact, we believe that by the end of the week or early next week, the American people will see credible polling data that says nearly 80 percent of the American people are saying: You go produce that oil. Why are you asking foreign nations to supply it? We have the oil. Why aren't we drilling it?

You hear the argument here on the floor: My goodness, it would take 4, 5, 6 years to bring that oil online. I suggest that it wouldn't take 4 or 5 or 6 years. We know the oil is there, maybe 2 billion barrels of oil and literally hundreds of trillions of cubic feet of

gas. Here are the pipelines. Here are refineries. Here is the infrastructure that could take this oil immediately out of what we call the eastern Gulf of Mexico, off the coast of Florida, and bring it into production within 2 to 3 years.

What does the marketplace say? What does that buffer out there, that green line on that other chart say, if, in fact, we were to do that? It would say: My goodness, there is now potentially spare capacity in the market, and prices begin to drop. No, we can't produce our way out of a crisis, but we can lessen the crisis while the American economy and technology are taking us to new forms of energy and to new ways to supply transportation.

I hope the Senate faces the reality that we have to get this country producing again. If we do, we can say to the American consumer: We will lower your tax burden at the gas pump, and we are going to create once again the kind of flexibility the American consumer has in their family budget. You lower the gas price, you lower the tax at the pump. That is the reality of what we are doing. It is a very real tax today. It has frightened the American consumer, and it has put our Nation in a state of insecurity.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

EPA ADMINISTRATOR STEPHEN L. JOHNSON

Mr. WHITEHOUSE. Madam President, I rise to speak about a matter that I very much regret being here to discuss, but events have driven me to this point and, with me, the chairman of the Environment and Public Works Committee, Mrs. BOXER, Senator KLOBUCHAR, and others as well.

For most of its nearly four-decade history, Americans could look to the Environmental Protection Agency for independent leadership, grounded in science and the rule of law. It was an agency whose clear mission was to protect our environment and health.

At its very founding, EPA's first Administrator, William Ruckelshaus, stated unequivocally:

> EPA is an independent agency. It has no obligation to promote agriculture or commerce; only the critical obligation to protect and enhance the environment.

During the tenure of Administrator Stephen Johnson, we have seen that clear mission darkened by the shadowy handiwork of the Bush White House, trampling on science, ignoring the facts, flouting the law, defying Congress and the courts, while kneeling before industry polluters, and all for rank and venal purposes. Under Administrator Johnson, EPA is an agency in distress, in dishonor, and in bad hands.

Events last week have shed new light on the extent of the damage done to this great agency, but the evidence of Mr. Johnson's dismal record has been growing for many months. The charges are serious and fall in three separate categories: his repeated decisions putting the interests of corporate polluters before science and the law, even when it puts at risk our environment and the health of American people; his deliberate actions to degrade the procedures and institutional safeguards that sustain the agency; and his apparent dishonesty to us in testimony before Congress.

The particulars are these. Count 1: On pollution from ozone, the EPA, under Administrator Johnson, departed from the consistent recommendations of agency scientists, public health officials, and the agency's own scientific advisory committees and instead set an ozone standard that favored polluters. The standard he set was inadequate to protect the public, especially children and the elderly, from the harmful effects of ozone pollution, from asthma and lung disease.

Indeed, it was so inadequate that EPA's own Clean Air Scientific Advisory Committee took the unique step of writing to the Administrator to state that they ''do not endorse the new primary ozone standard as being sufficiently protective of the public health'' and that the EPA's decision ''fail[ed] to satisfy the explicit stipulations of the Clean Air Act that you ensure an adequate margin of safety for all individuals, including sensitive populations.''

Setting this inadequate ozone standard against the evidence was a dereliction of Administrator Johnson's duty to the Agency he leads and of EPA's duty to protect the health of the American people.

Count 2: On pollution from lead, Administrator Johnson has proposed a standard that fails to sufficiently strengthen the regulation aimed at limiting exposure to lead pollution.

Lead has poisoned tens of thousands of children in Rhode Island and many more all over the country. Both an independent scientific review panel and EPA's own scientific staff recommended a lead standard of no greater than 0.2 micrograms per cubic meter. Yet Administrator Johnson proposed a range of 0.1 up to .05 micrograms—2½ times.

Mr. Johnson further diluted even that lax standard by using what public health advocates have labeled ''statistical trickery''—statistical trickery—allowing polluters a longer period of time over which to average the amount of lead they discharge into the air.

Again, by not adequately protecting children from lead, Administrator Johnson was derelict in his duty to his Agency.

Count 3: On pollution from soot, technically called ''particulate matter,'' Administrator Johnson bowed to pressure from industry and failed to strengthen a decade-old standard limiting particulate matter pollution from smokestacks.

Again, the Agency's own scientific advisory committees had called for a tougher standard to protect public health. Again, Administrator Johnson yielded to polluters. Again, Administrator Johnson failed in his duty to the Agency he leads.

Count 4: On vehicle tailpipe emissions, Administrator Johnson denied a waiver that would have allowed the State of California, my State of Rhode Island, and many other States to enact strict restrictions on global warming pollution from automobiles.

EPA staff indicated in briefing materials that ''we don't believe there are any good arguments against granting the waiver.'' EPA lawyers cautioned the Administrator that all of the arguments against granting the waiver were ''likely to lose in court.'' Yet Administrator Johnson issued an unprecedented denial of that waiver.

I will separately discuss my grave concerns about the Administrator's testimony on this matter. I believe he has lied to us. But for this purpose now, looking only at the substantive outcome, in ignoring the law, the dictates of science, the recommendations of his regulatory and legal staff, the role of Congress, the wishes of the States, and the welfare of the American people, Administrator Johnson failed again in his duty to the Agency he leads.

Count 5: On global warming pollution, in defiance of the Supreme Court's decision in Massachusetts v. EPA, Administrator Johnson has failed to take action after the Court's ruling that EPA has the authority, under the Clean Air Act, to regulate greenhouse gas emissions that pollute our air and warm our planet.

It is now nearly 18 months since the Court's decision, and the EPA has shown no indication it will act before President Bush leaves office. In ignoring a ruling of this Nation's highest Court empowering him to act on a matter important to the public health of Americans, Administrator Johnson again failed in his duty to the Agency he leads.

But it was not enough for Administrator Johnson to rule for the polluters on pollutant after pollutant.

Administrator Johnson has also systematically dismantled institutional safeguards and processes that protect his Agency's integrity and guide its mission.

Jonathan Cannon served at EPA during the Reagan, George H.W. Bush, and Clinton administrations. He warns of ''extreme friction within the agency and institutional damage . . . demoralizing the legal staff, and . . . further separating staff from the political leadership at the agency.'' We saw similar sabotage of institutional safeguards in the Gonzales Department of Justice, and this institutional damage raises four further charges, taking us to count six.

On the question of the Agency's legal integrity, under Administrator Johnson, the EPA offered legal arguments for its insufficient pollutant standards so shallow they provoked ridicule by the courts that heard them. When EPA tried to defend its weak mercury cap-and-trade system, the DC Circuit Court of Appeals—which, as we know, is hardly a liberal bench—accused the Agency

of employing the ''logic of the Queen of Hearts'' in attempting to evade the intent of Congress and the clear meaning of the Clean Air Act.

The same court said EPA's argument under the Clean Air Act allowing power companies to avoid upgrading their pollution control technologies made sense only in ''a Humpty Dumpty world.'' In adopting ''Wonderland'' legal analysis that contravenes the clear will of Congress and embarrasses his Agency before the courts, Administrator Johnson failed again in his duty to uphold the mission of the Agency he leads.

Count 7: On the integrity of EPA's scientific advisory boards, Administrator Johnson did not just ignore these boards' recommendations, he willingly allowed those panels to be infiltrated by the very industries they are meant to regulate and control.

For example, an employee of ExxonMobil served on the panel to assess the carcinogenicity of ethyl oxide—a chemical manufactured by ExxonMobil.

Another scientist received research support from Dow Agro and served on that panel, even though ethyl oxide is also manufactured by Dow Agro.

A scientist whose research was funded by American Cyanamid and CYTEC sits on the EPA panel on acrylamide, which is manufactured by American Cyanamid and marketed by CYTEC. EPA did not see any conflict of interest.

But at the beck and call of the American Chemistry Council, an industry lobby group, Administrator Johnson removed Dr. Deborah Rice, a prominent toxicologist, from a scientific review board investigating chemicals used in common plastic goods.

The industry argued that she had a conflict of interest. Incredibly, the conflict of interest was that, at a public hearing in the State of Maine, as a representative of the State's Government, Dr. Rice had stated her professional opinion regarding the dangers associated with these chemicals. The industry did not like her professional opinion. Not only was Dr. Rice removed from the panel, but in a particularly Orwellian maneuver, the fact that she had ever been on the panel was stricken from the advisory committee's records.

In packing EPA's scientific panels to please industry polluters, Administrator Johnson is guilty of a particularly chilling dereliction of his duty to the Agency he leads.

Count 8: A report issued on April 23 by the Union of Concerned Scientists, entitled ''Interference at the EPA,'' uncovered widespread political influence in EPA decisions. The report found that 60 percent of EPA career scientists surveyed had personally experienced at least one incident of political interference during the past 5 years—60 percent of the career scientists. It is a plague over there.

The report documented, among other things, that many EPA scientists have been directed to inappropriately exclude or alter information from EPA science documents, or have had their work edited in a manner that resulted in changes to their scientific findings.

The survey also revealed that EPA scientists have often objected to or resigned or removed themselves from EPA projects because of that pressure to change scientific findings.

Allowing this corrosive political influence to persist among the career scientists at EPA is yet another dereliction of Administrator Johnson's duty to the Agency he leads.

Count 9: Administrator Johnson has twisted the very administrative procedures of the Environmental Protection Agency to allow the White House Office of Management and Budget secret influence over Agency decisionmaking.

For example, the IRIS process for determining the toxicity of chemicals that all of us are exposed to allows OMB three separate chances to exert its dark influence: at the beginning, in the middle, and again at the end of the Agency's process. In the words of the GAO, this process is ''inconsistent with the principle of sound science that relies on, among other things, transparency.''

This is not just a potential concern. The current chair of EPA's Clean Air Scientific Advisory Panel has testified that the ozone standard was ''[set] . . . by fiat behind closed doors,'' has testified that the entire Agency's scientific process was ''for naught,'' and testified that ''the OMB and the White House set the standard, even though theoretically it was set by the EPA Administrator.'' She testified that as a result, ''willful ignorance triumphed over sound science.'' That is her testimony.

In manipulating his Agency's processes to let willful ignorance triumph over sound science, Administrator Johnson has again been derelict in his duties to this once proud Agency.

The third and final category of charges relates to Johnson's relationship to Congress. In defiance of his charge under the Constitution of the United States, Administrator Johnson has personally repeatedly refused to cooperate with Congress in our efforts to conduct proper oversight over the executive branch.

The Senate Environment and Public Works Committee has repeatedly requested documents in connection with EPA's denial of the California waiver and its failure to adequately regulate ozone pollution in our efforts to determine whether the White House improperly influenced these decisions.

Administrator Johnson has rebuffed these proper requests. He has repeatedly declined to appear before the EPW Committee to explain his Agency's policies. And when he has appeared, he has resorted to canned, stock, evasive answers in response to legitimate questions about political influence infiltrating his Agency.

Just last week, he refused to appear before the Judiciary Committee on which I also serve for a hearing to look further into his failure to cooperate with Congress and provide documents and other information we have sought.

In what is perhaps the gravest matter of all, I believe the Administrator deliberately and repeatedly lied to Congress, creating a false picture of the process that led to EPA's denial of the California waiver, in order to obscure the role of the White House in influencing his decision.

Today, Senator BOXER and I have sent a letter to Attorney General Mukasey—along with Senator KLOBUCHAR—asking him to investigate whether Administrator Johnson gave false and misleading statements, whether he committed perjury, and whether he obstructed Congress's investigation into the process that led to the denial of the California waiver request.

I ask unanimous consent that the letter and its attached recitations be printed in the RECORD as an exhibit to these remarks.

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

(See Exhibit 1.)

Mr. WHITEHOUSE. There is more. These are not isolated counts but signs of an agency corrupted in every place the shadowy influence of the Bush White House can reach.

Administrator Johnson forced the resignation of EPA's Regional Administrator for the Midwest, Mary Gade, who was locked in a struggle with corporate polluter Dow Chemical Company. The circumstances are highly suspicious. Administrator Johnson has replaced Ms. Gade with a former attorney for the automobile industry, whose record on behalf of the environment has been described as ''horrible.''

The EPA, under Administrator Johnson, has reduced the reporting burdens on industries that release toxic chemicals into our land, sea, and air. It has weakened enforcement and monitoring by opening fewer criminal investigations, filing fewer lawsuits, and levying fewer fines against corporate polluters.

It has failed to protect agency employees who pointed out problems or reported legal violations or attempted to correct factual misrepresentations made by their superiors and created an atmosphere where employees fear reprisals.

In the face of widespread criticism that his agency is in crisis and that he is a pawn of the White House and its allies in polluting industries, Administrator Johnson's response was to label all those concerned, many of whom are dedicated career employees of his agency, as ''yammering critics,'' clearly a man after Spiro Agnew's own heart.

The EPA has a vital mission. When this great agency is weakened and its work subverted by political interference, there is a great cost to this country. When EPA scientists and career employees become discouraged as their voices go unheard, there is a great cost to this country. When the

people of America lose faith that the Environmental Protection Agency actually lives up to its name, there is a great cost to this country. When those who were chosen to serve this country instead serve themselves, their political allies, and their patrons, there is a great and lasting cost to this country. It is a failure of integrity, and that is a failure we can no longer afford.

We demand integrity—democracy demands integrity—of our public officials, not just because integrity is an abstract moral good but because democracy fails without it.

Integrity sustains our democracy in such important ways. The first is integrity to the truth. In Government, when the facts are clear enough for responsible people to act, it is a failure of integrity to fail to confront those facts. As the late Senator from New York, Daniel Patrick Moynihan, famously said: ''You are entitled to your own opinion; you are not entitled to your own facts.''

America has traditionally been characterized by candid and practical assessment of the facts, a can-do attitude about responding to those facts, and bold decisionmaking to find our way through those facts. Practical, can-do, optimistic, realistic—that is the American way. When Government doesn't face the truth about the facts, it will almost certainly fail to meet the demands of the moment and fail to serve the interests of our people. That is what is happening at EPA. They simply will not face facts plain to any responsible person.

However, facts are stubborn things. They do not yield to ideology or influence. They do not care about your politics. Unanswered they stand, getting worse, and eventually the piper must be paid. If facts aren't candidly, realistically, and responsibly faced, not only will the problem get worse but the very capacity of the Government to address problems candidly, realistically, and responsibly, that capacity will itself degrade when not put to use. So there are ugly, lasting consequences when Government officials fail at their obligation to meet the truth head on.

Another integrity is to honesty. As failures of truth have a harsh cost in Government, so do failures in honesty. I have sworn in new assistant U.S. attorneys. I have sworn in new State assistant attorneys general. I have presided at nomination hearings. Every time I have seen the same thing: a little spark of fire, a moral fire sparked when someone makes a choice to earn less money than they would otherwise, to work a lot harder than they would otherwise, to dare greater challenges than they might otherwise, all in order to serve the larger purpose, to serve an ideal, to serve America.

This spark of fire inspires young men and women to tackle problems that may seem unmanageable. This spark of fire keeps people at their desks late into the night when others have gone home to their families. This spark of fire brings idealism and principle to decisions and illuminates a moral path through the complexities of Government.

The value in Government of that spark of fire burning in the hearts of a thousand men and women—our real thousand points of light—is immeasurable. EPA is sustained by that spark of fire.

But this spark of fire is quenched in the toxic atmosphere of dishonesty whose guiding principles are help your friends, please your patron, dodge your responsibilities, and fudge the truth. Dishonesty and idealisms do not cohabit.

The third integrity is competence, a vital integrity. If we are to address the present and looming problems a new administration will have to face—a war without end in Iraq, an economy on a sickening slide, a broken health care system, a country divided into two increasingly separate Americas, a public education system that is failing, the dangerous weight of an alarming national debt, foreign policies that have unhinged us from responsible world opinion, bickering and irresolution on problems such as immigration and global warming—we must see competence as a core integrity. We must demand competence of Government officials as a bare minimum, a core necessity.

Unfortunately, as one discouraged official has complained: ''In the Bush administration, loyalty is the new competence.''

Administrator Stephen Johnson is a failure in all these dimensions. From everything we have seen, Administrator Johnson has done the bidding of the Bush administration and its political allies without hesitation or question and in violation of his clear duty. He has tried to cover up his dereliction of duty with evasive and discreditable testimony. He has acted without regard for the law or the determinations of the courts. He has damaged the mission, the morale, and the integrity of his great institution—the Environmental Protection Agency—and he has betrayed his solemn duty to Americans who depend on him to protect their health, particularly our very youngest and our very oldest whose vulnerability is greatest.

Administrator Johnson suggests a man who has every intention of driving his agency onto the rocks, of undermining and despoiling it, of leaving America's environment and America's people without an honest advocate in their Federal Government. This behavior not only degrades his once great agency, it drives the dagger of dishonesty deep into the very vitals of American democracy. The American people cannot accept such a person in a position of great responsibility.

I am truly sorry it has come to this, but that is why this afternoon I called on Administrator Johnson to resign his position. I encourage my colleagues to look closely at these concerns. Look at the reasons. Look at what I have prepared. Whatever decision colleagues may come to, I hope all understand I come to this decision sincerely and after much review and reflection and with no pleasure.

I thank the President, and I yield the floor.

EXHIBIT 1

U.S. SENATE, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC, July 29, 2008.

Hon. MICHAEL MUKASEY,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL MUKASEY: As members of the Senate Committee on Environment and Public Works (EPW), we are writing to ask that you open an investigation into whether the Administrator of the U.S. Environmental Protection Agency (EPA), Stephen L. Johnson, has made false or misleading statements before the EPW Committee.

We do not make this request lightly. However, we believe that there is significant evidence to suggest that Mr. Johnson has provided statements that are inconsistent with sworn testimony and documents provided in connection with an investigation conducted by this Committee. These false, misleading, or intentionally incomplete statements relate to the decision announced by EPA on December 19, 2007, to deny the request by California for a waiver under Section 209 of the Clean Air Act. After Mr. Johnson's testimony, a former senior aide to Mr. Johnson at EPA, Jason Burnett, provided sworn testimony before the EPW Committee on July 22, 2008, that appears to contradict Mr. Johnson's testimony on key factual matters.

For example, Mr. Johnson stated under oath before the EPW Committee on January 24, 2008 that he based his denial of the California waiver request on California's failure to meet the ''compelling and extraordinary'' circumstances criterion under Section 209, and that he reached this decision independently. However, Mr. Burnett testified that Mr. Johnson had in fact determined that California met this criterion and the other Clean Air Act criteria necessary for approval of the waiver, and that the Administration's decision to deny the waiver was based on the President's policy preferences, rather than the lack of compelling and extraordinary circumstances.

In addition, Mr. Johnson testified before the EPW Committee that the decision to deny that waiver was solely his decision. However, Mr. Burnett testified that Mr. Johnson had a plan to grant the waiver and had concluded that the statutory criteria for granting it were met, until it was ''clearly articulated'' by the White House that the President's ''policy preference'' was to deny the waiver.

We also are concerned about Mr. Johnson's testimony that the energy legislation enacted by Congress and signed by the President on December 19, 2007, was not substantively related to his decision announced on the same day to deny the California waiver, which he asserted was based upon his finding that the waiver did not meet the Clean Air Act statutory criteria. Mr. Burnett testified, however, that Mr. Johnson had required extensive analysis of the impact of this energy bill in evaluating whether to grant the waiver, and that it was the President's policy preference that led to the denial of California's waiver request, because granting the waiver or a partial grant of the waiver would have led to two standards, not one, as the President desired. The energy bill established a single standard for vehicle fuel efficiency, as the President desired.

It appears that Mr. Johnson's account of the California waiver decision is factually inaccurate or misleading. We take the inconsistency between Mr. Johnson's testimony and other evidence very seriously. False testimony by any witness is serious and undermines our ability to fulfill our constitutional duties on behalf of the American people. Our concern is heightened because this decision by the EPA Administrator affects the health and wellbeing of the American people. For these reasons, we have no choice but to refer the matter to you for appropriate investigation and prosecutorial action.

We look forward to your prompt response on this matter.

Sincerely,

BARBARA BOXER,
Chairman.
SHELDON WHITEHOUSE,
U.S. Senator.
AMY KLOBUCHAR,
U.S. Senator.
FRANK R. LAUTENBERG,
U.S. Senator.

EPA ADMINISTRATOR JOHNSON'S TESTIMONY BEFORE CONGRESS ON THE CALIFORNIA WAIVER DECISION

Specifically, the concerns we have regarding Administrator Johnson's testimony arise out of conflicts between his testimony before the EPW Committee, and that of Jason Burnett, a former EPA official who worked closely with Administrator Johnson on the California waiver issue.

It appears from Mr. Burnett's testimony that Administrator Johnson's testimony was at best misleading and at worst untruthful in many specific ways.

Administrator Johnson repeatedly claimed that the decision to deny the California waiver was ''mine and mine alone.'' He said this repeatedly, over and over:

I was not directed by anyone, I was not directed by anyone to make the decision. This was solely my decision based upon the law, based upon the facts that were presented to me. It was my decision. (1/24/08 EPW Committee Oversight hearing (''1/24/08 hearing''), unofficial transcript at p. 29).

I made the decision. It was my decision and my decision alone. (2/27/08 EPW Committee hearing on EPA FY2009 Budget (''2/27/08 hearing''), unofficial transcript at p. 58)

The decision was mine and mine alone. I made the decision. (2/27/08 hearing, unofficial transcript at p. 59).

Certainly the California waiver was my decision under the Clean Air Act and mine alone. I made the decision, I made it independently, I carefully considered all the comments and I made that decision. (Id. at p. 30)

Mr. Burnett's testimony, however, indicates that these statements were not true in any meaningful sense. First, in point of fact, the decision Administrator Johnson made was to grant a partial waiver:

There was an effort that we were engaged in and that I was engaged in to make the case that it would be appropriate to issue at least a partial grant of the waiver. (Testimony of Jason Burnett at EPW Committee hearing, 7/22/08, unofficial transcript at p.31)

The Administrator had a plan to partially grant the waiver provided that the Clean Air Act was not enacted [sic] by Congress. (Id. at p. 42).

Second, Mr. Burnett's testimony makes clear that this decision to grant the partial waiver was vetted thoroughly within EPA and reflected the Agency's consensus view that at least a partial waiver was appropriate:

We did our best to ensure that all policy officials involved in this decision were apprised and informed of the law and EPA's assessment that all three criteria were, that the, clearly the most supportable case under the law is that all three criteria had been met. (Id. at p.43)

My advice, my recommendation, as well as the advice and recommendation of all other advisors within EPA that I am aware of was for Administrator Johnson to grant the waiver or at least grant the first few years of the waiver. (Id. at p. 21)

Third, Mr. Burnett testified that Administrator Johnson's decision to partially grant the waiver was then taken to the White House:

But we went forward with our plan, told the White House about our plan to have a partial grant of the waiver. . . . (Id. at p. 32)

Fourth, Mr. Burnett was clear that when the White House was informed of the plan, the Administrator was told of the President's ''policy preference'' and reversed his decision to support the partial waiver.

But we went forward with our plan, told the White House about our plan to have a partial grant of the waiver, and in response, we were reminded of the President's policy preference. (Id. at p. 32)

Mr. BURNETT: I believe that we continued throughout the early December to explain the case for a partial grant. I believe that it was early December when the Administrator made his plan known. Of course, that plan ultimately was not followed.

Senator WHITEHOUSE: And in between that, the White House response came back that the President desired there to be the single standard?

BURNETT: yes. (Id. at p. 38)

The repeated, false emphasis by the Administrator that the decision to deny the waiver was ''mine and mine alone,'' when in fact the Administration effectively reversed Administrator Johnson's decision to grant the waiver, was part of a larger plan to mislead the EPW Committee about the decision-making process regarding the waiver.

A second part of this plan was Administrator Johnson's suggestion that there was staff debate on the California waiver, during which a wide range of options were presented by staff, and after which, based on this debate, the Administrator made the decision to deny the waiver:

Again, a great team of people, the lawyers and scientists and policy staff. They presented me with a wide range of options [on the waiver]. Those options ranged from approval to denial. I listened to them carefully, I weighed the information and I made an independent judgment. I concluded that California does not meet the standard under Section 209. (1/24/08 hearing unofficial transcript, at p. 45).

Again, as I have stated and will state again, the decision was mine, solely mine. I heard a wide range of comments from inside the agency, outside the agency, I was presented with a range of options. I made the decision. It was my decision and my decision alone (2/27/08 hearing unofficial transcript at p. 58).

During the briefing process, I encouraged my staff to take part in an open discussion of issues, and due to their value [sic?] options and opinions, I was able to make a determination. As you know, the Clean Air Act requires the EPA Administrator to determine whether or not the criteria for a waiver have been met. It was only after a thorough review of the arguments and material that I announced my direction to staff to prepare a decision document for my signature. (1/24/08 hearing unofficial transcript at p. 16)

Senator WHITEHOUSE: The last time we spoke about this, you said that sometimes the EPA staff gave you a single consolidated recommendation, Mr. Administrator, this is what we think you should do, and sometimes they give you an array of options, Mr. Administrator, we think these are your options. You have testified that in this case, they gave you an array of options, not a single, consolidated opinion, correct?

Administrator JOHNSON: That is what I remember, yes. (2/27/08 hearing unofficial transcript at p. 61)

In fact, however, Mr. Burnett was clear that there was staff agreement on the issue, as manifested in the plan agreed to by the Administrator, and presented to the White House, to grant a partial waiver:

My advice, my recommendation, as well as the advice and recommendation of all other advisors within EPA that I am aware of was for Administrator Johnson to grant the waiver or at least grant the first few years of the waiver. (7/22/08 hearing, unofficial transcript at p. 21).

Mr. Burnett made clear, however, that the Administrator went to the White House armed with a plan to partially grant the waiver but, after being informed of the Bush ''policy preference'' that the waiver not be granted, reversed course and denied the waiver:

We went forward with our plan, told the White House about our plan to have a partial grant of the waiver, and in response, we were reminded of the President's policy preference. (7/22/08 hearing unofficial transcript at p. 32)

Senator WHITEHOUSE: In the Clean Air Act waiver, after the White House was notified of the proposed decision that you put together, did the White House respond to that notice that you intended to partially grant the waiver?

BURNETT: The response was clearly articulating that the President had a policy preference for a single standard that would be inconsistent with granting the waiver. (Id.)

BURNETT: I believe that we continued throughout the early December to explain the case for a partial grant. I believe that it was early December when the Administrator made his plan known. Of course, that plan was ultimately not followed.

SW: And in between that, the White House response came back that the President desired there to be the single standard?

BURNETT: Yes. (Id. at p. 38)

Administrator Johnson deliberately and repeatedly left these steps out of his discussion of the process that led to denial of the waiver.

Moreover, when questions regarding White House contact were raised, he said things that were not true, if words are given their meanings in common usage.

For example, Administrator Johnson testified repeatedly that his contacts with the White House regarding the waiver were limited to ''routine discussions'' that were nothing more than status updates for the White House on the waiver issue and were part of meetings involving multiple issues:

Senator BOXER: Did you contact [the White House about the California waiver]?

Administrator JOHNSON: As part of good government, I tell them what is the status of major actions that are before the Agency to give them an update. That is what I do on petitions, on regulations, and——

Senator BOXER: Did you discuss this waiver with members of the Administration in the White House, the Vice President's Office, or the OMB? Did you discuss this?

Administrator JOHNSON: I have routine discussions. (EPW 7/26/07 Hearing on Status of California Waiver unofficial transcript at pp. 15–16)

Senator WHITEHOUSE: Was there or was there not contact from the White House regarding the waiver decision?

Administrator JOHNSON: As I said, I have routine contacts with members of the Administration, including the White House.

Senator WHITEHOUSE: And did that routine contact include contact regarding the waiver decision?

Administrator JOHNSON: Again, I have routine conversation on a wide range of topics that I believe is good government and indeed, it included what our status was on the issue of the California waiver. (2/27/08 EPW hearing unofficial transcript at p. 58)

In fact, Mr. Burnett's testimony makes clear that there were specific White House meetings dedicated to the waiver:

Senator WHITEHOUSE: Were the meetings . . . related to the California waiver . . . specific to that? Or were they part of a routine schedule that the Administrator had, going to the White House on a regular basis and this would be on the agenda, this particular time? Or were these meetings that were scheduled specifically to address this and not part of a routine, ongoing scheduled meeting process?

Mr. BURNETT: Both. There were some meetings that were specifically scheduled to talk about the California waiver, and other meetings to talk about a range of issues relating particularly to climate policy, including the response to the Supreme Court and the California waiver.

Senator WHITEHOUSE: And were there meetings specific to the California waiver, that you would not characterize as routine that were specifically scheduled for that purpose?

Mr. BURNETT: Well, there were meetings specifically scheduled for that purpose, as I said.

Senator WHITEHOUSE: Not just dropped in as an agenda point on a regularly-scheduled meeting?

Mr. BURNETT: Yes, meetings that were specific to talk about the California waiver. But I'm not sure if that means they were routine or not. It certainly was the case that this issue of the California waiver received a great deal of attention from a number of people throughout the Administration. (7/22/08 hearing unofficial transcript at p. 31.)

Mr. Burnett also testified that the waiver decision was a very important matter to EPA and the Administration:

It certainly was the case that this issue of the California waiver received a great deal of attention from a number of people throughout the Administration. (Id.)

This issue is one of the most important issues that was facing EPA. It received very high level attention, many meetings with the Administrator and many meetings with senior officials at the White House (Id. at p. 43)

Thus, the meetings clearly were more than ''routine,'' both in terms of their timing (Webster's II New Riverside University Dictionary, at p. 1022—''A set of customary and often mechanically performed procedures;'' ''prescribed and detailed course of action to be followed regularly'' and substance (''not special,'' ''ordinary'').

Moreover, Administrator Johnson's testimony that the meetings were merely to provide the White House with status updates was also directly contradicted by Mr. Burnett, who testified that at least some meetings were held at the White House to present the Administration with EPA's plan to grant a partial waiver.

We went forward with our plan, told the White House about our plan to have partial grant of the waiver, and in response, we were reminded of the President's policy preference. (Id. at p. 32)

Senator WHITEHOUSE: Would it be accurate to say that in those meetings Administrator Johnson's contribution was limited to an update on the status of the waiver action?

Mr. BURNETT: There was an effort that we were engaged in and that I was engaged in to make the case that it would be appropriate to issue at least a partial grant of the waiver. (Id. at p. 31)

Administrator Johnson was also misleading and not credible regarding the staff process on the waiver decision. He testified that he had been presented a range of options from denial to outright grant, but that he could not remember any of the options beyond the extremes of a full grant or outright denial of the waiver:

Senator WHITEHOUSE: What would you list? You said a wide range of options? Can you specify what those options were?

Administrator JOHNSON: As I have said, a range from approving the waiver to denying the waiver.

Senator WHITEHOUSE: That is not a range, that is two.

Administrator JOHNSON: Well, there were options in between and—

Senator WHITEHOUSE: Such as?

Administrator JOHNSON: I was trying to recall. I don't recall the specific options in between but that certainly is a matter of record.

Senator WHITEHOUSE: Do you recall any of the specific options in between?

Administrator JOHNSON: As I said, the options ranged from approval to denial and included other options in between. I don't recall how they were entitled or the specifics.

Senator WHITEHOUSE: Without their title, their fundamental nature, do you recall?

Administrator JOHNSON: Again, there was a range of options and I don't recall the specifics of the intermediate ones. (2/27/08 hearing unofficial transcript at p. 63)

In fact, however, Mr. Burnett's testimony makes clear that there was a unanimous staff recommendation for a partial waiver so fully developed that he agreed to it and took it to the White House after extensive briefing:

My advice, my recommendation, as well as the advice and recommendation of all other advisors within EPA that I am aware of was for Administrator Johnson to grant the waiver or at least grant the first few years of the waiver. (7/22/08 hearing unofficial transcript at p. 21)

The Administrator had a plan to partially grant the waiver, provided that the Clean Air Act was not enacted [sic] by Congress. (Id. at p. 42)

There was an effort that we were engaged in and that I was engaged in to make the case that it would be appropriate to issue at least a partial grant of the waiver. (Id. at p. 31)

I believe that we continued throughout early December to explain the case for a partial grant. I believe that it was early December when the Administrator made his plan known. Of course, that plan ultimately was not followed. (Id. at p. 38)

We went forward with our plan, told the White House about our plan to have a partial grant of the waiver, and in response, we were reminded of the President's policy preference. (Id. at p. 32)

It is simply unimaginable that Administrator Johnson could forget that a partial waiver plan had been recommended to and developed for him, that it had been adopted as the Agency plan on this critical matter, and that he had presented it to the White House.

Administrator Johnson said there was no White House reaction to his update, or that he could not recall any White House response or reaction:

Senator BOXER: Did you discuss the California waiver with someone from the President's office, the Vice President's office, OMB?

Administrator JOHNSON: I routinely have conversations with members of the White House.

Senator BOXER: The answer is yes, then. What did they say? What was their reaction? How did they feel about the waiver?

Administrator JOHNSON: I don't recall their reaction because I was giving them an update of the status of this action and a lot of other actions before the Agency. (7/26/07 hearing unofficial transcript at 16).

Senator BOXER: Is this a fair analysis of what you have told us? That no one ever contacted you to give an opinion on the waiver, or to tell you to slow it up or anything; no one from the President's, Vice-President's, OMB; no one from the DOT. But you did contact them just to fill them in on what was happening, and the waiver was one of the issues, but you don't recall anything that they said. You just briefed them, but they never made any opinion. Yes or no?

Administrator JOHNSON: If you would add ''to the best of my recollection,'' then I would say, ''yes.'' (Id. at p. 17)

Given Mr. Burnett's testimony, it is simply unimaginable that Administrator Johnson cannot recall getting a response from the White House suggesting that he reverse his plan to grant a partial waiver:

Senator WHITEHOUSE: In the Clean Air Act waiver, after the White House was notified of the proposed decision that you put together, did the White House respond to that notice that you intended to partially grant the waiver?

Mr. BURNETT: The response was clearly articulating that the President had a policy preference for a single standard that would be inconsistent with granting the waiver. (7/22/08 hearing unofficial transcript at p. 32)

Mr. BURNETT: . . . the Administrator certainly knew the President's policy preference for a single standard. (Id.).

Mr. BURNETT: [W]e went forward with our plan, told the White House about our plan to have a partial grant of the waiver, and in response, we were reminded of the President's policy preference. (Id.)

Mr. BURNETT: I believe that we continued throughout the early December to explain the case for a partial grant. I believe that it was early December when the Administrator made his plan known. Of course, that plan ultimately was not followed.

Senator WHITEHOUSE: And in between that, the White House response came back that the President desired there to be the single standard?

Mr. BURNETT: Yes. (Id. at p. 38)

It is unimaginable that the head of a major government agency could take a plan on a vital public issue to the White House, fully vetted and briefed, to make the case for the plan, come back to the agency with a completely different plan as a result of the White House meeting, and then not remember that this event had taken place. It can only be a lie.

Administrator Johnson claimed that his decision to deny the waiver was based on criterion two of the waiver test under the Clean Air Act: that is, whether California demonstrated compelling and extraordinary conditions in support of its request:

I came to the conclusion that of the criteria that I am required to evaluate, it was the second criteria, that the State does not have compelling, extraordinary conditions. So that is the basis of my decision. (1/24/08 hearing unofficial transcript, p. 22)

I made my decision for the California waiver under Section 209 of the Clean Air Act. And I found that California does not meet the compelling and extraordinary conditions. (Id. at p. 55)

In fact, as noted above, Mr. Burnett's testimony makes clear that Administrator Johnson was prepared to grant a partial waiver, based on the compelling and extraordinary factor and other factors having been met:

As part of the plan to grant a partial waiver, certainly it was the case that all three criteria in the Clean Air Act would be met, including the criteria that California has compelling and extraordinary circumstances. (7/22/08 hearing unofficial transcript at p. 19)

We did our best to ensure that all policy officials involved in this decision were apprised and informed of the law and EPA's assessment that all three criteria were, that the, clearly, the most supportable case under the law is that all three criteria had been met. (Id. at p. 43)

Indeed, it was only after President Bush's ''policy preference'' was explained to Administrator Johnson at a White House meeting that he decided to deny the waiver. The rationale that California did not meet was evidently an after-the-fact embellishment designed to cover up the initial plan to grant the waiver, the White House meeting at which President's Bush's ''policy preference'' was explained, and Administrator Johnson's reversal of course, and to create a post hoc legal explanation for the decision.

The following summary of Administrator Johnson's testimony by Chairman Boxer was admitted by Johnson to be accurate ''to the best of [his] recollection.''

Senator BOXER: So just to wrap this up, and then I will turn to Senator Inhofe. So just to wrap this up, no one ever contacted you. You contacted them, meaning the White House, the Vice President's office, the OMB, the DOT. You contacted them just to give them an update on this issue, but no one ever contacted you and you don't recall anybody in the White House giving you their opinion on the waiver.

Administrator JOHNSON: I don't recall anyone contacting me. I do recall making contacts to others because as I said, I have routine conversations with——

Senator BOXER: You keep repeating this. I am just trying to see, and tell me if I am saying this in a fair way and a just way.

Mr. JOHNSON: Okay.

Senator BOXER: All right. Nobody ever contacted you from the White House, the Vice President's office, the OMB, or the DOT? You contacted them just to update them and you don't recall anything they said to you about the waiver?

Mr. JOHNSON: To the best of my recollection, again, I have a lot of conversations with members of the White House, a lot of conversations. I said I do recall me making contact because——

Senator BOXER: I just said that. So did I say it in a fair way? I will repeat it the last time and then I will stop, because I would like a yes or no. Is this a fair analysis of what you have told us? That no one ever contacted you to give an opinion on the waiver, or to tell you to slow it up or anything; no one from the President's, Vice President's, OMB; no one from the DOT. But you did contact them just to fill them in on what was happening, and the waiver was one of the issues, but you don't recall anything that they said. You just briefed them, but they never made any opinion. Yes or no?

Mr. JOHNSON: If you would add ''to the best of my recollection,'' then I would say ''yes.'' (7/26/07 hearing unofficial transcript at p. 17).

Again, in light of the Burnett testimony, Administrator Johnson's failure to recollect the Administration's reaction to his proposal is simply incredible.

Finally, it is worth noting President Bush's ''policy preference'' for a single standard does not bear in any way on the existence vel non of compelling and extraordinary conditions, and is known by Administrator Johnson not to be one of the statutory criteria for decision:

Administrator JOHNSON: . . . I tried to make it clear in the letter to Governor Schwarzenegger [announcing denial of the waiver] that the bases of my decision were on the three criteria under Section 209 [of the Clean Air Act] and compelling and extraordinary was the issue that the criteria, that was not met. I pointed out in the letter that that certainly isn't a context of what is the policy of both what is happening as a Nation, and that is the policy, again my words, policy context. But that was not the decision criteria. The decision criteria are very clear in Section 209 on whether or not——

Senator KLOBUCHAR: That is fine. When I come back, I will talk about it. But you have said before that this could create a confusing patchwork of State rules.

Administrator JOHNSON: And again, that is not one of the criteria for the decision. (1/24/08 hearing unofficial transcript at p. 36)

The PRESIDING OFFICER. The Senator from Kansas is recognized.

ENERGY

Mr. BROWNBACK. Mr. President, I wish to spend a little time talking about the energy topic which has consumed this body and rightfully so. It has certainly consumed the people's checkbooks and pocketbooks. I will then submit a course of action and suggestions, one of which is a bill that was recently introduced by a tripartisan coalition—Senator SALAZAR, Senator LIEBERMAN, and myself—requiring that a third of the fleet of vehicles the United States produces sold here by 2012 be able to operate on flex fuel; that is, a car or a pickup—whatever it is that is being sold—can operate on either ethanol, methanol or gasoline or any combination thereto, to remove our addiction to foreign oil. I also wish to talk about the need to produce more energy here at home.

I have a couple charts. This one is one people instinctively know about, but I think it is pretty dramatic when you look at it. Our consumption is going up. It has been a bit more level lately. Production. Look at what we have done with production since the mid-1980s. It has gone down while our imports have made up the difference. We had this huge crossover in 1994. We are actually importing what we should be producing. We have to change this chart.

Boone Pickens was in town last week—one of the famous oilmen in the United States—and he was saying we are on track to be importing $700 billion worth of oil on an annualized basis. If you think about that and the transfer of wealth that is taking place—that $700 billion comes from someplace, and it comes from people's pocketbooks. Then, instead of going into the U.S. economy, it is going overseas and on to places that often don't agree with us, whether it is into Venezuela or other regions of the world. Plus, think about the sheer economic activity. If you take $700 billion worth of economic activity out of here and are not generating further economic activity someplace else and are putting it someplace else, it degrades our tax coffers. Yet that $700 billion of economic activity here, if there were just a 20-percent tax rate associated with it, we are looking at $140 billion worth of taxes back into this country if we had that sort of economic revenue taking place. Imports of petroleum and petroleum products in the billions of dollars, and you can see the increase in the price of oil, what this is doing. It is skyrocketing from, again, 2004 on forward. If that activity were taking place here, those dollars would be back here. Instead of building enormous buildings or new islands or incredible facilities in Dubai, we could be building them here.

That is why we need to produce more in the United States, and we can produce more in the United States instead of getting it from overseas.

It is my hope that later this week, we are going to start voting on some of these resolutions, some of these bills to produce more in the United States. We cannot continue to consume 25 percent of the world's oil while producing only 3 percent of it. The world is not going to let that continue to take place.

If you set all that aside and say: Well, I don't care, as long as it continues to take place—if you set all that aside, what is taking place now in the Middle East, of Iran developing nuclear capacity and the threat of that to the region, to a number of countries in that region, particularly Israel—and if there is a response to that, what happens then to oil prices and the availability of oil to the United States if that escalates further? It may get an escalation that happens out of our control. Then what happens to the oil supply and the price if we continue to be dependent on this much of a dollar amount for foreign sources of oil? What would the Venezuelans do? What would Chavez do if the Iranians are attacked? Do you think they are going to send oil to the United States? What would happen in Russia, where Russia has been moving to work more with the Iranians? I think we are looking at a scenario, from a security perspective and from an economic perspective, that is wholly untenable for us in the United States and one we have to deal with now.

The way to deal with it is to produce more in the United States and to allow drilling to take place here. We must explore new areas. The Department of Energy, Energy Information Agency reports that 75 billion barrels of oil are off-limits today in the United States. The President has recently lifted the Executive ban on the Outer Continental Shelf, and unless Congress lifts its congressional ban, we will not have access to 16 billion barrels of crude oil. Lifting this congressional ban on offshore drilling would surely send the right signals to the marketplace and many believe it would help lower prices in the near term. It would show the world we are willing to explore for new energy. We should also explore in Alaska for oil shale in the Western United States.

I wish to show quickly one other piece of information on biofuels, and that is a chart and a statement that

was recently put forward by Merrill Lynch. Biofuels has been in a tough debate recently as there are a number of people accusing it of different things. One thing I wish to put on the table for sure is that biofuels has expanded our energy sources and expanded it away from the Middle East and it has expanded it away from foreign imports. That is something that has taken place. A recent study from Merrill Lynch found that because of the world's use of biofuels, gasoline is $21 per barrel less expensive than without these biofuels—$21 a barrel it took off oil prices. That is 50 cents less per gallon. We must continue to research and innovate in the world of cellulosic ethanol and biodiesel, soy, possibly from algae.

What we have put forward in an amendment on this bill, if we are able to get to the Energy bill, is a requirement that half the new cars built and that are imported to the United States by 2012 be flex-fuel vehicles that can use ethanol, methanol or gasoline or any combination of those three. The big three auto manufacturers have said they can meet this goal to allow consumers to choose between gasoline, ethanol, methanol or, in some cases, biodiesel.

So imagine you are pulling up to the pump and ethanol this day is selling for $1 a gallon less than gasoline is. Perhaps methanol is selling for $1.50 a gallon less than gasoline, and you are saying I am going to put in ethanol today. It is selling for cheaper. Those will continue to drive down the price of gasoline and will have a security benefit in that. If something happens in the Middle East or a part of the world that is out of our control and oil supplies dry up, we won't be left high and dry; we will have other sources of fuel to be able to move forward with. That is why so many security people are interested in this flex-fuel concept and a flex-fuel vehicle.

I filed this legislation as amendment No. 5249 to the speculation bill that is currently on the floor. I ask unanimous consent that Senator SALAZAR be added as a cosponsor to that amendment.

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

Mr. BROWNBACK. Mr. President, many economists believe energy efficiency and conservation are absolutely critical to our efforts to reduce our reliance on foreign oil. I agree.

We have passed major energy legislation in the past to promote research and development in the area of hybrid automobile research, including batteries. We will be holding a hearing tomorrow in the Joint Economic Committee on this issue. Clearly, we need to conserve more. We have two hybrid vehicles in my family, and it has worked well. We need to move that technology forward. But it doesn't change the fundamentals that we have to produce more here as well.

I want to show a final chart of the oil shale area in the United States. It is currently off limits from drilling. It has the potential of 500 billion—or more—barrels in production. This is in Wyoming, Utah, and Colorado. Clearly, this is another area we need to open for development.

My point is that we are not helpless and we can do more. We have to do it now. Time is of the essence. It is draining people's pocketbooks, and it is putting us in an unnecessary security risk.

I am hopeful that the leader is going to allow us to put forward amendments. I hope we can put forward our flex fuel amendment. I hope we can put forward drilling amendments so that we can get production up in the United States. That is something we need to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak as in morning business on S. 3335, the tax extender package, for up to 15 minutes.

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

TAX EXTENDERS

Mr. WYDEN. Mr. President, folks across our country feel as if they are drowning as wave after wave of bad economic news hits them.

I urge my colleagues to vote for this important legislation because at times like this, when so many people feel they are close to going under, they look to their Government to toss them a life preserver, not burden them with a 2-ton cement block of bills to pay and then wish them luck. Congress has shown a willingness to shore up Wall Street. This legislation gives us an opportunity to shore up the folks who are on Main Street.

People across our country want to see the Senate address the issues that are most important to them, and at the top of that list is energy. Obviously, our country is now at a crossroads. The country can continue to keep going on the road we are on, living on high-priced fuel and spewing carbon dioxide into the air from fossil fuels that choke the planet, or we can take a different road. With this legislation, we can start down that route.

This legislation put the country on a path toward real energy independence. It would reduce our reliance on fossil fuels, and it would extend tax credits for renewable energy technologies—solar, geothermal, wind, hydroelectricity, geothermal heat pumps, and fuel cells. These new energy choices will help stem the devastating effects of global warming.

On the other hand, the failure to extend existing renewable energy credits sends the wrong signals to renewable energy companies and investors. It will literally cut off the pipeline of promising renewable energy projects at a time when many of these technologies are just getting off the ground.

How often is it possible to point to legislation and say that this bill will actually lead to a more promising future? In this case, businesses, workers, consumers, and homeowners all have an opportunity to be part of a brighter energy future. Truckers would get an exemption from the highway excise tax so they could install fuel-saving anti-idling equipment. Consumers would get a new tax credit when they buy the plug-in hybrids. There would be a tax break for the bicycle commuters. For the first time, wave, tidal energy, and small wind turbines would be eligible for renewable energy tax credits. The bill also extends production tax credits for biodiesel. Consumers and businesses would be encouraged to live on less energy but in a fashion that does not compromise our economy or our quality of life. There would be tax credits for energy-efficient homes, commercial buildings, energy-efficient appliances, and also recycling equipment.

It is my view that the tax provisions of this legislation make sense for taxpayers and they make sense for the environment and our businesses, and in that sense, we have an opportunity to act for America's future. I hope this legislation will pass.

I would like to touch quickly on several other parts of the legislation that I think are particularly important, and especially the county payments legislation.

If you live in a big city in this country, you may not know a whole lot about this legislation, but the county payments program keeps rural communities throughout the country—particularly in my home State—alive. The legislation includes more than $3.7 billion in funds that are desperately needed for rural schools, counties, and communities. Without the safety net funding included in the bill, rural communities across the country will face a future without schools and without vital services such as law enforcement and essential road repair. Pink slips have already been sent out to teachers and county workers, and unless the Congress acts quickly, these devastating losses to the very fabric of rural communities would become permanent.

There are counties in my home State that now literally face dissolution. Folks who live there don't know what to expect, but they are bracing for the worst. I am just not going to let that happen.

This energy tax package contains the last best hope to help these counties, and the Senate should not turn its back on rural America now.

Specifically, the package contains a 4-year extension of the Secure Rural Schools Program that I authored in 2000 and 5 years of full funding for the Payments in Lieu of Taxes Program.

This proposal closely mirrors the legislative proposal I put together last year with Senators BAUCUS, BINGAMAN, and Majority Leader REID—a proposal that overwhelmingly passed with bipartisan support by a vote of 74 to 23. Senator CRAIG and Senator DOMENICI also helped with critical efforts to move the legislation forward and to give it strong, bipartisan support.

When folks in rural America are losing their jobs, their homes, and the chance to educate their kids, the Federal Government should not break its promise to rural communities. When Federal forests were created in Oregon and around the country, rural communities were promised they would get a share of the revenue from those forests. This revenue sharing was intended to make up for the loss of Federal forest land from the local tax base. As the benefits from forest management changes with the times, Congress can't walk away from its responsibility to provide funding to the counties for their contribution in creating the Nation's forests. Since that original effort, it has been clear that local communities needed some measure of support.

By providing funds through 2011, this bill gets our rural counties off the fiscal roller coaster they have been on, particularly during these difficult economic times. It gives them stable funding so they can concentrate on the real work of planning for the future. Nationally, this would mean $3.7 billion, and in my home State of Oregon, it would mean hundreds of millions of dollars for schools, public safety, roads, and other essential county services.

In the midst of an energy crisis, our schools face big challenges. An Energy Department study reported that schools spend about $8 billion on energy each year, second only to spending on books and computers. The same study estimated that 61 percent of public school districts had insufficient energy budgets. As a result, the schools—especially our rural schools—are forced to make difficult decisions about whether they can fully afford to heat or cool their buildings or whether they are going to have to cut some essential service, such as the school bus service in rural areas. Reauthorizing the county payments program would keep the lights on in the classrooms and make sure our youngsters have the basics they need in order to be able to learn.

The Secure Rural Schools and Community Self Determination Act of 2000 has worked. It has built collaboration between counties, forest product firms, and environmentalists in communities in over 700 counties in 41 States across the Nation. A key part of that collaboration has included funding projects to restore the national forests, and those would include providing renewable woody biomass that is part of the renewable energy solution this legislation would provide.

Finally, on this point, these funds are a critical lifeline to rural areas. I point out that rural schools and counties would not be the only ones who suffer if this bill isn't passed. But I want to highlight the county payments legislation tonight particularly.

I am going to be going home this weekend for townhall meetings in the rural part of my State. I will hear again and again this weekend how, without this program, without the essential program for rural communities that, in effect, built on something that started a century ago, we will see some of those rural communities dissolve before our eyes. I cannot allow that to happen on my watch.

Finally, a quick comment on one other section of the legislation. I see that my friend from Arizona is here, and I want him to know that I will wrap up very briefly.

Mr. President, with respect to the tax extenders provisions of this legislation, I can only say that businesses are calling for this. Typical taxpayers are calling for it. Teachers are saying they need it. Once again, we have to look at the consequences of not passing an important domestic initiative. This bill includes help for folks who are hurting right now. It includes help with relief to people in the Midwest who are still hurting from this year's floods. It helps businesses by renewing the business research and development tax credit. This is very important because our fast-growing technology companies say it is critical for their plans to grow and hire new staff. High-tech companies are some of the best employers in my home State and around the country, and they offer family-wage jobs that Americans can depend on.

Both parties agree that the research and development credit should be extended and that it will be—some day. That is what they say, Mr. President—some day. That doesn't do much good for struggling manufacturers now. They have to plan their investments in order to be able to grow. They say that R&D credits are critical to doing that. By holding it up, the Congress is pushing our companies to outsource the important work. Clearly, no Member of the Senate could want that to happen, but without these credits, we are not having the proper incentive to keep jobs in the United States. I want to see high-skill, high-wage jobs here in our communities. We are the world leaders in research and development, and it is moments like this that will either keep us in that position or will start us heading down the path of becoming followers.

I want to finally express my appreciation to the chairman of the Finance Committee, Senator BAUCUS, for his fine work on this legislation. I particularly appreciate the many times in which he has assisted me with the Secure Rural Schools Program. A host of other colleagues: Leader REID, Chairman BINGAMAN, Senator SMITH, Senator DOMENICI, among others. I also express my appreciation to Senator TESTER, our new Senator from the State of Montana, who has been a champion of rural schools and this program as well for all of his assistance.

I urge the support of the critical Baucus legislation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

ENERGY

Mr. KYL. Mr. President, the question the Senate is facing this evening and again tomorrow morning is whether we are going to stay focused on the issue that is of the most importance to the American public, and that is doing something about this incredible energy crisis in our country causing us to not just pay higher prices at the pump but also higher prices for almost everything else because of the high cost of transportation to transport goods across this country. Our airlines are hurting, shipping, trucking, all families, and we have seen inflation rise in this country, among other things, and probably primarily because of the fact that we are not producing enough energy—enough American energy.

Republicans believe we need to stay focused on this issue until we deal with it, and we can deal with it. We can deal with it before this body leaves for the so-called August recess. I know this: It is not recess when we go home and start visiting with our constituents and every one of them is going to ask us: What did you do to drive down the price of gasoline? What did you do to deal with this energy crisis?

Earlier today, I quoted from the New York Times in an editorial yesterday in which the editors of the Times noted that the problem in the United States is not one of speculation, which is the subject of the bill the Democratic majority has brought forward, but it is a problem of supply and demand. What they say is all speculators or investors do is take a look into the future and ask a question: Five years from now or 5 months from now, where is demand going to be compared to supply in the world? Right now, everybody can see that the demand is going to far exceed the available supply of energy. As a result, of course, that puts pressure on prices which continue to go up.

The fact that the President announced he would remove the moratorium on certain offshore production has had a salutary effect in helping to reduce prices a little bit because those futures markets decided that maybe we were serious about doing something about energy production in the future.

That is the test. That is the commitment. That is what the Senate has been focused on this last week and is going to be focusing on again tomorrow.

My colleagues are talking about legislation that the Senate needs to pass and, indeed, the last bit of legislation the Senator from Oregon was talking about is a subject which we will deal with. Everybody agrees we need to deal with it. My guess is the bill will pass, if not unanimously, close to unanimously, if and when we can get a bipartisan so-called tax extenders bill to the floor of the Senate. But Republicans are not going to leave what we are doing now to take that up and who knows what else.

As a matter of fact, one of the issues I wanted to speak about briefly is another bill they want to go to. It is called the media shield legislation.

Tomorrow morning, we are going to have two votes. The first one will see

whether we will forget the energy crisis, leave the Energy bill, and take up the media shield legislation. I daresay we will do the same thing with that that we have done with the other bills we have considered in the last couple of days, and that is, we will say no, we are going to finish energy first. Then we will have this next tax extenders bill. That will be the fourth time that bill will be before us. Once again, we will say: Let's finish energy first and then we will take it up.

I hope as we speak that Senators BAUCUS and GRASSLEY, the chairman and ranking member, respectively, of the Finance Committee on which I sit are talking to each other about the way to put this bipartisan tax extenders bill together so we can bring it to the floor and complete action on it before the August recess. That is possible to do. The two of them work very well together. I think they are very close to reaching an agreement on what this program would look like, and if they can reach such an agreement, it will be possible for us, once we have concluded work on energy, to then bring up that bill and get it passed before we go home. But we are not going to decide we have talked about energy long enough, even though we haven't done anything about it, and it is time to move on to other priorities. Our priority is energy. Our priority is getting gas prices down.

It is not just a matter of filling up at the gas pump. Last week, I filled up and it was $70 and the tank still had a third in it when I filled the tank. That is hard to take. That is not the bottom line. The bottom line is what it does to our economy and national security. It used to be we produced most of the energy we use. Now we import most of the energy we use and, unfortunately, we are getting it from places that can create real problems for us.

If you talk about Iran, for example, all Iran has to do to make more money on the oil it produces is drive some of its speedboats around the Strait of Hormuz and threaten the shipping there. About 40 percent of the oil goes through the Strait of Hormuz, and that unsettles the market to the extent it drives up the prices. They have it within their power to make more money just by creating problems for us.

Why don't we rely more on the energy resources we have right here in the United States of America? We are the third largest producer of oil and gas in the world. We could be producing a lot more American energy for American needs and not have to rely on these other countries which, as I say, can create huge headaches for the entire world and drive up the price of energy.

We can produce more. What Republicans are saying is, let's open some of the areas that have been closed by law to more production, starting with offshore in the deep waters of the gulf, off our coasts. We also have energy that is tied up in Alaska, in the oil shale in the Rocky Mountain West, and in other places.

We have suggested a balanced approach. We need to use less. We need to reduce our consumption. We need to rely on so-called renewable fuels. We obviously need to do more with nuclear energy. But almost everybody agrees that the starting place is more drilling to produce more American oil for the American economy. That is what we want to get some votes on before we turn to other legislation.

Let me briefly comment about the first vote we are going to have tomorrow because this is new. We have already dealt with the so-called tax extender program three times now. Tomorrow morning will be the fourth time. We are not going to have any different result than we have had in the past. So I suggest we get on with the bipartisan negotiations to complete our work on that legislation so we can get it passed.

MEDIA SHIELD

Something we haven't taken up yet is this so-called media shield bill. I am not going to go through all the arguments about it, but simply to point out the history of it and describe what it does and why it is so problematic.

This basically says that reporters don't have to disclose their sources if they don't want to. You can imagine a lot of bad things will happen as a result of that. People break the law for disclosing very highly classified information. The reporter says: I am not going to tell you, Mr. FBI Agent, who did that. Yes, I know who did it—it is against the law—but I am not going to tell you. And this bill would provide the protection for that.

The first problem is it doesn't even define media in a way with which everyone can agree. We don't know whether a blogger, who is trying to put material out on the blogs, is in the media, whether a reporter for some kind of terrorist newsletter is a member of the media or what. They have tried and tried to get a good definition. It is very difficult to do.

When the bill was in the Judiciary Committee, on which I sit, it was not a perfect bill. Back then people said: Yes, we need to pass this; we need to not change a comma in it. I think there were 10 or 12 amendments adopted that day. Clearly, it needed work. Most of those amendments had strong bipartisan, if not unanimous, support, and we agreed at the end of the process that it needed more work. Since then, there have been a lot of meetings held to try to refine the bill.

I take my hat off to Senator ARLEN SPECTER who has tried very hard to find a way to resolve some of the problems that have been raised. At the end of the day, the Attorney General of the United States, Attorney General Mukasey, the intelligence community, and the White House have all raised very serious doubts and problems about the bill.

Let me refer to some of the things that have been said about it. The Secretary of Defense, Secretary Gates, wrote at the end of March this year that ''the Department of Defense is concerned that this bill will undermine our ability to protect national security information and intelligence sources and methods, and could seriously impede investigations of unauthorized disclosures.''

The problem I just identified. Because of that, of course, President Bush is expected to veto the bill.

Very recently—I think yesterday—the Director of National Intelligence, Mike McConnell, published in USA Today an op-ed in which he described some of the problems he has with the bill, one of many commentaries. Here is what he said:

> I have joined the attorney general, the Secretaries of Defense, Energy, Homeland Security, and Treasury, and every senior intelligence community leader in expressing the belief, based on decades of experience, that this bill will gravely damage our ability to protect national security information. Unauthorized disclosure of classified information disrupts our efforts to track terrorists, jeopardizes the lives of intelligence and military personnel and inhibits international cooperation critical to detecting and preventing threats.

It is not just our intelligence community and Government sources. Last week, the U.S. Chamber of Commerce and the National Association of Manufacturers circulated a letter expressing ''deep reservations with the way the current version of the media shield bill, S. 2035, applies to the private sector. As drafted, it would have significantly adverse ramifications on the ability of Americans to legitimately protect personal and proprietary information and we must oppose the bill in its current form.''

It is interesting, despite all of these issues that have been raised by a variety of private groups and all of the national defense and intelligence community of our Government, there has not been a single hearing during the 110th Congress on this legislation, let alone a hearing on the general need for the media shield legislation. It is obviously not ready for prime time.

Let me mention one problem—and I will speak more on this tomorrow—to illustrate some of the other problems the bill has, one illustration of what additional work needs to be done. This is one that could easily be resolved, and I don't understand why the sponsors of the legislation would not be willing to deal with it.

The bill fails to provide an exception to the privilege for information necessary to investigate a terrorist attack. Let me repeat that. You could not investigate a terrorist attack under the exclusion that is provided in the bill. The committee-reported bill would only provide an exception in section 5 for ''protected information that a Federal court has found . . . would assist in preventing an act of terrorism,'' or ''other significant and articulable harm to national security.''

I raised this question in a hearing. The exception makes no mention of information that would assist in investigating a terrorist attack or other significant event. It only talks about preventing. This is the kind of thing that could be fixed, and I don't understand why the authors of the bill wouldn't be willing to fix it.

Under the form in which it would be brought forward, obviously the majority leader would fill the parliamentary tree, there would be no opportunity for amendments, and we would be stuck on a take-it-or-leave-it basis with a piece of legislation that is highly flawed, totally criticized by the intelligence community and many in the private sector, as well.

The point, of course, is that the Democratic leader is simply throwing legislation out on the floor with the hope that somehow or another we will be able to divert attention from the subject of energy, the bill we are currently on. We should neither vote for cloture for the media shield bill nor the tax extenders bill nor any other piece of legislation, as I said, until we complete our work on energy. We could do that in a matter of 2 or 3 days. We can clearly do it before we leave here in August. But under no circumstances should we leave the important Energy bill to go off onto a piece of legislation such as this media shield bill.

I hope when we have the cloture vote tomorrow, my colleagues will join me in voting no on cloture on this legislation so we can deal with the No. 1 priority of the American people, and that is our energy crisis in America.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I rise to speak on an important issue related to my responsibilities as chair of the Coast Guard and Fisheries Subcommittee in the Commerce Committee. I see some of my colleagues on the floor. I ask unanimous consent that following my remarks, Senator DORGAN be recognized for 10 minutes, Senator MURRAY for 10 minutes, and Senator SALAZAR for 10 minutes. Knowing that my colleague, Senator SPECTER, is expected to show, when he shows up we will fit him in the sequence back and forth, depending on when he shows up.

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

NEW ORLEANS OIL SPILL

Ms. CANTWELL. Mr. President, last week over 400,000 gallons of fuel spilled into the Mississippi River near New Orleans after a chemical tanker collided with a fuel barge and literally split the barge in half.

This is a picture depicting the Coast Guard looking at the two halves of this barge that was split in half right in the heart of New Orleans, causing serious damage in the area from diesel and diesel fumes, even impacting the French Quarter.

Now, the second chart shows the impact of that spill on downtown and the seriousness of that spill in the region. This major spill has closed the Mississippi River from New Orleans to the river's mouth, choking off one of the Nation's most important major commercial arteries. Even now, a week later, only a few ships can get through on this 100-mile stretch of the lower Mississippi.

As the picture shows from the night of the accident, the mighty Mississippi was covered with this eerie sheen right in the downtown area of New Orleans. Now, a week later, some of the heavy fuel oil has turned into tar balls, bouncing and sticking and contaminating this waterway. The spill has slowed down New Orleans' normally thriving waterfront, and the economic impact is already being felt. To put this tragedy into perspective, the economic loss from a total shutdown of the port would cost our Nation's economy around $270 million a day.

While the Coast Guard has begun to allow limited essential vessel traffic back into this area, at one time point over 800 tugs and barges were impacted by the spill, and many ships are still waiting to return to this vital transportation corridor that needs to be reopened. We are only now beginning to understand fully the economic and environmental impacts this spill has caused.

Unfortunately, as many of my colleagues know, these sorts of spills are becoming all too frequent. Last November, the Cosco Busan cargo ship spilled 54,000 gallons of highly toxic bunker fuel into San Francisco Bay, costing well over $50 million in cleanup costs.

Hurricane Katrina and Rita caused spills totaling nearly 8 million gallons, released throughout the Gulf of Mexico region.

In December of 2004, the Selendang Ayu broke apart, pouring 350,000 gallons of oil into the waters off the Aleutian Islands, killing countless sea birds and marine mammals and sea otters.

In 2004, in my home State, the oil tanker, Polar Texas, spilled 1,000 gallons of crude oil into the Puget Sound. This spill in the Dalco Passage cost millions of dollars to clean up and was a real wake-up call to many of my Washington constituents.

As I know the Presiding Officer, Senator LAUTENBERG, is aware, because he has been a great champion over strengthening the oil spill prevention safety net, the oil tanker, Athos, spilled over a quarter-million gallons of crude oil into the Delaware River and its tributaries in November of 2004.

As chair of the Commerce Subcommittee with jurisdiction over oil spill issues and the Coast Guard, I want my colleagues to know the Commerce Committee has been working hard to try to give the Coast Guard the tools it needs to prevent these spills and to respond quickly and effectively when a spill happens. Over the last few years, the committee has held several hearings and has asked for and received information from the Coast Guard and Government Accountability Office, and worked to help understand and update the Nation's oil spill prevention safety net.

We worked hard to develop a thoughtful and balanced piece of legislation that would help prevent more of these tragic spills from happening again. Almost exactly 1 year ago, after months of bipartisan negotiations, the Commerce Committee unanimously reported the 2007 Coast Guard authorization bill, which contains many of these oil prevention provisions. I would like to thank Ranking Member STEVENS for his thoughtful improvements and his strong support of these vital provisions, which would update the Oil Pollution Act of 1990.

Even though we have this bipartisan bill before us that has come out of the Commerce Committee, and even though it is critical to our national security and emergency preparedness, it is still being subjected to the same kind of obstructionism from a handful of Senators who don't want to move forward on the legislation, a situation we are becoming all too familiar with on the Senate floor. In this case, the bill is being held hostage by one or two Senators who seem interested in stopping its progress. They do not seem to care that it has the support of the Bush administration's Department of Homeland Security, which stated it ''strongly supports'' this legislation.

Mr. President, I ask unanimous consent to have printed in the RECORD the Department of Homeland Security letter to the chairman, DANIEL INOUYE, and the vice chair, TED STEVENS, from Donald Kent, Assistant Secretary, Office of Legislative Affairs.

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

DEPARTMENT OF HOMELAND SECURITY,
Washington, DC, May 19, 2008.

Hon. DANIEL INOUYE,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Hon. TED STEVENS,
Vice Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR CHAIRMAN INOUYE AND VICE CHAIRMAN STEVENS: This letter sets forth the Department of Homeland Security's views on S. 1892, the ''Coast Guard Authorization Act for Fiscal Year 2008.''

As noted in the Department's September 20, 2007, views letter, the Department strongly supports S. 1892, as reported by the Committee on Commerce, Science, and Transportation. As the Senate prepares to take up the measure, the Department urges the Committee to review anew the Department's objections that are set forth in that views letter and prepare amendments that would address the concerns of the Department and the Coast Guard.

The Department urges the Committee to seek amendments that would further perfect two of the three key Administration initiatives (i.e., sec. 201 (Vice commandant; vice admirals) and sec. 916 (Protection and fair treatment of seafarers)). Specifically, the Department would strongly support amendments that, with regard to sec. 201, would

provide for the treatment of incumbents during the period of transition and, with regard to sec. 916, would allow the use of community service moneys to provide necessary support for other seafarers who have been abandoned in the United States.

The Department also urges the Committee to reject any future amendment to the Coast Guard Authorization Act that would prescribe the manner in which the Coast Guard executes missions, affects or divests the Service of its adjudicatory functions, prescribes the qualifications of Coast Guard officers, imposes reporting requirements that attribute expenditures to a single mission area, or prescribes acquisition practices harmful to the interests of the Government that would otherwise cause the Administration, the Department, or the Coast Guard to object strongly to the bill. From the viewpoint of the Department and the Coast Guard, the absence of such language reflects positively on the Committee and the institutional role of the Senate. The Department applauds the Committee's past and future efforts to ensure that S. 1892 remains free of such and like language.

Both the Department and the Coast Guard appreciate the Committee's willingness to work amicably with all parties to pass a bill that would enhance the organizational efficiency and operational effectiveness of the Coast Guard, yet preserve the Commandant's authorities as Service Chief. The Department is confident that, during further congressional consideration, the Committee, the Department, and the Coast Guard can agree on language to address the Senate's objectives, as well as the Department's and the Coast Guard's concerns.

The Department and the Coast Guard deeply appreciate your efforts to resolve those issues that preclude the Senate from taking up and passing the measure. The Department stands ready to assist you in this endeavor.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report to Congress.

I appreciate your interest in the Coast Guard and the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs.

Sincerely,

DONALD H. KENT, Jr.
Assistant Secretary,
Office of Legislative Affairs.

Ms. CANTWELL. Mr. President, I also want to make sure people understand the Coast Guard and its commandant, Admiral Thad Allen, have been working hard to see this legislation passed. In fact, Admiral Allen has made the statement: ''The swift enactment of these provisions would significantly improve safety, security, and stewardship in the maritime domain.''

But these Senators refuse to meet with the Coast Guard Commandant who wants to at least have a chance to explain why he needs this legislation to pass so the Coast Guard can do the critical job of securing our Nation's waterways.

Let me take a moment to describe why this bipartisan legislation is so important. First, it would require the Coast Guard to have rules in place for how it needs to respond to any kind of wreckage or salvage operation, such as the wreckage in the Mississippi River from the incident last week. Because no strict guidelines are in place as to the amount of time it takes to respond to oil spill wreckage, a barge, such as the one in the Mississippi, could be left for many days in the middle of the river.

Another section of the legislation addresses human error. We don't know what caused this spill yet, although we know there was not a properly licensed pilot in the tug pulling the barge, and we do know human error is the cause of many spills. In fact, the bill requires the Coast Guard to take into consideration human error causes of spills and how best to address them.

The Coast Guard would also benefit from the fact that NOAA's oil spill response program would get up to an additional $15 million per year from the oil spill liability trust fund. This program is currently on the ground helping with the oil spill in Louisiana, but they are limited in their ability because of severe budget constraints. So certainly having this bill passed would have helped in the response in New Orleans.

There are other significant measures that will help in improving our Nation's oil spill prevention safety net. So I hope my colleagues can help us get this legislation over the goal line because it is critically important we do so before we leave for the August recess.

It provides the Coast Guard with the critical resources and authority it needs in other areas as well—to fight terrorists, to capture drug runners, and to defend our homeland security. So isn't it time to help push the Coast Guard into the 21st century and begin planning for the challenges of tomorrow, rather than continuing to struggle with the challenges of today? And isn't it time we pass this legislation that might actually help prevent another oil spill from happening again, such as the one in Louisiana, and to give the Coast Guard the tools it needs?

Tomorrow, I will be asking my colleagues for unanimous consent to pass this legislation. I hope my colleagues on the other side of the aisle who believe in strong tools for the Coast Guard will talk to their colleagues and ask them to stop blocking this legislation so we can get on with preventing another incident such as this one from happening again.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER (Mr. MENENDEZ). The Senator from North Dakota.

BEIJING OLYMPIC GAMES

Mr. DORGAN. Mr. President, a week from Friday we will see the start of the Olympics, held every 4 years, where people from all over this globe come together and compete on the athletic field. And with the start of the 2008 Summer Olympic Games, I wish to talk for a moment about what is happening today in China.

I wish to be clear that I have great respect and admiration for the Chinese people. I have visited their country and enjoyed long conversations. I have had an opportunity to stand on the Great Wall of China and understand some of the history of this great country. But no one should confuse the Chinese people with their unelected Government. The differences I have are with the Government of China regarding human rights, the rule of law, and freedom of speech, and they are very significant.

The Government of China was awarded the Games by the International Olympic Committee only after it pledged to respect the Olympic Charter and to improve its human rights record. The charter of the Olympics states that the goal of the Olympic Games should be to promote ''a peaceful society concerned with the preservation of human dignity.''

The world had high hopes that China's leaders would ensure that the Olympics took place in an atmosphere that advanced freedom and openness and reflected genuine progress on human rights. But those hopes have been sadly dashed. Human rights conditions, unfortunately, have worsened in China.

Individuals who have publicly spoken out about the Olympics, or who have spoken about abuses in China and Tibet, and have been punished or harassed as a result include lawyers, bloggers, journalists, community activists, NGO workers, Tibetans, Muslims, Christians, parents of children who died in earthquakes. The list goes on and on.

Now, every country that has ever hosted an Olympics has had critics, both at home and abroad. China has also had critics of it hosting the Games. But instead of being tolerant of dissent, what China has done is hit back hard with a combination punch of intimidation and, too often, imprisonment.

I am the cochairman of the Congressional-Executive Commission on China, and we maintain the most complete database of China's political prisoners accessible and searchable by the public. We now have 4,400 records in that prison database, and I wish to discuss three of those prisoners today. I call them Olympic prisoners of conscience.

The first is Hu Jia. This is a picture of Hu Jia. Hu Jia is a courageous activist jailed last December by the Chinese for comments he made at a European Parliament hearing. He was invited to speak at the hearing, were he made some statements that were critical of his country hosting the Games. He was then detained and his wife and infant daughter were put under house arrest for several months. In April, Mr. Hu was sentenced to 3½ years in prison for ''inciting subversion of state power.'' Since then, his young family continues to be harassed and is still under surveillance. Hu Jia is quite ill in a Chinese prison, where he is being held for simply speaking his mind at a European Parliament hearing.

Here is a photograph of Mr. Yang Chunlin. He is a laid-off worker, an unemployed worker in China. He has been repeatedly detained for helping farmers trying to seek compensation for lost land. Last summer, he organized a petition titled ''We Want Human Rights, Not the Olympics.'' He was subsequently arrested, and he was charged with inciting subversion of state power.

Let me say that again. The charge was ''inciting subversion of state power.'' Now in prison, he has reportedly suffered severe beatings, which have caused damage to his eyesight.

Finally, I wish to mention Ye Guozhu. This courageous Chinese citizen is pictured in this photo alone, smiling. In 2003, three generations of his family have been evicted from their Beijing home to make way for the Olympics-related construction. In 2004, he applied for permission to organize a protest against other alleged forced evictions in Beijing in connection with preparations for the Olympics. Mr. Ye was arrested and sentenced to 4 years in prison for provoking and making trouble. The charge is ''provoking and making trouble.'' He has reportedly been tortured in prison. Having served his sentence, he was finally expected to be released from prison this week, but his release has now been further delayed, allegedly due to the concerns that he might speak to the foreign press during the Olympics.

The right to speak freely and the right to challenge the Government in China, all of these are enshrined in China's constitution. Yet all are being violated in the run up to the Olympic Games.

Now, here is list of 807 cases of political prisoners developed by the Congressional-Executive Commission on China, CECC. I have shown the photographs of three Chinese prisoners, prisoners who have been sentenced to prison terms because they had a determination to speak out. They wanted the ability to criticize their Government. This list of 807 cases is part of 4,500 case records contained in our database. This document is published by the Congressional-Executive Commission on China. This particular document has 807 cases of political prisoners, all the detailed information on political prisoners known or believed to be detained in prison in China. The Commission notes that ''there are considerably more cases than these 807 cases. These represent a subset of 4,500 case records contained in the political prisoner database created by our commission.''

That database, if anyone is interested, is accessible and searchable by the public at www.cecc.gov.

I have just described the CECC political prisoner database, as well as three of the prisoners contained in this document, for this reason: A week from Friday, President Bush will be attending the opening ceremony of the Olympic Games. Today, President Bush met with four Chinese dissidents, including Rebiya Kadeer, Harry Wu and others. I commend the President for that meeting. I know he has an interest in this issue, the issue of liberty and of freedom of speech in China. But I hope and I implore the President not to miss the opportunity of while going to the opening ceremony of the games in China, at the same time providing the CECC list on political prisoners to the Chinese leaders. If the President is going to attend the opening of the Olympics, I believe there is a responsibility to make the trip genuinely count, and not just to celebrate the Olympics.

The Olympics are a wonderful way for people around the world to come together. All of us support the Olympics. I certainly do. But I believe very strongly that the 807 people in China now in prison, contained in these records must not be forgotten. I believe strongly the leaders of the Chinese Government should continually be confronted with the names of these individuals who are imprisoned merely for their belief and speech. The Olympic charter talks about respect and human dignity. The Chinese Government made representations to the international community if it was given the privilege of hosting the Olympics, it would meet the test of that charter. Regrettably, it has not.

Again, I commend President Bush for meeting with the four Chinese dissidents today at the White House. I think that was an important step. I hope when our President goes to the opening games in China a week from Friday, he will take this prisoner list with him—which we will send to him tomorrow at the White House—and that he will, when he meets with Chinese leaders show them the names of the 807 brave and courageous men and women contained in the list, who believe in the right of free speech, who desire freedom for themselves and their families, who in most cases are unfairly imprisoned for transgressions that are things we would take for granted in this country where we have such great freedom.

We will be sending this to the President in the hope that he will continue to raise these names with the Chinese Government. In conclusion, the Congressional-Executive Commission on China maintains the most significant publicly accessible database that exists in the world of those who now sit in prisons in China for having the courage to speak the truth, for having the courage to do and say the things we take for granted every single day in the United States.

My hope is looking at just one of these cases, and knowing there are many more than the 807 in this list, all of us will use the opportunity of the Olympcis to say to the Chinese Government: Stop the harassment and detention. Stop imprisoning innocent people. Live up to your own Constitution's protections for the Chinese people. My hope is our country, including our President, will continue to raise these subjects with the Chinese leaders.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington State.

TAX EXTENDERS

Mrs. MURRAY. Mr. President, in the last year, Americans here at home have faced an ever increasing number of challenges—skyrocketing gas prices, the mortgage and foreclosure crisis, record job losses, and devastating natural disasters. Families are hurting in this country today and they need relief right now.

I have come to the floor this evening because we will soon be voting on legislation that will help ease the burden for many of these families. We know it is not perfect, but the Jobs, Energy, Families and Disaster Relief Act of 2008 will take important steps to create jobs and provide disaster relief to flood, tornado, and hurricane victims. That bill includes critical provisions that will help our renewable energy industry continue to thrive and to shore up our Highway Trust Fund as well. It also includes provisions that are important to my home State of Washington, including a measure to extend the sales tax deduction and help our rural schools.

I come to the floor this evening to take a few minutes to urge my colleagues tomorrow to support this legislation and help get it into the hands of our taxpayers and our communities that so desperately need it. I will begin by explaining how important it is that we extend the sales tax deduction.

In most States, taxpayers can deduct their State income taxes on their Federal tax returns. But people who live in my home State of Washington historically have not had that option. Back in 2004 I worked with my colleagues from my home State of Washington, Senator CANTWELL and Congressman BAIRD, on a measure that temporarily enables taxpayers to take an itemized deduction for State and local sales taxes. That provision enabled nearly 1 million people to save an average of $519 to $575 each and every year. It has helped many of our middle-class families pay for school or cars or other major expenses.

The Washington State Office of Revenue Forecast has told us that the sales tax deduction has actually created thousands of new jobs in our State. But it was a huge blow to the taxpayers in my home State when that sales tax deduction expired in December and then our Republican colleagues decided to block a bill that would have extended it for 2 more years. Tomorrow we will have, finally, another chance. That proposal we will vote on would extend this provision to the end of 2008.

At a time when so many of our families are struggling to get by, at a time when we are looking for innovative ways to stimulate the economy, it is vital that we approve that measure tomorrow and establish fairness in our State tax system and put money back

into the pockets of our State taxpayers.

Another provision in this same bill we will be voting on tomorrow is important to help communities in my State and others pay for roads and schools and basic services. In Washington State and in other big Western States where vast areas of land are owned by the Federal Government, States currently lose millions of dollars in tax revenue that normally would go to pay for our schools or our local government services. In the past, the Federal Government shared the revenue from timber sales on our Federal lands to help our States make up for that lost revenue. But because timber sales have been decreasing since the middle of the 1990s, Congress passed an act called the Secure Rural Schools Act, to ensure that our rural communities and counties would continue to get the money they need to pay for their schools and their roads and provide basic services. That act expired 2 years ago now. While we funded it for a year on the fiscal year 2007 supplemental, it has not been extended this year, and that means our rural communities in my home State and across the West are now struggling to keep their school doors open. Some of our counties, in fact, have already been sending out pink slips.

The bill we will vote on tomorrow will again extend that program to 2011 and adjust the funding formula to make it more equitable and increase Payments in Lieu of Taxes to these rural communities and counties across the country. This provision is extremely important to our rural communities. All of our children deserve an equal opportunity to learn, regardless of where they live. That is why the secure rural funding program is so important. I hope our colleagues across the aisle will join us tomorrow to vote for this.

I also want to say a few words about the highway trust fund fix, which is also in the same bill we will be voting on. The condition of the highway trust fund, which helps us pay for all of our highway repair and construction across this country as well as mass transit, has been deteriorating now for years. Skyrocketing gas prices have made an already dire situation worse.

This year we are going to see the largest recorded decrease in highway miles traveled in the last 17 years. As a result of that, the highway trust fund is now less than a year away from going bankrupt. That is going to leave a lot of critical construction projects in every one of our States in peril.

I, along with Senator BOND, who is the ranking member on my Transportation and Housing Appropriations Subcommittee, have been sounding the alarm about the problems facing our highway trust fund for almost 2 years now. In January of 2007 we wrote and voiced our concerns to Senator BAUCUS and Senator GRASSLEY on the Finance Committee and they promised to help us fix this problem.

The Senate has now tried twice to move a bill through the Senate to fix the highway trust fund for this year, for 2009. There is a broad, bipartisan consensus for solution. But, unfortunately, our efforts have been blocked repeatedly by a few Senators.

This bill we will vote on tomorrow, if it passes, will provide enough money, $8 billion, to get us through this coming fiscal year. That means our construction projects can continue to go forward in every single State and it will help us keep as many as 380,000 good-paying jobs to continue critical construction and repair projects that will make our highways and our bridges safer. That proposal that is in that bill will not have any revenue effect. It passed the House on July 23 by an overwhelming majority and it is vitally important to all of our communities that this Senate do the same thing.

I hope our colleagues join with us tomorrow to invoke cloture and move to this bill, this tax extenders bill, so we can put this provision in place.

That same bill also includes a number of other provisions that will help ease the burden of the faltering economy for our taxpayers. It will extend the tax credits for wind, biomass, geothermal, and other renewable energy providers, and help provide stability for that developing industry.

As I said at the beginning of my remarks, the bill is not perfect. Unfortunately, we have had to leave out some worthy items. But it is an extremely important bill and we are very close to making this legislation a reality. We need a few Senators to vote with us tomorrow morning.

I am worried. I come to the floor to speak tonight because I am concerned that there are some on the other side of the aisle who seem to be willing to play politics, rather than help us bring forward this bill that will create jobs and support clean energy and provide tax relief for our families. I am here tonight to say this is far too important an issue with which to play politics. Not only are all of these provisions critically important but they are time sensitive. They are time sensitive. At a time when our economy is lagging and so many families are struggling, we need to get these programs in place and we need them now.

I hope that tomorrow morning when we vote on the cloture to move to this tax extenders bill that our friends on the other side will join us, that they will put politics aside and hopefully make American families a priority.

I will yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, I come to the floor this evening to speak in support of S. 3335, which is the Jobs, Energy, Families and Disaster Relief Act on which this Chamber will have an opportunity to vote tomorrow morning. It is a real, honest solution to how we move forward on a variety of challenges that face the Nation today, including the huge challenge of energy which we know we face. This has been debated for the last several weeks here on the floor of the Senate.

It is my sincere hope we will be able to join in a strong bipartisan vote in support of this legislation, which was crafted in the Finance Committee under the leadership of Senator BAUCUS.

Through his leadership, this legislation that we will vote on tomorrow morning will create the opportunity for us to demonstrate to the American people we can, in fact, find solutions to some of the major problems that are facing us as a nation today.

I want to focus, first of all, on the energy tax extenders that are included in this legislation. This legislation will help us as we address the energy challenges of the Nation by making sure what we do is to open the door to one of the cornerstones of alternative fuels and energy independence that we need for America.

It will provide extension of the production tax credit, to the investment tax credit, for an industry and for markets that need certainty, and that certainty can only be provided by giving the long-term extensions that are created in this legislation.

A ''no'' vote on this legislation tomorrow is a disastrous effect to an industry that is still in a nascent position, an industry that has a horizon where within a few years we can start making some very dramatic impacts to the energy needs of America.

Projections by the experts show that a failure to extend the solar and wind tax incentives alone will result in the withdrawal of nearly $19 billion in capital investments and the loss of more than 116,000 jobs in 2009. That is 116,000 jobs in 2009.

At this point, we look at the pillars of the American economy, and they are shaky. Last Saturday, it took a Saturday session, but we were able, here in the Senate, with a very strong bipartisan vote, to help put one of those pillars of the American economy on a pathway where we will be able to strengthen that pillar. That has to do with the housing crisis that America has been facing.

Tomorrow morning we have another opportunity to address another one of those pillars that is somewhat shaky, in fact, very shaky, and causing a lot of pain to the American consumers and to American national security; that is, the issue of energy which is addressed in the tax extender package that we will be voting on tomorrow morning.

When we think about the fact that people are concerned about the economy, they are concerned about their jobs, they are concerned about the pain at the pump, the fact that we have an opportunity to do something about it tomorrow morning, hopefully, will result in the kind of resounding bipartisan vote that we saw on the housing package on Saturday in this Chamber.

All people have to think about is the fact that we need to move forward with a new energy future; the fact that if we do not pass this energy legislation, just on the energy piece of this legislation, 116,000 jobs will be lost in 2009. So a ''no'' vote on this legislation is essentially saying no to 116,000 jobs that would be created through the renewable energy world, including through wind energy, which is included within this legislation.

I want to make sure that everybody understands, my colleagues in the Senate, and I know that the Presiding Officer, a distinguished member of the Energy Committee, very much understands this reality; that is, we are not talking about the theoretical or pie-in-the-sky kind of stuff, things that may happen in the year 2050 or in the year 3000.

This is a picture of a small farm with small wind microturbines that are actually producing enough electricity to be able to power the entire farm operation. In many retail shopping centers around the country, you see these kind of small wind turbines that are creating most of the wind power necessary to power those shopping centers across America.

Wind power is here in a very real way, as is solar, as is our opportunity to harness the power of biofuels. Let me say in my home State of Colorado in the brief time that I have been in Washington, DC, I have seen what we have been able to do.

In 2004, in the State election when I was elected to come to the Senate, I was one of the supporters of the renewable portfolio standard that created the vision that we would produce 10 percent of our energy from renewable energy resources by the year 2015.

As a result of the passage of that legislation, and as a result of the work that the Congress did in 2005 with the Energy Policy Act and other legislation that we have passed to create incentives for renewable energy, we are making a major difference in my State of Colorado. Wind power alone today accounts for over 1,000 megawatts of power being produced in my small State of Colorado and 1,000 megawatts of power is about the equivalent of three coal-fired powerplants. The wind industry tells us we are just beginning.

For those who have heard and listened to the highly publicized visit of T. Boone Pickens to the Congress in the last week, you know what he says about wind and how he is investing in wind because we know we can harness the power of the wind. It is not some theoretical committee possibility. We are doing it in Colorado, we are doing it on farms and ranches across the State, and we are even doing it in the cities and in the shopping centers across the State. But it is more than wind. It also is about solar energy.

A few years ago there was no solar energy being created in our State. Yet, today, a few years later, we have a solar powerplant in my native San Luis Valley that is producing about 10 megawatts of power.

Our military has been leading in many ways in creating a new energy future for America. Now Fort Carson has a solar powerplant which is providing a significant amount of power to our men and women in uniform at Fort Carson. And at Denver International Airport we are about ready to plug in what will be a new solar powerplant.

In Colorado and across the Nation we have shown that we can harness the power of the wind, that we can harness the power of the Sun, that we can harness the power of biofuels. Those programs are all what is at stake when we vote on the cloture motion on the so-called extender package.

What we have done is we said wind energy is important for America, so we are going to have an extension that will allow the wind energy industry to make plans for the future. We have said biofuels and hydropower and biomass are important. In this tax extender package we have said that we will provide the tax credits or the tax incentives that are necessary for the next 3 years. We have said that solar has huge potential and we should put in an 8-year tax credit for solar in the United States.

Again, this is not theoretical work that we are doing, this is real work. Places in Arizona, for example, are looking at the construction through the Arizona Public Service Company of a 400-megawatt powerplant. In my own State we are looking at the possibility of expanding our 10-megawatt powerplant in the San Luis Valley up to 100 megawatts of power.

So if we can put these kinds of incentives in place with a 2016 horizon, we are going to make a dramatic difference in terms of how we provide energy to our Nation. So I am hopeful that as we move forward we will be able to have a strong bipartisan vote in support of this energy legislation.

OIL SHALE

I wanted to address one issue that the other side has come to the floor often and talked about for the last 2 weeks; that is, the issue of oil shale. I think as we deal with this energy crisis that we find ourselves in today we need to be honest and straightforward and truthful with the American people. And that means one of the things we ought to require of ourselves as public servants is that we ought not to be about phantom solutions. We ought not be about propounding phantom solutions that we know are not true because for some reason they become politically expedient for someone running for political office.

We need to be truthful with the American people. One of those phantoms that has been talked about for hours endlessly on the floor of the Senate has to do with the potential of oil shale where I have seen many of my colleagues with their charts coming out of the cloakroom across the aisle, saying there are some 2 trillion barrels of oil that are locked up in the oil shale of the Rockies; 80 percent of that on the western slopes of Colorado.

So because it is in my State, I have taken it upon myself to know about oil shale, to study the booms and busts that have come with oil shale for at least 100 years. I would only say that we are a long ways from developing oil shale and creating gas or diesel out of oil shale or other kinds of fuel that we can actually use in America. The technology simply is not there.

Oil shale is shale. It is oil that is locked up in rock.

Mr. President, I ask unanimous consent that I have an additional 4 minutes to complete my statement.

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

Mr. SALAZAR. Mr. President, oil shale is oil that is trapped in rock. It is different from the tar sands of Canada today where you can easily, through the technologies that have been developed, create and produce millions of barrels of oil.

It is different than oil sands which exist in other places around the world. Oil shale is shale. It is rock. It is hydrocarbon that is locked up in that rock, and 100 years of trying and billions of dollars for research and development to try to figure out how to take the hydrocarbon out of that rock has not gone anywhere. Yet that does not mean we should all shut the door to the potential of developing oil shale. And someday we may.

In fact, I was one of the people who helped put together the 2005 Energy Policy Act that created a research and development program, which is well underway in my State of Colorado, to determine whether we can develop this oil shale in the ground.

But we have a number of questions which have not yet been answered. So it is not a panacea for anybody to come over here to the floor of the Senate today and say that oil shale—somehow we are going to wave a magic wand and all of a sudden that is going to deal with the pain at the pump today. It simply is not because we do not yet know how to take the hydrocarbon out of this rock.

The oil companies themselves—Chevron Oil—said this not so long ago, on March 20 of 2008. Chevron, an oil company most people are familiar with, Chevron and what it does, said:

> Chevron believes that a full-scale commercial leasing program should not be made at this time without clear demonstration of commercial technologies.

That was Chevron in March of this year. Last week, notwithstanding what the industry is saying about oil shale, the Department of the Interior decided that it would move forward and that it would attempt to develop the oil shale through a commercial leasing program. Even within those comments of the Department of the Interior, the BLM said on July 22, 2008—this is the agency of our Federal Government that is going to be responsible for developing commercial oil shale:

It is not presently known how much surface water will be needed to support future development of an oil shale industry. Depending on a need, there could be a noticeable reduction in local agricultural production and use.

We do not know whether it is 100,000 acre feet or 200,000 acre feet or 1 million acre feet. We simply do not know. Finally, the BLM also said on that same day:

The lack of a domestic oil shale industry makes it speculative to project the demand for oil shale leases, the technical capability to develop the resource, and the economics of producing shale oil.

I conclude by simply saying that as we look at energy solutions for this very difficult challenge America faces today, let's focus on real solutions. Let's not focus on phantom solutions.

One of the real solutions we will be voting on tomorrow will be the energy provisions of the tax extender bill that will embrace a new energy frontier with what is the cornerstone of energy independence that says alternative fuels are one of the ways in which we will get to that energy independence.

Mr. WEBB. Mr. President, I rise today in support of the Jobs, Energy, Families and Disaster Relief Act of 2008, S. 3335. Earlier versions of this bill failed to overcome minority opposition. But now is the time for the Senate to pass this legislation in an expeditious manner.

This narrowly targeted and fair-minded bill contains several important provisions. Some of these provisions will help promote economic fairness. For example, this bill extends critical tax relief for working families and college students. Moreover, this legislation will help incentivize the development of alternative energies that will reduce our Nation's dependence on foreign sources of oil.

In addition, I support this bill because it contains provisions to help repair our Nation's aging infrastructure, provide relief for Americans suffering from recent natural disasters, and require parity for mental health care treatment with other medical treatment.

One of the noteworthy provisions in this legislation relates to an issue that is important to constituents in my home State of Virginia—namely the research and development tax credit—referred to as the ''R&D'' tax credit. This bill will extend the R&D tax credit for another year.

As most of my colleagues know, Congress originally enacted the temporary R&D tax credit in 1981. Expenditures for R&D go to wages paid to employees performing qualified research activities, as well as supplies used to conduct this research. Since 1981, U.S.-based research and development have had a track record of spurring U.S.-based innovation.

The Commonwealth of Virginia has helped to lead the innovation revolution. Since the 1980s, small and large businesses across Virginia have thrived. Many of these Virginia businesses engage in fields such as information technology, telecommunications, manufacturing, computer software, aerospace, and energy. A renewed R&D tax credit extension will help Virginia's businesses continue to compete effectively around the world and help protect Virginia's economy.

As Virginia's research-driven companies have flourished, many Virginians have found employment in the R&D field. These jobs traditionally are stable, high-paying jobs that have helped to strengthen not only Virginia's business sector but also Virginia's families and communities.

The Commonwealth of Virginia is among the top States ranked by number of firms engaged in R&D activity. Virginia's industrial R&D activity totals over $2 billion per year. And my home State is among the top States contributing to our Nation's R&D performance.

If Congress allows the R&D tax credit to lapse, the consequences will be large. The lapse of the tax credit could cost the American economy tens of millions of dollars per day, as companies delay or cancel R&D-related activities. Many of our Nation's overseas competitors—including China and several European nations—offer an R&D tax credit and would gain a big competitive advantage over the United States. Failure to renew the R&D tax credit would allow our foreign competitors to attract researchers and facilities at the expense of U.S. research. But most importantly, if Congress does not renew this much-needed tax credit, we will see more Americans lose their jobs at a time when hardworking families already are suffering.

On three occasions this year, many Senators have thwarted the majority leader's attempts to begin debate on tax extenders legislation. I ask my colleagues this time to allow this tax legislation—including the R&D tax credit—to move toward final passage. Let us work together to keep our R&D sector competitive and let us support policies that will drive the next generation of American innovation.

MORNING BUSINESS

AUTISM

Mr. DURBIN. Mr. President, as a Senator, I often meet with constituents about their concerns. I hear a lot of stories about their lives. No story is more compelling than that of a parent looking for help for their sick child. My office receives hundreds of letters and phone calls each year from Illinoisans asking Congress to do something to help with the burden that autism brings, and we are hearing from more families every year.

Two years ago, I heard from one woman whose story reflects the experience of so many families. Ellen wrote to let me know that her son's autism was a constant source of worry for her. She loves her son. At the same time, she worries that her son's siblings carry a genetic tendency for autism and that their own hopes for marriage and children are tainted with concerns about this genetic tendency. She worries that one day, her other son will have to bear the strain of raising a child who is affected by autism. Ellen writes, ''As much as we love our son, we would give anything to have him be 'typical.' He will always require supervision and assistance. He is the great passion of my life and also a very great burden.''

Autism has become the fastest-growing developmental disability in America. In the past decade, the State of Illinois has seen a 353 percent increase in the number of children diagnosed with autism. Today, one out of every 150 children born will eventually be diagnosed with some form of autism. When a family has to hear that their child, sibling, or loved one is diagnosed with autism, there are a number of questions that immediately arise. Is there a cure? What caused this? Where do we seek help? How will this affect our family financially?

Parents are searching for answers, and through medical and public health research, we can further our understanding of the challenges families are facing. During the 109th Congress, I was a cosponsor of the Combating Autism Act, which the President signed into law in December 2006. The new law calls on the Federal Government to increase research into the causes and treatment of autism, and to improve training and support for individuals with autism and their caretakers. The law will help millions of Americans whose lives are affected by autism and will begin to give us answers to outstanding questions related to an individual's diagnosis. But more importantly, the new law demonstrates the commitment of Congress to delve deeper into this critically important issue for millions of families. Recently, the Centers for Disease Control and Prevention launched the Study to Explore Early Development—a study primarily focused on the causes of autism spectrum disorders related to genetic and environmental factors. This study is the first to comprehensively look for causes of autism with over 2,700 families involved.

In addition to looking into the causes of autism, we are working to improve the quality of life for those living with autism today. I am proud to cosponsor the Expanding the Promise for Individuals with Autism Act. This bill would expand access to treatment, interventions, and support services for people with autism. All families living with autism do not have the ability to access services like those offered at the Hope School in Illinois. Through committed staff and a community-based treatment approach, the Hope School makes every day a little better for kids living with autism. This bill would help replicate resources like the Hope